



*Sakshi Singhal*  
*Associate*

## SUPREME COURT ON INTERPRETATION OF CONTRACTS

### **A. Introduction:**

Supreme Court (“**SC**”), in the *Bangalore Electricity Supply Company* case of May 2021,<sup>1</sup> interpreted an agreement by giving its terms their ordinary meaning and did not use the narrow or liberal approach while interpreting it.

### **B. Brief Facts:**

1. Karnataka Renewable Energy Development Limited (“**KREDL**”) invited bids for undertaking development of Solar PV ground-mount power plants in Karnataka.
2. Emmvee Photovoltaic Power Private Limited (“**Emmvee**”) incorporated two Special Purpose Vehicles (“**SPV**”) as per terms of the Request for Proposal and submitted its bid.
3. Projects were awarded to Emmvee and the SPVs (collectively the “**Respondents**”) and two Power Purchase Agreements (collectively “**PPA**”) were entered.
4. Aggrieved by the reduction of the tariff payable by KREDL against damages for alleged delay in commissioning the plants, Respondents petitioned before the Karnataka Electricity Regulatory Commission (“**KERC**”) and imposing.
5. KERC viewed the Scheduled Commissioning Date (“**SCD**”), i.e., October 17, 2016, as different from that contended by Respondents and dismissed their claims.
6. Being aggrieved, Respondents appealed before the Appellate Tribunal for Electricity (“**APTEL**”).
7. APTEL set aside KERC’s order and held that the reduction of applicable tariff is permissible only when there is delay in commissioning of the project beyond the SCD and that it is not necessary to adjudicate the point relating to the requirement of actual injection of power into the grid to decide the SCD.
8. Aggrieved by this, KREDL approached the SC.

### **C. Parties’ Contentions:**

1. KERC contended that the PPA must be interpreted to include the first and last dates i.e., the date on which PPA was approved by KERC and the date on which injection of power into the grid was carried out for determining the SCD.
2. Respondents claimed that the twelve-month period for deciding the SCD starts from October 17, 2016 which was the date of approval of PPA by KERC. Emphasis was placed on fact that

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<sup>1</sup> *Bangalore Electricity Supply Company Limited Vs. Respondent: E.S. Solar Power Pvt. Ltd. and Ors.*, MANU/SC/0337/2021.  
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commissioning of the plant is different from commercial operation date. The date of injection of power is immaterial.

#### **D. SC Order & Reasoning:**

1. SC dismissed the appeal and upheld that the order passed by APTEL by interpreting various relevant articles of the PPA.
2. It took note of the well-settled canons of construction of contracts<sup>2</sup> and reiterated the following principles:<sup>3</sup>
  - a. *“The duty of the Court is not to delve deep into the intricacies of human mind to explore the undisclosed intention, but only to take the meaning of words used i.e. to say expressed intentions.”*
  - b. *“In seeking to construe a Clause in a Contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that Clause is ambiguous, and that it has two possible meanings. In those circumstances, the Court has to prefer one above the other in accordance with the settled principles. If one meaning is more in accord with what the Court considers to be the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose former or rather than the later.”*
  - c. *“The intention of the parties must be understood from the language they have used, considered in the light of the surrounding circumstances and object of the contract.”*
  - d. *“Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavoring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause.”*
3. Applying the above principles, SC adjudged that the solar power project’s SCD was October 17<sup>th</sup> and not 16<sup>th</sup> by interpreting the terms ‘months’, and ‘from’ (with reference to a period) used in PPA’s articles. Also, KREDL’s requirement of actual injection of power into the grid by the Respondents to determine the SCD was considered immaterial since the PPA was silent on this aspect.

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<sup>2</sup> *Scheme Limited v. West Bromwich Building Society*, MANU/UKHL/0054/1997; *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.*, MANU/UKHL/0004/1997; *The Antaios Compania Naviera SA v. Salen Rederierna AB*, MANU/UKWA/0075/1983; *Kamala Devi v. Seth Takhatmal and Anr.*, MANU/SC/0016/1963; *Bank of India and Anr. v. K. Mohan Das and Ors.*, MANU/SC/0491/2009; and *Bihar State Electricity Board, Patna and Ors. v. M/s. Green Rubber Industries and Ors.* MANU/SC/0075/1989.

<sup>3</sup> Paragraph 16 of the Judgement.