

**KERALA STATE ELECTRICITY REGULATORY COMMISSION**  
**THIRUVANANTHAPURAM**

Present:       **Shri. Preman Dinaraj, Chairman**  
                  **Shri. S. Venugopal, Member**

**Petition No. OP 58 /2019**

In the matter of                       : Petition filed by M/s. INOX Renewable Limited for the approval of Power Purchase Agreement with KSEBL for 16 MW Wind Power Project at Kanjikode.

Petitioner                               : M/s INOX Renewables Limited (INOX)

Respondent                             :     1.     Kerala State Electricity Board Limited.  
  2.     M/s Damodar Jagannath Malpani,  
  Malpani Estate, Maharashtra

**Petition No. OP 58A /2019**

In the matter of                       : Application for approval of the draft Power Purchase Agreement duly initialled by both the petitioner and Respondent KSEB Ltd in terms of the Commission's order dated 03.10.2018 in Petition No. 8 of 2017.

Petitioner                               : M/s Damodar Jagannath Malpani

Respondent                             :     1.     Kerala State Electricity Board Limited.  
  2.     M/s INOX Renewables Limited (INoX)

**Common Order dated 24.04.2020**

**Background**

1. M/s Damodar Jagannath Malpani (herein after referred to as M/s D.J Malpani), on 05.04.2019, filed a petition before the Commission for the approval of the Power Purchase Agreement (PPA) to be signed with KSEB Ltd for the sale of electricity from the 16 MW WEG commissioned at the Kinfra Textile Park at Palakkad.
2. M/s D.J Malpani, while filing the petition produced a Power of Attorney dated 07.03.2019, given by M/s INOX Renewables Ltd, empowering Sri. Sukant Bapat, the authorized representative of the D.J Malpani to do the following acts in respect to the 16 MW Wind project.

- (1) To sign the respective PPA with KSEB Ltd for the project.
- (2) To receive/ pay the payment/ charges for the energy injected into the grid in terms of the PPA.
- (3) To receive letters, sign letters, sign & enter into such agreements & other documents etc required for the purpose of the said projects.
- (4) To deal with the various authorities in the State and at the Central level for the matters pertaining to the project.
- (5) To take up the statutory or legal exercise if any required or deemed to be necessary during the project life.

The Power of Attorney is valid till the term of the PPA.

The petitioner has also produced a copy the Resolution passed by the Board of Directors of Inox Renewables Ltd on 17<sup>th</sup> January 2019, resolving to issue 'no objection certificate' to M/s D.J Malpani to enter into PPA with KSEB Ltd, and also resolved to issue 'Power of Attorney' to M/s D.J Malpani to authorize M/s Malpani to do certain acts for the project.

The petition is admitted as OP No. 58A/2019.

3. M/s. DJ Malpani, the petitioner, who filed the petition for the approval of the PPA for the 16MW WEG at Kanjikode, was not a party to the original petition No. 08/2017, filed by M/s INOX Renewables Ltd (herein after referred to as M/s INOX) for the approval of the tariff. Hence the Commission vide the Daily Order dated 31.05.2019 issued the following directions to M/s INOX Renewables Ltd for compliance.

*“The petitioner shall file separate petition for approval of the PPA to be signed with KSEB Ltd, instead of filing petition through a third party. The Commission further clarified that, any person authorized by the petitioner INOX can sign PPA with KSEB Ltd for selling power from the 16 MW WEG installed at Kanjikode, Palakkad.”*

4. In compliance of the direction of the Commission, M/s INOX Renewables Ltd, on 10.07.2019, filed a petition before the Commission with the following prayers.
  - a) *Direct the respondent Kerala State Electricity Board to enter into the Power Purchase agreement for 25 years in compliance to the order dated 03.10.2018 for 16 (8X2) MW wind power projects commissioned by the petitioner in the land allocated to it by KINFRA at Textile Park, Kanjikode, Palakkad district, Kerala without prejudice to the rights and contentions under the review petition filed before the Hon'ble commission vide petition No RP 01 of 2019; and*
  - b) *Approve the initialled draft PPA in terms of the order dated 03.10.2018 for 16 (8x2) MW wind power projects commissioned by the petitioner in the land allocated to it by KINFRA at Textile Park, Kanjikode, Palakkad District, Kerala without prejudice to the rights and contentions under (i) the review petition filed before the Hon'ble commission vide petition no*

*RP 01 of 2019 and (ii) the interlocutory application petition filed on 21.03.2019 w.r.t the Hon'ble Commission order dated 03.10.2018 in OP No. 8/2017; and*

- c) *Pass such other order or orders as this Hon'ble Commission may wish to pass for doing substantial justice in the matter and to uphold the provisions of the Act of 2003.*

5. The Commission admitted the petition as OP No. 58/2019 and conducted hearing on 27.11.2019 at Thiruvananthapuram. Shri Ravi Sinha presented the petition on behalf of M/s INOX and Smt. Latha S.V, Asst: Executive Engineer presented the counter arguments on behalf of the respondent KSEB Ltd.
6. Based on the deliberations during the hearing, the Commission has issued certain observation and directions, vide the daily order dated 13.12.2019, which is extracted below.

*"5. During the deliberations of the subject petition, the Commission noted the following.*

- (1) *The draft initialled PPA is proposed to be signe between KSEB Ltd and M/s Damodar Jagannath Malpani .*  
(2) *Further, in the draft initialled PPA, M/s Damodar Jagannath Malpani is referred as 'developer' of the project.*

*However, as per the details submitted before the Commission during the deliberations of the original petition OP No.08/2017, M/s INOX Renewable Ltd is the developer of the 16 MW WEG established at the KINFRA park at Palakkad. Further, M/s KINFRA allotted the land for establishing the wind plant to M/s INOX Renewable Limited. M/s Damodar Jagannath Malapani is not a party to the original petition OP No. 08/2017 before the Commission. Hence the Commission cannot approve the proposed PPA to be signed between the KSEB Ltd and a third party M/s Damodar Jagannath Malpani for purchasing the electricity generated from the 16 MW WEG established by M/s INOX Renewables Limited at KINFRA park at Palakkad.*

*The Commission may consider approving only the PPA to be signed between KSEB Ltd and M/s INOX Renewables Limited for the purchase of electricity generated from the 16 MW WEG established by the petitioner at KINFRA park at Palakkad, if such a PPA is submitted before the Commission.*

*6. Under these circumstances, the Commission hereby direct the petitioner M/s INOX Renewables Limited to submit the revised petition for approval of the PPA to be signed between KSEB Ltd and M/s INOX Renewables Ltd for the purchase of electricity generated from the 16 MW WEG established at KINFRA park at Kanjikode."*

7. However, M/s INOX did not submit the revised petition as instructed by the Commission. M/s INOX vide the letter dated 25.02.2020 submitted the following regarding the subject matter.

- (i) *M/s INOX Renewables Ltd vide the letter dated 27.12.2019 approached KSEB Ltd for the initialization of the draft PPA for onward transmission before the Commission for approval. However, response is awaited from KSEB Ltd.*
- (ii) *Further, upon pursuance of the matter with KSEB Ltd, it is brought to their notice that, KSEB Ltd has written a letter dated 20.02.2020 before the Commission seeking clarity and direction from the Commission on certain issues. Post receipt of the clarifications and in accordance with the directions of the Commission, KSEB Ltd is desirous to proceed further in the matter.*
- (iii) *Under these circumstances, it may be futile to file petition without having KSEB Ltd's confirmation and the draft PPA initialization.*

8. KSEB Ltd vide its letter dated 20.02.2020 raised certain issues on signing the PPA with M/s INOX. The summary of the issues raised by KSEB Ltd is extracted below.

- (1) The Commission issued the following orders on tariff for the electricity generated from the 16 MW Wind plant at Kanjikode, Palakkad.
  - (a) Hon'ble Commission vide order dated 03.10.2018 in petition No.OP. 8/2017 approved a levelized tariff for the electricity generated from 16 MW wind energy generator at the rate of Rs.4.09 per unit, duly considering the benefit of accelerated depreciation. The Commission also ordered that KSEB Ltd shall reimburse, any tax paid on the RoE, limited to the amount of equity specified in this Order. For claiming the tax, developer shall furnish the proof of payment of such tax to KSEB Ltd.
  - (b) Hon'ble Commission vide order dated 2-12-2019 in Review Petition RP 1/2019 ordered that the levelized tariff of the project without the benefit of accelerated depreciation is approved @ Rs 4.54/unit.
- (2) As per the tariff approved by the Commission, the generator should have the following rights.
  - (a) Right to get reimbursed for the tax paid against return on equity identified by the Commission.
  - (b) Right to get higher tariff in case benefit of accelerated depreciation is not claimed by the generator.

Both the above rights of the generator is linked to the investment made in the project. Hence, signing the PPA with someone who has not invested in the project could lead to ambiguities in administering the PPA while procuring power from the 16MW wind project at KINFRA, Kanjikode

- (3) KSEB Ltd further submitted that, it is clarified by M/s INOX Renewables that, the entire investment in the project has been made by M/s.Damodar Jaganath Malpani. The role of M/s.Inox Renewables Ltd

is limited to that of a supplier and EPC contractor facilitating establishment of the project and in carrying out O&M of the project.

- (4) As per the legal opinion obtained by KSEB Ltd, PPA can be entered into with M/s.Damodar Jagnath Malpani in case M/s.INOX Renewables Ltd is furnishing a Power of Attorney issued by its Board of Directors, the resolution for which contain clear authorization for entering into PPA with KSEBL. Accordingly, M/s.INOX Renewables Ltd furnished Power of Attorney in respect of M/s.Damodar Jagnath Malpani and copies of resolution of its Board of Directors.

In view of the Power of Attorney and Authorization submitted by M/s INOX Renewables Ltd, KSEB Ltd initialed draft PPA with M/s Damodar Jagnath Malpani on 05.04.2019 for submitting before the Commission.

- (5) However, as per the daily order of the Commission dated 13.12.2019 in OP No. 58/2019, the Commission may consider approving only the PPA to be signed between KSEB Ltd and M/s INOX for the purchase of electricity generated from the 16 MW project. But this may lead to ambiguities in administering the PPA for procurement of power from the project as given below.

- (a) The levelized tariff of Rs.4.09/unit is approved by Hon'ble Commission at post tax RoE of 14% with income tax reimbursable on actual basis on production of documentary evidence. If PPA is signed with M/s. INOX Renewables Ltd, the tax on RoE can be reimbursed only against the incidence of tax for M/s. INOX Renewables Ltd. However, as M/s. INOX Renewables Ltd is the developer and not the investor of the project and therefore it is evident that there is no equity infusion to the project by INOX and thus there cannot be any reimbursement of tax claim. At the same time any claim against tax paid on RoE made by M/s.Damodar Jaganath Malpani cannot be entertained as there is no privity of contract between KSEB Ltd and M/s.Damodar Jaganath Malpani. Further, any form of tax incidence, if any, on M/s. INOX Renewables Ltd is also not reimbursable as long as they have not made any investment in the project.

- (b) Further, as per the order dated 3-10-2018 and 2-12-2019, the levelized tariff of the project after accounting the benefit of accelerated depreciation is Rs.4.09/unit and Rs.4.54/unit without accounting the benefit of accelerated depreciation. If PPA is signed with M/s. INOX Renewables Ltd, the tariff has to be based on the position taken by M/s. INOX Renewables Ltd on accelerated depreciation. Even though, as per records, it is evident that M/s. Damodar Jaganath Malpani is the investor, the accelerated depreciation if any, claimed by M/s. Damodar Jaganath Malpani for tax exemption cannot be considered as a criteria for determining the tariff. In case PPA is signed with

M/s.INOX Renewable Ltd, since M/s. INOX Renewable Ltd is not the investor, the firm cannot claim accelerated depreciation and the tariff at Rs.4.54/unit will have to be made applicable in the PPA. In the above situation if M/s. Damodar Jaganath Malpani claims IT benefit by claiming accelerated depreciation, that benefit will not be passed on to KSEBL and the consumers of the State and the firm will get undue benefit. Also, the intention of regulations to pass on the benefit of accelerated depreciation through tariff will be defeated.

- (c) KSEB Ltd further submitted that, the signing of PPA with M/s INOX Renewables Ltd, who is not an investor in the project will be considered on getting the views and directions of the Commission on the above matter.

9. The Commission conducted second hearing of the petition at Thiruvananthapuram on 4.3.2020 A and Sri Manoj Dixit represented the petitioner and Sri Manoj G, KSEB Ltd. It is submitted that the views of KSEB has already been submitted to the Commission.

### **Analysis and Decision**

10. The Commission examined in detail the petition filed by M/s D.J. Malpani dated 05.04.2019, for the approval of the PPA to be signed with KSEB Ltd for the sale of electricity from the 16MW WEG developed by M/s INOX at Kanjikode, Palakkad.

M/s. DJ Malpani, the petitioner, who filed the petition for the approval of the PPA for the 16MW WEG at Kanjikode, was not a party to the original petition No. 08/2017, filed by M/s INOX Renewables Ltd (herein after referred to as M/s INOX) for the approval of the tariff. Hence the Commission vide the daily order dated 31.05.2019 issued the following directions to M/s INOX Renewables Ltd for compliance.

*“The petitioner shall file separate petition for approval of the PPA to be signed with KSEB Ltd, instead of filing petition through a third party. The Commission further clarified that, any person authorized by the petitioner INOX can sign PPA with KSEB Ltd for selling power from the 16 MW WEG installed at Kanjikode, Palakkad.”*

11. In compliance of the direction of the Commission, M/s INOX Renewables Ltd on 10.07.2019, filed a petition before the Commission for the approval of the PPA to be signed with KSEB Ltd for the sale of electricity from the 16MW WEG developed by M/s INOX at Kanjikode, Palakkad. The Commission examined the petition in detail, as per the provisions of the Electricity Act, 2003, and the Regulations notified by the Commission.

12. The petition filed by M/s INOX, on 10.07.2019, is for getting the approval from the Commission, for the 'draft Power Purchase Agreement (PPA) between M/s D.J. Malpani and the licensee KSEB Ltd, for the sale of electricity from the 16MW WEG developed by M/s INOX at Kanjikode, Palakkad. The draft PPA was initiated by both M/s D.J Malpani and KSEB Ltd.
13. The Commission has examined the issue of filing petition by M/s INOX, for the approval of the PPA to be signed by KSEB Ltd and third party M/s D.J Malpani, for the sale of electricity from the 16MW WEG established by the INOX. In this matter the Commission noted the following.
- (1) The Commission vide the order dated 03.10.2018 in OP No. 08/2017 filed by M/s INOX, approved the following.
- “
- (i) *The levelised tariff for the electricity generated from the 16 MW WEG installed by M/s INOX at the KINFRA land at Kanjikode, Palakkad is approved @Rs 4.09/unit, duly considering the benefit of accelerated depreciation.*
- (ii) *The levelised tariff approved by the Commission is applicable for the entire electricity injected into the grid from the date of synchronization.*
- (iii) *KSEB Ltd shall reimburse, any tax paid on the RoE, limited to the amount of equity specified in this Order. For claiming the tax, developer shall furnish the proof of payment of such tax to KSEB Ltd.”*
- (2) Subsequently, the Commission vide the order dated 02.12.2019 in Review petition RP 01/2019 ordered that, the levelized tariff of the project without the benefit of accelerated depreciation is approved @ Rs 4.54/unit.
- M/s D.J Malpani was not a party in the petition OP No. 08/2017 and in the review petition RP 01/2019 filed before the Commission.
- (3) As per the record available with the Commission, the 16 WEG was established by M/s INOX at the KINFRA park at Palakkad. Further, M/s KINFRA allotted the land to M/s INOX for establishing the 16 WEG at Palakkad. The State Government through M/s ANERT, granted technical clearance and technical approval for establishing the project to M/s INOX. KSEB Ltd also issued the consent for purchase of power from the project to M/s INOX.
- (4) However, it was later reported by M/s INOX Renewables Ltd that, the entire investment in the project was made by M/s D.J Malpani. The role of the M/s INOX is limited to that of a developer and EPC contractor facilitating the establishment of the project and to carryout the O&M of the project.
- (5) M/s INOX issued a Power of Attorney, dated 7<sup>th</sup> March-2019 to M/s D.J Malpani, to do certain things including signing the PPA, receive/ pay the payment/ charges for the electricity injected into the grid in terms of the PPA, as detailed under paragraph-2 above. The Board of

Directors of M/s INOX vide the Resolution dated 17<sup>th</sup> January 2019 authorised the representative of M/s D.J Malpani to act in terms of the Power of Attorney dated 7<sup>th</sup> March 2019.

- (6) KSEB Ltd in the letter dated 20.02.2020 submitted that, in view of the Power of Attorney dated 7<sup>th</sup> March 2019 and the Resolutions of the Board of Directors of M/s INOX, KSEB Ltd initialed the PPA with M/s D J Malpani for the purchase of the electricity generated from the 16 MW WEG at the tariff approved by the Commission.
  - (7) KSEB Ltd further submitted that, signing with the PPA between M/s INOX and KSEB Ltd may lead to ambiguities in administering the PPA for procurement of power from the project, due to the following.
    - (a) The Commission had approved the tariff at post tax RoE of 14% with income tax reimbursable on actual basis. If the PPA is signed with M/s INOX, the tax on ROE can be reimbursed only against the tax of INOX. But M/s INOX is not the investor of the project and hence there is no equity infusion to them, and hence INOX cannot claim reimbursement of tax. However, tax paid on RoE by M/s D.J Malpani cannot be entertained as there is no privity of contract between KSEB Ltd and M/s D J Malpani.
    - (b) The Commission vide the orders dated 03.10.2018 and 02.12.2019, separately approved the tariff of the project without availing the benefit of accelerated depreciation, and with the benefit of the accelerated depreciation. If the PPA is signed with M/s INOX, the tariff has to be based on the position taken by M/s INOX on accelerated depreciation. Further M/s INOX cannot claim accelerated depreciation since they have not invested in the project. Further, though M/s D.J Malpani is the investor, the accelerated depreciation if any claimed by M/s D.J Malpani for tax exemption cannot be considered as a criteria for determining the tariff. Hence even if M/s D J Malpani claim IT benefit by claiming accelerated depreciation, the benefit will not be passed on to the KSEB Ltd.
14. The Commission, based on the deliberations on the subject matter and other documents placed before it, appraised the same and identified the following issues.
- (1) What are the rights delegated by M/s INOX to M/s D.J Malpani as per the Power of Attorney dated 07.03.2019?
  - (2) Has the Power of Attorney been registered ? Is it Legally enforceable?
  - (3) What is the difficulty in signing a tripartite agreement between the parties?
  - (4) Income Tax reimbursement to INOX.
  - (5) Why the benefit of AD paid cannot be included in the power cost?
  - (6) Duration of PPA- 13 years or 25 years?



15. Issue No.1: What are the rights delegated by M/s INOX to M/s D.J Malpani as per the Power of Attorney dated 07.03.2019?

The Commission has examined the Power Attorney dated 07.03.2019 issued by M/s INOX to M/s DJ Malpani. As detailed under paragraph-2 of this order, the Power of Attorney to M/s D J Malpani, is for carrying out the following acts in respect of the 16 MW WEG at Kajikode, Palakkad.

- (1) To sign the respective PPA with KSEB Ltd for the project.
- (2) To receive/ pay the payment/ charges for the energy injected into the grid in terms of the PPA.
- (3) To receive letters, sign letters, sign & enter into such agreements & other documents etc required for the purpose of the said projects.
- (4) To deal with the various authorities in the State and at the Central level for the matters pertaining to the project.
- (5) To take up the statutory or legal exercise if any required and deemed necessary during the project life.

As detailed above, the Power of Attorney given by M/s INOX is for carrying out certain rights only, as mentioned above.

Further, M/s INOX is the supplier, EPC contractor and carrying out the O&M of the project throughout the life of the project. Ensuing the availability of the machines for generation, schedule and dispatch of electricity from the project is also the responsibility of M/s INOX for the entire useful life of the project. As per the Power of Attorney given by M/s INOX, the role of the M/s D.J Malpani is limited to, as the investor, to receive payments for the energy injected from the project into the grid. Accordingly, M/s Malpani is authorized to sign the PPA with KSEB Ltd.

Hence, it can be concluded that, M/s INOX is responsible for all the issues related to the 16 MW WEG at Kanjikode, Palakkad except the five items specified in the Power of Attorney dated 07.03.2019 given by M/s INOX to M/s D.J Malpani.

16. **Issue No.2. Whether the Power of Attorney is registered ? Is it legally enforceable?**

The Commission examined in detail the Power of Attorney dated 07.03.2019, given by M/s INOX to M/s D.J Malpani. The Power of Attorney placed before the Commission is seen to be un-registered.

The matter of Registration of Power of Attorney is governed by the provisions of the Registration Act, 1908. Further, Hon'ble Supreme Court vide the judgment dated 29<sup>th</sup> July 2009 in Civil Appeal No. 4671 of 2004, examined in detail the legality of an unregistered 'Power of Attorney', which is extracted below.

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*“27.The object of registration is designed to guard against fraud by obtaining a contemporaneous publication and an unimpeachable record of each document. The instant case is one where no allegation of fraud has been raised. In view thereof the duty cast on the Registering Officer under Section 32 of the Act was only to satisfy himself that the document was executed by the person by whom it purports to have been signed. The Registrar upon being so satisfied and upon being presented with a document to be registered had to proceed with the registration of the same.”*

As above, it is settled legal position that, an unregistered Power of Attorney is legally not enforceable. In the present case, M/s D J Malpani is claimed to be the investor, and M/s INOX has given to M/s Malpani, the right of signing the PPA with KSEB Ltd, and also the right of getting the payment of electricity injected into the grid from KSEB Ltd. The authority granted to the M/s DJ Malpani by M/s INOX through this Power of Attorney is legally enforceable only if the Power of Attorney is registered as per the provisions of the Registration Act, 1908.

***Hence, the Commission hereby direct that, the Power of Attorney dated 07.03.2013 given by M/s INOX to M/s D.J Malpani shall be registered as per the provisions of the Registration Act-1908.***

**17. What is the difficulty in signing a Tripartite Agreement between the parties?**

As already discussed elsewhere in this Order, M/s INOX is the developer, who established the 16 MW WEG project at the KINFRA land at Kanjikode, Palakkad. It is also pertinent to note that KINFRA had originally allotted the land to M/s INOX for development of this project. Thereafter, M/s INOX filed the petition OP No. 08/2017 for the approval of the PPA, and to determine the tariff of the project. KSEB Ltd, the Government owned distribution licensee agreed to purchase power from the project at the tariff determined by the Commission. The Commission has seen that M/s D.J Malpani is stated to be the investor of the project, and M/s INOX has authorized them to sign the PPA with KSEB Ltd and to get payments for the electricity injected into the grid, and certain other things as detailed under paragraph-2 above. Further, for the entire life of the project, M/s INOX is responsible to carry out the O&M for the project. Accordingly, the three entities, M/s INOX, M/s D.J. Malpani and KSEB Ltd are seen to be directly involved in the project for its entire useful life. Hence the Commission is of the considered view that, a Tripartite Power Purchase Agreement is the best way forward and directs that the same shall be entered into between M/s INOX, M/s D.J Malpani and KSEB Ltd, specifying the role and responsibilities of each entity separately, so as to avoid disputes and litigations during the terms of the PPA.

The Commission examined in detail the role of the M/s INOX, M/s D.J Malpani and the Distribution licensee, and identified the following responsibilities (not limited to) in the 16 WEG established at Kanjikode, Palakkad.

(1) **M/s INOX Renewables Ltd.**

M/s INOX Renewables Limited is the one of the leading Wind Turbine Manufactures and Wind Energy Developers in the Country. In pursuance of the Kerala Wind Power Policy notified by the State Government in 2004 and in 2007, the State Government through M/s ANERT granted technical clearance to establish 22 MW Wind Energy Generating Unit at KINFRA Textile park at Palakkad district. M/s KINFRA, another State Government agency, allotted the land at KINFRA Textile park at Kanikode Palakkad to M/s INOX for 90 years lease. KSEB, also has given its consent to M/s INOX, for purchase power from the WEG. As per the details presented before the Commission, M/s INOX established the 16 MW WEG at Kanjikode, Palakkad during the FY 2017-18. The decision on establishing the balance 6 MW is yet to be communicated to the Commission.

However, during the deliberations of the subject petition, M/s INOX clarified that, their role in the 16 MW WEG established at Kanjikode Palakkad is limited to the 'supplier and EPC contractor facilitating the establishment of the project and in carrying out the O&M of the project. However, M/s KINFRA, an agency constituted by the State Government, allotted the land to M/s INOX for establishing the project. Further, M/s ANERT, an agency under the Statement Government for Renewable project allotted the project to M/s INOX. Considering all these the role of the INOX cannot be limited to that of an EPC contractor.

M/s INOX further clarified that, the entire investment of the project was made by M/s D J Malpani. As the investment was made by M/s D J Malpani, M/s INOX has given a Power of Attorney dated 07.03.2019, to M/s Malpani to do certain things on behalf of the project as detailed under paragraph-2 including signing the PPA with KSEB Ltd, to get payment from KSEB Ltd for the electricity injected in to the grid as per the terms of the PPA.

The Commission examined all these aspects in detail, and noted that the following role and responsibilities is vested with M/s INOX during the entire useful life of the project.

- (i) The technical sanction for establishing the 16 MW WEG at Kanjikode, Palakkad was given by ANERT to M/s M/s INOX, and the M/s INOX is the developer of the project, EPC contractor and has to carry out the O&M cost of the project throughout the life of the project.
- (ii) M/s INOX as the developer has to ensure the availability of the machines, schedule and dispatch as per the terms of the PPA and also as per the instructions from SLDC of Kerala, and the Regulations and orders of the statutory authorities including CEA, CERC and KSERC.

- (iii) All the role and responsibilities specified in the PPA except the authorities given to the M/s D J Malpani as per a legally enforceable Power of Attorney is vested with M/s INOX.
- (iv) In the terms of the PPA, M/s INOX shall be 'developer' and its role and responsibilities shall be construed accordingly.

**(2) M/s D.J. Malpani**

M/s INOX clarified during the proceedings of this petition that, M/s D J Malpani is the Investor in the 16 MW WEG established at Kanjikode, Pallakkad. Considering the investment made by M/s D.J. Malpani in the project, M/s INOX has given a Power of Attorney dated 07.03.2019, to M/s Malpani to do the following acts, as detailed under paragraph-2 of this order, in respect of the project.

- (1) To sign the respective PPA with KSEB Ltd for the project.
- (2) To receive/ pay the payment/ charges for the energy injected into the grid in terms of the PPA
- (3) To receive letters, sign letters, sign & enter into such agreements & other documents etc required for the purpose of the said projects.
- (4) To deal with the various authorities in the State and at the Central level for the matters pertaining to the project.
- (5) To take up the statutory or legal exercise if any required, deemed to be necessary during the project life.

In the draft initialed PPA between M/s D.J Malpani and KSEB Ltd, M/s Malpani is referred to as the 'developer' of the project. However, as detailed under paragraph 16(1) above, M/s INOX is referred to as the 'developer' and their roles and responsibilities (not limited to) specified therein. However, M/s INOX the developer of the project has given a 'Power of Attorney' to act up on certain things to M/s D.J Malpani as the investor, as detailed earlier. Accordingly as per the terms of the 'Power of Attorney' dated 07.03.2019, the role and responsibilities of M/s D J Malpani is limited only to the same specified in the 'Power of Attorney'.

The Commission examined these aspects in detail, and noted that the role and responsibilities of M/s D.J Malpani, in terms of the PPA, is limited to the following.

- (i) M/s D.J. Malpani, has to be referred to as the 'investor of the project'.
- (ii) M/s D.J Malpani is authorized to do the acts specified in the Power of Attorney dated 07.03.2019, during the terms of the PPA.

- (iii) The role and responsibilities of M/s D.J. Malpali, 'the investor' of the project may be construed accordingly in the PPA to be signed with KSEB Ltd.
- (iv) As the investor the liability of income tax and benefit of accelerated depreciation is applicable to M/s Malpani.

It is also pertinent to reemphasise that the PoA has not been registered and therefore not legally enforceable.

**(3) KSEB Ltd**

Kerala State Electricity Board Limited (KSEB Ltd), the State Government owned 'distribution licensee' is purchasing the entire energy from the project as per the terms of the PPA. There is no overlapping of the roles or responsibilities of KSEB Ltd with that of the INOX and DJ Malpani. Hence the roles and responsibilities of KSEB Ltd in the draft initialed PPA may be continued for the tripartite agreement to be signed between M/s INOX, M/s D.J Malpani and KSEB Ltd.

**Considering the reasons explained in the preceding paragraphs, a Tripartite Power Purchase Agreement shall be signed between the parties M/s INOX, M/s D.J Malpani and KSEB Ltd, specifying the role and responsibilities of each entity separately, to avoid disputes and litigations during the term of the PPA.**

**18. Income Tax reimbursement to INOX**

Regarding the payment of income tax, the Commission vide the order dated 03.10.2018 in OP No. 08/2017 ordered as follows.

"53. ....

(3)KSEB Ltd shall reimburse, any tax paid on the RoE, limited to the amount of equity specified in this Order. For claiming the tax, developer shall furnish the proof of payment of such tax to KSEB Ltd."

As above, the developer who entered into PPA with KSEB Ltd has to claim reimbursement of income tax, if any, paid on the RoE on actual basis.

In the present case, M/s DJ Malpani is the investor, and accordingly they had availed the borrowings and/or made own investment in the project. As per the Power of Attorney given by the M/s INOX to M/s Malpani, the payment towards the electricity injected into the grid from the project is being claimed by M/s Malpani and accounted as their Income.

As per the norms, the investor can make own investment as equity upto 30% of the capital cost of the project. While determining the tariff, as per the prevailing norms, the Commission has allowed the Post-tax RoE @14% on the 30% of the approved capital cost. Further, as extracted above, the actual tax paid on RoE is reimbursable to the investor.

***In this case, as the investor, M/s DJ Malpani has invested in the project in the form of equity. M/s INOX do not have equity infusion and accordingly they cannot claim 'reimbursement of income paid on RoE' from KSEB Ltd. Hence, KSEB Ltd cannot reimburse Income Tax of M/s INOX,.***

**19. Why the benefit of accelerated depreciation be not included in the power cost?**

The Commission, vide the order dated 03.10.2018 in petition OP No. 08/2017 has adopted the principles, norms and parameters as per the CERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2017 (hereinafter referred as CERC RE Regulations, 2017) for the reasons specified therein. The Regulation 23 of the CERC RE Regulations, 2017 provide as under.

“23. Subsidy or incentive by the Central / State Government The Commission shall take into consideration any incentive or subsidy offered by the Central or State Government, including accelerated depreciation benefit if availed by the generating company, for the renewable energy power plants while determining the tariff under these Regulations.”

As above, the CERC RE Regulations 2017 provides that, the Commission shall consider the benefit of accelerated depreciation, if such benefit is availed by the generator/ investor.

Considering these provisions, the Commission vide the order dated 03.10.2018 had approved the tariff at Rs 4.09/unit after accounting the benefit of accelerated depreciation and Rs 4.54/unit without the benefit of accelerated depreciation. Accordingly, if the investor avail accelerated depreciation, the tariff payable is only Rs 4.09/unit, after taking into account the benefit of accelerated depreciation. Accordingly, it is clear that, the Commission has included the benefit of accelerated depreciation in the power cost.

***M/s Malpani, as the investor in the project may have the tax benefit by claiming accelerated depreciation if they desire. However, the INOX cannot claim accelerated depreciation on this project since they are not the investor of the project.***

**20. Duration of the PPA- 13 years or 25 years.**

During the hearing on the petition, M/s INOX requested before the Commission to direct the respondent KSEB Ltd to sign the PPA for entire useful life of 25 years.

The Commission examined the request in detail, and noted the following.

(i) The Commission vide the order dated 03.10.2018 in OP No. 08/2017 has determined the project specific tariff of the 16 MW WEG at Kanjikode, Palakkad, by adopting the norms and parameters as per the CERC (Terms and Conditions of Tariff determination from Renewable Energy Sources) Regulations, 2017 (herein after referred to as CERC (RE) Regulations, 2017.

(ii) The relevant portion of the CERC (RE) Regulations, 2017, dealing with Tariff period and related issues is extracted below.

(a) 'Regulation 2(1) (bb)' of the CERC (RE) Regulations, 2017, define the 'tariff period' as below.

'Tariff period' means the period for which tariff is to be determined by the Commission on the basis of norms specified under these Regulations;

(b) 'Regulation 2(1) cc' of the CERC (RE) Regulations, 2017 defines the 'Useful Life' as follows.

'Useful Life' in relation to a unit of a generating station including evacuation system shall mean the following duration from the date of commercial operation (COD) of such generation facility, namely:-

(a) Wind energy power project	25 years
(b) Biomass power project with Rankine cycle technology	20 years
(c) Non-fossil fuel cogeneration project	20 years
(d) Small Hydro Plant	35 years
(e) Municipal Solid Waste (MSW)/ (RDF)	20 years
(f) Solar PV/Solar thermal power project	25 years
(g) Biomass Gasifier based power project	20 years
(h) Biogas based power project	20 years

(c) Further, the Regulation-6 of the CERC (RE) Regulations, 2017, deals with 'Tariff Period', which is extracted below.

*"6. Tariff Period*

*a) The Tariff Period for Renewable Energy power projects will be same as their Useful Life as defined in Regulation 2 (1) (cc).*

*b) Tariff period under these Regulations shall be considered from the date of commercial operation of the renewable energy generating stations.*

*c) Tariff determined as per these Regulations shall be applicable for Renewable Energy power projects, for the duration of the Tariff Period as stipulated under Clause (a) and (b)."*

(iii) As extracted above, as per the Regulations 2(1) (bb), 2(1)(cc) and 6, of the CERC (RE) Regulations, 2017, the following may be noted with

respect to the 16 MW WEG established by M/s INOX at Kajikode, Palakkad.

- (1) As per the Regulations 2(1)(cc) and 6 (a) of the CERC (RE) Regulations, 2017, the Tariff period for RE power projects will be the same as their useful life.

Accordingly, the tariff period of the 16 WEG established by INOX also '25' years.

- (2) As per Regulation 2(bb), the tariff of RE project has to be determined for the tariff period.

The Commission vide the order dated 03.10.2018 and 02.12.2019, determined the tariff for the tariff period of '25' years as stipulated in the CERC (RE) Regulations, 2017.

- (3) Further, as per the Regulation 6 (c) of the CERC (RE) Regulations, 2017, the tariff determined by the Commission as per the norms and parameters specified in the said CERC Regulations is applicable for the entire tariff period of '25' years.

***Hence, considering the provisions in the CERC (RE) Regulations, 2017, and also the fact that the tariff of the project was determined for the period of 25 years, the Commission is of the considered view that, the power purchase agreement for purchasing electricity from the project shall be for a period of 25 years from the date of CoD.***

### **Orders of the Commission**

21. The Commission, after detailed examination of the petition filed by M/s D.J. Malpani dated 05.04.2019 and the petition filed by M/s INOX Renewables Ltd on 10.07.2019, as per the provisions of the Electricity Act, 2003 and other applicable Regulations in force, hereby orders the following.

- (1) The Power of Attorney dated 7<sup>th</sup> March 2019, given by M/s INOX Renewables Ltd to M/s Damodar Jagannath Malpani, shall be registered as per the Registration Act. 1908.
- (2) M/s INOX Renewables Ltd, M/s Damodar Jagannath Malpani and KSEB Ltd, shall enter into a Tripartite Power Purchase Agreement, specifying the role and responsibilities of each entity, as discussed (but not limited to) under paragraph-17 of this order, for the purchase of the electricity generated from the 16 MW WEG at Kanjikode, Palakkad.
- (3) The Tripartite Power Purchase Agreement shall be signed for a period of 25 years from the date of Commercial Operation Date (COD) of the project.



- (4) The initialed Tripartite Power Purchase Agreement shall be submitted before the Commission for approval, as per the provisions of the KSERC (Conduct of Business) Regulations,2003 and KSERC (Terms and Conditions of Determination of Tariff) Regulations, 2018.
- (5) The petition filed by M/s D.J Malpani dated 05.04.2019 in OP No. 58A/2019, and the petition filed by M/s INOX dated 10.07.2019 in OP No.58/2019 stand disposed off as above.

**Sd/-**  
**S.Venugopal**  
**Member**

**Sd/-**  
**Preman Dinaraj**  
**Chairman**

Approved for issue

C.R Satheesh Chandran  
Administrative Officer  
(In Charge of Secretary)