

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

*In the matter of an Application for
Mandates in the nature of Writs of
Certiorari, Mandamus and
Prohibition under and in terms of
Article 140 of the Constitution of
the Democratic Socialist Republic
of Sri Lanka.*

Case No: CA WRIT /1029 /2025
CA WRIT /1033 /2025

**POLONNARUWA SOLAR
POWER (PVT) LTD**
No. 59/1, Ward Place,
Colombo 07.

PETITIONER

Vs.

**1. CEYLON ELECTRICITY
BOARD**

No. 50,
Sri Chittampalam A. Gardiner
Mawatha,
Colombo 02.

**2. ENG (PROF.) K.T.M.U.
HEMAPALA**

CHAIRMAN
Ceylon Electricity Board,
No. 50,
Sri Chittampalam A. Gardiner
Mawatha,
Colombo 02.

3. ENG. W. EDUSSURIYA
GENERAL MANAGER
Ceylon Electricity Board,
No. 50,
Sri Chittampalam A. Gardiner
Mawatha,
Colombo 02.

4. ENG. K.K.P. PERERA
DEPUTY GENERAL
MANAGER – RENEWABLE
ENERGY, PROCUREMENT &
PERFORMANCE
MONITORING,
Ceylon Electricity Board,
Meetotamulla Road,
Kolonnawa.

5. ELECTRICITY
GENERATION LANKA (PVT)
LTD
No. 50,
Sri Chittampalam A. Gardiner
Mawatha,
Colombo 02.

6. NATIONAL TRANSMISSION
NETWORK SERVICE
PROVIDER (PVT) LTD
No. 50,
Sri Chittampalam A. Gardiner
Mawatha,
Colombo 02.

**7. NATIONAL SYSTEM
OPERATOR (PVT) LTD**

No. 50,
Sri Chittampalam A. Gardiner
Mawatha,
Colombo 02.

**8. ELECTRICITY DISTRIBUTION
LANKA (PVT) LTD**

Ceylon Electricity Board,
No. 50,
Sri Chittampalam A. Gardiner
Mawatha,
Colombo 02.

**9. PROF. K.T.M. UDAYANGA
HEMAPALA**

SECRETARY
Ministry of Power and Energy,
No. 437, Galle Road,
Colombo 03.

**10. MAHAWELI AUTHORITY OF
SRI LANKA**

No. 500,
T.B. Jayah Mawatha,
Colombo 10.

**11. H.M.J.K. HERATH
DIRECTOR GENERAL**

Mahaweli Authority of Sri Lanka,
No. 500,
T.B. Jayah Mawatha,
Colombo 10.

12. P.J. NOEL JAYASIRI

RESIDENT PROJECT
MANAGER

Resident Project Manager's
Office – System "B"

Mahaweli Authority of Sri Lanka,
Welikanda.

**13. SRI LANKA SUSTAINABLE
ENERGY AUTHORITY**

No. 72, Ananda Coomaraswamy
Mawatha,
Colombo 07.

RESPONDENTS

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : M.U.M. Ali Sabry, P.C. with Ruwantha Cooray,
Sehani Alwis and Naamiq Nafath instructed by
Ramzi Bacha Associates for the Petitioner.

Rajika Aluwihare, S.C. for the 1st to 4th and 9th to
13th Respondents.

Written Submissions on : 13.02.2026 for the Petitioner.
16.02.2026 for the 1st to 4th and 9th to 13th
Respondents.

Supported on : 17.12.2025 , 12.01.2026 & 28.01.2026

Decided on : 30.03.2026

K. Priyantha Fernando, J.(CA)

1. The captioned two cases were instituted by Petitioners Polonnaruwa Solar Power (Pvt) Ltd., and Castle Solar Power (Pvt) Ltd. respectively against the Respondent Ceylon Electricity Board. Both matters were supported for notices and interim relief on 17th October and was scheduled to be resumed on 12th January 2026. On 12th January 2026, Learned President's Counsel for the Petitioners informed that: the two main issues before the Court are whether the Standard Power Purchase Agreement (hereinafter referred to as SPPA) could be extended or not and if such a question was answered in the affirmative, what would the applicable tariff be for the extended SPPA.
2. The facts in both matters are almost similar except the fact that there are two separate contracts (two SPPAs). The genesis of both applications lie in the SPPAs marked as P10 dated 4th April 2024 and P10 dated 9th April 2024 respectively, which were entered into between the Petitioners and the 1st respondent, the Ceylon Electricity Board (CEB).
3. In 1029/25, the Petitioner has been engaged in a 5-Megawatt ground mounter solar power project bearing the name '*Mahindagama 2 Solar Power Project*' which is located in the Grama Niladhari Division of Mahindagama, Welikanda Divisional Secretariat of Polonnaruwa District. Steps to initiate this project have been taken **since 2016** after obtaining necessary approvals. Petitioner has prepared a Pre-Feasibility Report prior to the application being made. [Vide P5(xiv) and P5(xv)]. It was submitted that the Petitioner had to face several obstacles including the 10th Respondent Mahaweli Authority (hereinafter referred to as MASL) demanding 6% of the total revenue as the land utilization fee which led to seeking extensions of the Provisional Approvals for the project and paying re-registration fees for the project. [vide P16(vi) to P6(xviii)]; the Energy Permit has been issued on 05.12.2023; however, due to obstacles faced in commencing commercial operations within the said Permit, extensions granted until 04.12.2025.
4. The Petitioner in 1029/25, submitted that on or around **1st February 2024**, the Ceylon Electricity Board (CEB) issued the Grid Interconnection Proposal (GIP) which allowed the Petitioner the option to utilize pole line. This offer was valid until the **31st of**

December 2024. The Petitioner then on or around **12th March 2024** submitted the application for signing of the Standardized Power Purchase Agreement (SPPA). Following the same, on 14th March 2024 the Petitioner received a revised GIP which provided for tower line as the Grid Interconnection method. The Standardized Power Purchase Agreement was then entered into on or around **4th April 2024** between the CEB (1st Respondent) and the Petitioner.

5. It was submitted that the 10th Respondent MASL (Mahaweli Authority) then **directed the suspension of the operations of the Petitioner by letter dated 30th December 2024**, and the said suspension was only lifted by letter dated **7th February 2025**. Furthermore, the 10th Respondent's conduct resulted in a delay in executing the long-term Lease Agreement. Additionally, the revised cost estimate for the grid interconnection was not confirmed, and the resulting uncertainty had rendered the Petitioner's project financially nonviable.
6. Although the Petitioner has been able to achieve the Article 11 (a)(i) and (ii) of the SPPA, due to the delay in entering into the long-term lease agreement, it has effectively been hindered from achieving the SPPA milestones and progressing the said *Mahindagama 2* project.
7. In terms of the SPPA, the Petitioner is required to: (a) complete the construction, testing and commissioning of the facility and transmission line within 12 months from the date of the SPPA (b) Achieve the commercial operation date within one month from completing the construction.
8. The 4th Respondent by letter dated 30.12.2024, acknowledging the request of the Petitioner, urged the 10th Respondent to expedite the signing of the Lease Agreement. [vide P18(v)].
9. In view of the above circumstances, on 20.02.2025, Petitioner has requested for an extension of cost estimate and assured to pay it upon the revised GIP and estimate; by letters dated 06.03.2025 and 11.03.2025, the Petitioner has requested for extension of

SPPA timeline and Petitioner has further submitted progress of its project as at 06.03.2025.

10. It was the Petitioner's position that the 1st Respondent knowing very well as to the circumstances surrounding the inability to achieve the commercial operations, did not extend the timeline; the 4th Respondent **by letter dated 03.06.2025, issued a notice of default stating that the Petitioner failed to achieve milestones stipulated in Article 11 (a) (iii) of the SPPA.** (vide P20)

THE POSITION OF THE 1ST TO 4TH AND 9TH TO 13TH RESPONDENTS:

11. Their main position is that upon the execution of the SPPAs, the rights, obligations and liabilities of the parties became governed by the terms and conditions of those Agreements. In terms of Article 3.1 of SPPA, the Agreement shall commence and subject to Article 6(h) and the termination provisions continue for a period of 20 years from the Commercial Operation Date (COD); Article 11 provides 4 milestones which must be met by the Petitioner (the seller); however, Article 3.2 (a) (i) recognizes the Seller's failure to achieve any of the milestones set forth in Article 11 as an event of default; Article 3.2(b) allows a non-defaulting party the opportunity to terminate the Agreement upon the occurrence of an 'Event Default' stipulated in Article 3.2 (a). in the instant matter, the Petitioner failed to meet the milestones in Article 11(a)(iii) and (iv). In terms of Article 3.2, the 1st Respondent CEB was contractually entitled to terminate the agreement. Consequently, the CEB issued the Notice of Default (P20) in terms of Article 3.2(b). It was petitioner's position that it's inability to achieve the milestones in Article 11(a) was due to reasons beyond its control for two reasons (a) The failure of CEB to provide a revised interconnection proposal (b) The Mahaweli Authority suspending the development of the land for a period of 2 months. As such, it is primarily being aggrieved by the 'Notice of Default' that the Petitioner has preferred this application. Reliefs sought arises purely from contract and is not amenable to writ jurisdiction.
12. The Respondent raised the following objections in relation to the application of the Petitioner; availability of an alternative remedy; the matter at hand is one which is

contractual in nature; failure on the part of the Petitioner to invoke the *force majeure* provisions.

13. In response, the Petitioners stated that the instant matter is amenable to writ jurisdiction as although the relationship between the parties is contractual in nature, the conduct of a state institution would still be subject to the jurisdiction of this Court in the nature of a Writ. Moreover, in response to the contention that the Petitioner has failed to apply the provisions of force majeure, the Petitioner submitted that the present matter does not fall within the ambit of the drafted clause of *force majeure* as in Article 6 of the SPPA.
14. The Petitioners submitted that since the SPPA timeline was not extended, they were not entitled to the bonded warehousing facility and thus would inevitably be compelled to bear high import costs, rendering the project financially not feasible. Furthermore, it was contended that some goods having already arrived at the Port have been incurring demurrage, and the financial letters of credit obtained by them are incurring interest daily. Moreover, it was submitted that if an interim order is not granted their investment of Rs. 688,453,175/- (Six Hundred and Eighty-Eight Million Four Hundred and Fifty-Three Thousand One Hundred and Seventy-Five) in Case No. 1029 and Rs. 678,369,350/- in Case No. 1033 would depreciate and be of no value to the Petitioners, causing grave loss and damage.

ADMISSIONS:

15. The following facts are admitted in light of the pleadings, documents and submissions made by the parties: Signing of SPPA on 4th April 2024; Achieving of milestones stipulated in Article 11(a)(I) and 11(a)(ii) of the SPPA; Mahaweli Authority gave possession of the land on 27th May 2024; Disruptions caused to the petitioner's possession on numerous occasions [vide P17(I)]; suspension of all development activities by Mahaweli Authority on 30th December 2024 until it was lifted 7th February 2025 [vide P17(vi) and P17(vii)]; there is no Lease Agreement between the Petitioner and Mahaweli Authority; CEB after 8 months from the date of signing SPPA, by letter

dated 30th September 2024, acknowledged that the delay in executing Lease Agreement is delaying the Petitioner from proceeding with the project.

16. Following are **arguable questions of law** arisen for determination:
- i. Whether the Petitioner is entitled for an **extension of the commercial operations date (COD)**?
 - ii. whether the Petitioner is entitled to the **tariff reflected in the SPPA**?
 - iii. Whether the availability of **alternative remedy** prevents this Court from hearing and determining the instant application?
 - iv. Whether the dispute is **contractual** in nature?
 - v. Whether the Petitioner has failed to invoke the **Force Majeure** provisions?
 - vi. Whether the Petitioner is entitled to the interim reliefs?

WITH REGARD TO EXTENSION OF THE COMMERCIAL OPERATIONS DATE:

17. The Petitioner drew the attention of this Court to the judgment delivered in the case of Vavuniya Solar Power (Private) Limited v Ceylon Electricity Board and others SC/FR/172/2017 decided on 20.09.2023 which extensively discussed the doctrine of legitimate expectation.

The judgment reads as follows:

“The repercussions of the 1st Respondents - CEB and the 2nd Respondent SLSEA is not having encouraged and facilitated entrepreneurs to, through private enterprise, generate electricity by tapping renewable energy sources and feed such electricity to the national grid, was only too evident in the year 2022, when the country and her people had to suffer severely due to the insufficiency of electricity generation and the over - dependency on petroleum as means of generating electricity. This situation resulted in power outages of long duration, which affected the daily lives of the public at large and resulted in serious consequences to trade, industry and commerce. At the time of writing this

judgment, the critical importance of generating electrical energy using sustainable and renewable energy resources available in abundance in Sri Lanka, and the devastating consequences that have arisen out of the failure on the part of agencies of State to voluminously and efficiently mobilize new renewable energy generation projects for the generation of electricity using solar and wind power, and other renewable energy resources is felt unlike ever before. The incident referred to in this judgment is an unfortunate testament to the root causes of the prevailing situation to which I find the 1st and 2nd Respondents having to bear responsibility” [vide page 100]

It is pertinent to note that the above position has been enunciated by the Supreme Court in a similar matter where no SPPA was signed and proceeded to grant relief.

18. When the Court inquired from the Counsel for the Respondent as to the possibility of a settlement, it was informed that,
 - i. Respondents were willing to extend the Commercial Operation Date (COD) at the prevailing tariff as a full and final settlement;
 - ii. Respondents were not willing to extend the COD at the prevailing tariff subject to this Court determining the applicable tariff at the conclusion of the present matter.

19. Thus, it is apparent that there is **no issue with extending the COD, and the only issue is with the tariff factor.**

IS THERE A CASE ON LEGITIMATE EXPECTATION TO THE PETITIONERS?

20. It is seen that on **01.02.2024**, the CEB has issued the Grid Interconnection Proposal (GIP) for the Petitioner’s project providing an option of utilizing pole line valid till 31st December 2024 and upon several requests, the 1st respondent has issued the Letter of Intent on 14th February 2024. [vide P8(v) to P8(viii)].

21. On the strength of the GIP dated 01.02.2024, Petitioner has submitted the application for signing the Standard Power Purchase Agreement (hereinafter referred to as SPPA) on **12th March 2024**. Then the 1st Respondent CEB has unilaterally issued a revised GIP on 14th March 2024 with two tower line as the mode of Grid Interconnection instead of pole line which is contrary to conditions in letter dated 01.02.2024. [vide P8(v)]. On **4th April 2024**, the SPPA was entered between the Petitioner and the 1st Respondent CEB. [vide P9(I), P9(ii) and P10]
22. Only around **May 2024**, the 10th Respondent has formally handed over possession of the land to the Petitioner. [vide P16(iii)]. It was submitted that the Petitioner was made aware of an unauthorized construction in the land allocated for the project. By letter dated 30.12.2024, Petitioner was requested to suspend all development activities of the project. [vide P17(vi)]. Suspension continued until lifted by letter dated **07.02.2025** [vide P17(vii)]. It was the Petitioner's position that said disruption adversely affected the construction schedule and its ability to comply with the commercial operation date. Only on **22nd August 2024**, cost estimate for the GIP dated 20.08.2024 utilizing tower line received by the Petitioner. Thereafter, on several occasions, requests were made to the CEB to substitute pole lines in place of tower lines for grid interconnection and revisit the cost estimate for the GIP. [vide P11(i) to P11(v)]
23. The Petitioner has proposed an alternative path in order to address the concerns raised by the 1st Respondent refusing to revise the cost estimate and/or GIP from tower line to pole line; on **16.10.2024**, the officers of CEB visited the project site and assessed an alternative access road in order to revisit the cost estimate for Grid Interconnection; the officers of 1st Respondent CEB has agreed and undertaken to issue a revised Grid Interconnection cost estimate; thereafter, the Petitioner has provided all necessary information as requested by CEB including the Project Feasibility Report; in view of the assurance given by the CEB, the Petitioner by letter dated 05.06.2025 requested for a revised cost estimate. However, the 1st respondent CEB has failed to provide the same.
24. It was the Petitioner's position that in the circumstances, the Notice of Default dated 03.06.2025 is unreasonable and ultra vires. The 1st to 9th Respondents were well aware of the obstacles faced by the Petitioner in setting up the project is evident upon perusal

of the correspondence dated 30th December 2024. [vide P18(v)]

25. The letter marked **P18(v)** dated 30th December 2024 is addressed to the Director (Land Use Planning) and sent by the Deputy General Manager of CEB stating as follows:

“The Standard Power Purchase Agreements (SPPAs) for the above two projects were signed by the CEB and the respective project companies on the specified dates. At the time of signing, Energy Permits had been issued by the Sustainable Energy Authority (SLSEA), and initial land clearances had been obtained from the Mahaweli Authority of Sri Lanka (MASL). It has now been nearly eight months since the agreements were signed, while the time allocated for the commencement of commercial operations is 12 months. The developer has managed to achieve financial clearances and issued construction notices for both projects even without land lease agreements.

*However, the absence of land lease agreements are hindering the release of funds under the approved loan resulting both these projects delayed. Therefore, the CEB will not be able to integrate the energy from these solar power plants into the system as planned. **Since 70% of the project costs are being funded by bank loans, the delay in land lease execution will definitely play a major role.***

Hence, kindly make the necessary arrangements to expedite the issuance of the land lease agreements for these two projects to enable the commencement of construction and achieve the commercial operations as per the SPPA milestones.”(the emphasis was added)

26. It is evident from the contents of P18(v) that the 1st Respondent was aware of the progress of the Petitioner’s project; 1st to 9th are aware of the disruption caused to the Petitioner setting up the project at the land allocated for a long period; they are also aware that the MASL delayed entering into a Lease Agreement with the Petitioner for the land allocated.

27. The attention of this Court has been drawn to the judgment in *Vavuniya Solar Power (Private) Limited v. Ceylon Electricity Board & Ors* - SC FR Application 172/2017 decided on 20.09.2023, where His Lordship Yasantha Kodagoda, P.C., J. held as follows:

*“Protecting expectations generated by public authorities through the doctrine of legitimate expectations and judicial insistence that expectations so generated be complied with by the relevant public authority is also fundamental to good governance. In the long term, it would be dangerous to permit public authorities to freely renege on their undertakings, as it would pave the way to public authorities functioning in an unreasonable or arbitrary manner, or otherwise abusing power conferred on them. **The public trust and confidence in public authorities can be protected by requiring public authorities to comply with their own undertakings**”.* [vide pg 18]

....

*“The rationale of the doctrine of legitimate expectations is also that if a public authority has induced a person to rely upon its representations or practices on the premise that such reliance was a real possibility and would bear fruit, **it is under a fiduciary duty to act in such a way that the reliance placed by such person will not result in detrimental outcomes to such person, who in good faith had placed reliance on the representations of a public authority and its practices. Public authorities must be required by law to honour expectations created by its own representations and practice. If unable to do so, the public authority concerned should compensate the person affected by having placed reliance on such representations and practices.**”* [vide page 19]

...

*“In R v. Secretary of State for Home Department, ex parte Behluli [(1998) Imm. AR 407, at 415] Beldam LJ, observed that “although legitimate expectation may in the past have been categorized as a catchphrase not be elevated into a principle, or as an easy cover for a general complaint about unfairness, it has nevertheless achieved an important place in developing the law of administrative fairness. **It is an expectation which, although not amounting to an enforceable legal right, is founded on a reasonable assumption which is***

capable of being protected in public law. It enables a citizen to challenge a decision which deprives him of an expectation founded on a reasonable basis that his claim would be dealt with in a particular way”. [vide page 18] (the emphasis was added)

28. **It was the Petitioner’s position** that the 1st Respondent has issued the Grid Interconnection Proposal (GIP) dated 01.02.2024 providing pole line as an option. The 1st Respondent has unilaterally issued revised GIP with only tower line. Upon receiving the cost estimate for the GIP which incorporated tower line, the Petitioner immediately requested the 1st to 9th Respondents to revisit the same due to the same being financially unviable to the Petitioner’s project; upon repeated requests 1st to 9th Respondents visited the project site and assessed the alternative routes in order to facilitate the GIP using pole line; **relying on the assurance created by the 1st to 9th Respondents, the Petitioner awaited a revised cost estimate; despite the assurance given by them, 1st to 9th Respondents have issued Notice of Default** and thus, the failure of the Respondents to provide a revised cost estimate for GIP is illegal, unreasonable, irrational and *ultra vires*.
29. As such, the Petitioner argued that since the 1st to 9th Respondents have not issued a Notice of Termination to date, the SPPA is still in force and has not been terminated, the Petitioner is entitled to an extension of the SPPA timelines. The Petitioner **highlighted that especially since the SPPA has stipulated the tariff applicable based on the agreement arrived at by the parties in relation to a specific timeline**, the Petitioner is entitled to the tariff stipulated by the SPPA and not the prevailing tariff. Thus, it is my considered view that the Petitioners have presented an arguable case on legitimate expectation.

WHETHER ANY ALTERNATIVE REMEDY PREVENTS THIS COURT FROM HEARING AND DETERMINING THE INSTANT APPLICATION?

30. It should be noted that the Rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion and there could be

contingencies in which the Court of Appeal exercised its jurisdiction in spite of availability of an alternative remedy.

31. The learned State Counsel contended that, since the SPPA contains a Dispute Resolution Clause, writ is not available.
32. The learned President's Counsel referred to and relied on the decision of this Court in Finest Tea Exports (Private) Limited and Another v. Chulananda Perera and Others [CA Writ Application No. 209/2017] decided on 04.10.2019 wherein on the same point this Court has held that,

*“However, as it is a general principle, Courts have recognized several qualifications to its application. **There may be situations where the alternative remedy is not adequate and efficacious in which event judicial review is available** [E.S. Fernando v. United Workers Union and another (1989) 2 Sri L.R. 199]. **It maybe that judicial review is capable of providing immediate means of resolving the dispute in which case it may be the more appropriate procedure. There may also be a need to obtain interim relief which may not be possible under the alternative procedure. This is not an exhaustive list and there are certainly other instances where judicial review may be granted even though an alternative administrative procedure exists**” (the emphasis was added)*

33. In the instant case, the Petitioner **seeks to impugn and seek relief against several parties**, i.e., Ceylon Electricity Board (1st to 9th Respondents), Mahaweli Authority of Sri Lanka (10th to 12th Respondents) and Sri Lanka Sustainable Energy Authority (13th Respondent).
34. In CA/Writ/673/2023, relied upon by the Learned State Counsel, 10th to 12th Respondents - Mahaweli Authority was not a party. Thus, resorting to the dispute resolution clause and seeking for relief against the 1st to 9th Respondents alone would not be sufficient and adequate.

35. As stated in the Petition, the delay cannot be solely attributable to the Petitioner. The CEB has conceded in their own correspondences that the delay on the part of the Mahaweli Authority has a direct bearing on the Petitioner achieving milestones stipulated in the SPPA. Thus, it is evident that resorting to alternative dispute resolution mechanisms in terms of the Dispute Resolution Clause in the SPPA is not effective and efficacious.
36. It was contended by the Respondents that since the principal relief relates to the Notice of Default (P20) and the termination of the SPPA; each of these issues arises directly from contractual relationship; writ jurisdiction is concerned with the protection of public law rights and it is not intended to serve as a mechanism for enforcing private contractual rights. However, it is seen that even though there is a contract/agreement in force (only between the Petitioner and the CEB), the reliefs sought in the Petition are beyond the scope of the agreement. Admittedly, the CEB is a state institution with a stronger bargaining power, holding the monopoly in purchasing power.
37. It was drawn to the attention of this Court the following judgments and academic arguments **where if a contractual matter amounts to an executive or administrative action, the same is subject to judicial review**. The following case law and legal texts were considered:
38. The learned State Counsel for the Respondent argued that in the case of CA Writ **673/2023 decided on 29.11.2023** wherein relief was sought in respect of a Notice of Default issued under Article 3.2 (a) of a Power Purchase Agreement and a subsequent notice of termination, the Court has observed that,

“due to various reasons the Petitioner was unable to utilize the land allocated for the power project”. Justice Ashan R. Marikar, considering that the parties were bound by the Power Purchase Agreement has held as follows: *“Thus, the Petitioner and the 1st Respondent are bound by the Power Purchase Agreement. On that, I refer C.G. Weeramanthry’s the Law of Contracts’*. In the said book, the definition given for the contract is as follows: *‘Any definition of contract must necessarily must stress the promise which give it birth and the*

attribute of enforceability or legal recognition whence it derives its vital force. These two elements will be found to dominate all definitions of concepts, and without them no definition is possible.

Therefore, the exercise of powers by parties in terms of the agreement exclusively arises through the contract and though one of the parties is a public authority, rights of the parties are not amenable to writ jurisdiction”.

39. In response, the learned President’s Counsel contended that,

- i. In both judgments CA Writ 610/2025 and CA Writ 673/2023, the dispute was between the Petitioner and the Party to the contract or agreement,
- ii. However, in the present application, the Petitioner seeks to impugn the unlawful, illegal and ultra vires conduct of parties including those who are not parties to the SPPA, namely the Mahaweli Authority of Sri Lanka (MASL) and have sought reliefs separately,
- iii. In the interest of judicial efficiency and economy and to reduce multitude of litigation, the Petitioner has invoked the jurisdiction of this Court.

40. Upon perusal, the reliefs (B) to (N) sought by the Petitioner in the present application, it is clear that the Petitioner is seeking reliefs against parties more than those party to the agreement, i.e. the SPPA. Thus, the facts in both cases referred to by Learned State Counsel [CA Writ 610/25 and CA Writ 673/23] are distinguishable and accordingly I overrule the objection.

41. In the instant application, the Petitioner is unable to proceed with an alternative remedy in terms of private law since the Petitioner cannot seek relief against Mahaweli Authority and/or Sri Lanka Sustainable Energy Authority (SLSEA) by enforcing the rights in terms of the SPPA.

42. It is seen that the Petitioner has invoked the jurisdiction of this Court *inter alia* in view of the legitimate expectation accrued to the Petitioner. (vide paragraphs 49 to 51, 53

and 54 of the Petition) It was contended that that the Petitioners have preferred writ jurisdiction since it is the best and most effective way to resolve the issue at hand and it is a ‘One Stop Shop’ to remedy the issue at hand.

43. The judgment in CA Writ 673/2023, relied upon by the Learned State Counsel,
- (a) Has no application in the instant application since the reliefs sought in this case are much wider in scope than in the said case;
 - (b) The 10th and 12th respondents i.e. the Mahaweli Authority of Sri Lanka is not a party in the said case;
 - (c) Resorting to the dispute resolution clause and seeking relief against the 1st to 9th respondents alone will not be sufficient and adequate;
 - (d) Thus, the said case is distinguishable from the instant application.
44. It is seen that in the present matter, the Petitioner seeks to impugn or seek relief against several parties as (I) Ceylon Electricity Board (1st to 9th respondents), (ii) Mahaweli Authority of Sri Lanka (10th to 12th respondents) and (iii) Sri Lanka Sustainable Energy Authority (13th respondent).
45. As revealed by the Petition and submitted therein, the delay cannot be solely attributable to the Petitioner. The CEB has conceded in their own correspondence [P18(v)] that the delay on the part of the Mahaweli Authority has a direct bearing on the Petitioner achieving milestones stipulated in the SPPA. Thus, it is apparent that resorting to alternative dispute resolution mechanisms in terms of the Dispute Resolution Clause in the SPPA is not effective and efficacious.
46. In *Finest Tea Exports (Private) Limited and Another v. Chulananda Perera and Others* CA Writ 209/2017 decided on 04.10.2019, His Lordship Janak de Silva J., has held that,

*“However, as it is a general principle, Courts have recognized several qualifications to its application. **There may be situations where the alternative remedy is not adequate and efficacious in which event judicial review is available**[E.S. Fernando v. United Workers Union and another (1989) 2 Sri L.R. 199] **It may be that judicial review is***

capable of providing immediate means of resolving the dispute in which case it may be the more appropriate procedure. There may also be a need to obtain interim relief which may not be possible under the alternative procedure. This is not an exhaustive list and there are certainly other instances where judicial review may be granted even though an alternative administrative procedure exists.” (emphasis was added)

47. It is important to note that availability of an alternative dispute resolution mechanism in the Agreement between the parties (the SPPA in the instant application) does not bar the Petitioner from invoking the jurisdiction of this Court.
48. I am further fortified by the judgment of the Supreme Court of India in Union of India v. Tania Construction Private Limited (2011) 5 SCC 697 [AIR 2011 SC 530] decided on 18.04.2011 where it was held that:

*“27. Apart from the above, even on the question of maintainability of the writ petition on account of the Arbitration Clause included in the agreement between the parties, **it is now well-established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and where ever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution. We endorse the view of the High Court that notwithstanding the provisions relating to the Arbitration Clause contained in the Agreement, the High Court was fully within its competence to entertain and dispose of the Writ Petition filed on behalf of the Respondent Company”.*** (emphasis was added)

49. In *Aitken Spence & Co v Garment Services Group Limited* [SC/CHC/APPEAL 08/2005] decided on 05.07.2018, the Supreme Court upheld that Court has jurisdiction to hear statutory claims of oppression and mismanagement notwithstanding parties agreeing to refer their disputes to arbitration. The relevant portion is reproduced as follows:

“...The first preliminary objection was that the High Court had no jurisdiction to hear the matter before the High Court because the Petitioner Respondent, Aitken Spence & C. Ltd had failed to abide by Clause 19 in the Joint Venture Agreement dated 21.12.1996 marked as P8 and the provisions of Section 5 of the Arbitration Act No. 11 of 1995. The position taken up was that the Petitioner Respondent was bound to refer the matter for arbitration before making an application under Sections 213, 210 and 211 of the Companies Act to the Court. The Appellants had taken up that position in the High Court on 05.05.2003 at the time the High Court was considering the Applications under Section 213. After hearing the parties, the then High Court Judge had gone into the matter at length and made a long order of 11 pages quoting judgments from Courts of India and comparing the similar provisions in the Indian Companies Act etc., and had delivered the same in open court on 28.05.2003. The Appellants being aggrieved by the said Order had then appealed to the Supreme Court and as I have mentioned earlier, the Supreme Court has refused leave to appeal and dismissed their Applications on 08.07.2003. Therefore, it cannot be stated that the learned Commercial High Court Judge who heard the matter under sections 210 and 211 have failed to consider the preliminary objection on jurisdiction. The same court cannot and shall not consider the same preliminary objection twice in the very same case. It is totally a wrong submission brought forward by the Appellants before this Court in the hearing of this Appeal”.

50. The observations made by **Sir Clive Lewis on Judicial Remedies in Public Law (6th Edition)** were brought to the attention of this Court by the Petitioners wherein it

observed as follows:

“2-078The source of the power is not now the only test for determining whether the acts or decisions of a particular body are susceptible to judicial review. The Court of Appeal in R. v Panel on Take-overs and Mergers Ex p. Datafin Plc, one of the landmark decisions in public law, accepted that the nature of the function as well as the source of the power could found the jurisdiction of the courts to entertain a claim for judicial review. Bodies performing public duties or exercising powers that could be characterised as "public" may be subject to judicial review in respect of those powers and duties even though the powers are not statutory or prerogative. Given the wide and disparate range of bodies that operate in the administrative landscape, and given a revitalised approach on the part of the courts to judicial review and the need to control potential abuses of power, a large number of non-statutory bodies have been brought within the ambit of public law and judicial review. The difficulty is to identify exactly what it is that makes a particular function "public"[vide page 50]

2-080Two approaches to the definition of "public" can be discerned in the Datafin case. First, there is the extent to which the body operates under the authority of the government or was established by the government or, presumably, by some other recognised public authority. Secondly, there is the extent to which a particular function is performed against a background of statutory powers even though there is no specific statutory or prerogative authority for the power which it is sought to review. Both these approaches involve some link between the government, or the legislature, and the body in question. Another element in the Datafin case was a reluctance to accept that bodies exercising de facto authority over individuals (which could not be controlled by private law mechanisms of contract or tort) should fall outside the control of the courts. Other approaches to the definition of "public" are also likely to emerge now that the Datafin case has broken the link between the origin of the power and the availability of judicial review... The current approach of the courts is to consider whether the body is woven into the fabric

of public regulation or governmental control of an activity or is integrated into a system of statutory regulation or, but for its existence, a governmental body would have assumed control over the activity regulated by the body under challenge. [vide page 52]

A company which was created by a local authority to carry out functions previously carried out directly by the authority itself (the organising of markets on public land) was subject to judicial review. The company owed its existence to the local authority, it performed the same functions as the local authority had previously performed and the local authority had assisted it, to a certain extent, by providing facilities and finance. A decision of the company excluding an individual from participating in the markets was therefore capable of being subjected to judicial review.” [vide page 53]

51. The *Datafin* case was considered further in the judgment delivered in the case of **Lanka Securities (Private) Limited Vs. Colombo Stock Exchange and Others (2020) 2 SLR 121, 125** by His Lordship Janak De Silva, J. The judgment reads as follows:

*“Although traditionally the English Courts looked at the source of power in deciding whether judicial review is available, the Court of Appeal in R v. Panel on Take-overs and Mergers Ex. Parte Datafin plc [(1987) Q.B. 815] accepted that the nature of the function as well as the source of the power could found the jurisdiction of the Courts to entertain a claim for judicial review. **Thus bodies performing public duties or exercising powers that may well be characterized as "public" may be subject to judicial review in respect of those powers and duties even though they are not statutory or prerogative.**” (the emphasis was added)*

52. Furthermore, His Lordship Justice Mahinda Samayawardhena in the case bearing No. CA/WRT/540/2019 decided on 16.06.2020 echoed the observations of De Smith in holding that,

“I must make clear this judgment shall not be taken to mean that violations based on contracts by public bodies are totally outside writ jurisdiction. There is no such blanket prohibition. Each case shall be treated separately. De Smith in his treatise at page 148 states ‘the existence of a possibility of a private law claim does not by itself however, make judicial review inappropriate’”(the emphasis was added)

53. Additionally, the case of Harjani and another v Indian Overseas Bank and Others (2005) 1 SLR 167, 171 ought to be considered. In the judgment it was held by His Lordship Saleem Marsoof J. as follows,

“A variety of commercial, professional, sporting and other activities are regulated by powerful bodies which are devoid of statutory status, and Courts in Sri Lanka and elsewhere have demonstrated a willingness to 'recognize the realities of executive power' and to review the decisions of a number of such bodies. In their desire to prevent the abuse of 'executive power' in the hands of these powerful non-statutory bodies, the courts have ventured to review the decisions of these bodies.

It is noteworthy that the decision in R v Panel on Takeovers and Mergers ex parte Datafin(13) extended the application of prerogative remedies to the London Takeover Panel, which is a non-statutory body regulating the conduct of takeovers and mergers in the London Stock Exchange on a voluntary basis through a process of self regulation. In R.V International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, the English Courts have held that the London Stock Exchange, which has been constituted as a limited liability company, is subject to judicial review. In decisions such as the Governor and Company of the Bank of Scotland, Petitioners; R v FIMBRA, ex parte Cochrane(16) SIB & Anor v FIMBRA & Anor(17) and R v LAUTRO, ex parte Ross(18) the Courts have held that although judicial review is not available in the context of purely contractual

powers, the authority of a contractual nature which various self-regulating organizations have over their members help these organizations to perform their public functions, and accordingly the failure of such an organization to perform a contractual obligation may be subjected to judicial review.

The rationale for making such non-statutory bodies amenable to prerogative remedies appears to be that they are discharging functions of a public nature” (the emphasis was added)

54. Finally, to reiterate, the Judgment delivered in the case of Lanka Securities (Private) Limited Vs. Colombo Stock Exchange and Others (2020) 2 SLR 121, 125 by His Lordship Janak De Silva, J. held as follows,

*“Although traditionally the English Courts looked at the source of power in deciding whether judicial review is available, the Court of Appeal in R v. Panel on Take-overs and Mergers Ex. Parte Datafin plc [(1987) Q.B. 815] accepted that the nature of the function as well as the source of the power could found the jurisdiction of the Courts to entertain a claim for judicial review. **Thus, bodies performing public duties or exercising powers that may well be characterized as "public" may be subject to judicial review in respect of those powers and duties even though they are not statutory or prerogative.**” (the emphasis was added)*

55. In view of the above judicial dicta, I am of the considered view that the instant application is an apt matter for this Court to exercise the writ jurisdiction.

56. The learned State Counsel took up the objection that the subject matter is contractual in nature and thus not amenable to writ. Even though there is a contract/agreement in force (only between the Petitioner and the CEB), the reliefs sought by the Petitioner are beyond the scope of the contract. Additionally, the CEB is a state institution with a stronger bargaining power, holding the monopoly in purchasing power. It is trite law

that the conduct of a state institution despite there being a contract is amenable to writ jurisdiction when the unreasonableness and violation of legitimate expectation is apparent.

57. It was also contended that the Petitioner has failed to trigger the Force Majeure provisions in the SPPA. Article 6 of the SPPA, i.e., the Force Majeure provision is as follows: “ARTICLE 6 FORCE MAJEURE (a) For purpose of this Agreement, the term ‘Force Majeure’ shall mean any exceptional event and circumstance or a combination of exceptional events and circumstances:

- i. Which are not within the reasonable control and not due to the failure, negligence or persistent disregard of the Party whose performance is materially and adversely affected or become impracticable.
- ii. Which the part affected despite all reasonable efforts could not have prevented or overcome or mitigate its effects with reasonable diligence and foresight by using Prudent Utilities Practice and
- iii. Which the Party claiming Force Majeure could not reasonably have provided against before entering into this Agreement.

58. It is evident as it was contended by the Petitioners that the circumstances in this case that led to the Petitioners from not being able to achieve the SPPA timelines and/or the commercial operation date are matters within the control of the respondents. Thus, the circumstances do not fall within the ambit of force majeure.

WHETHER THE PETITIONER IS ENTITLED TO THE TARIFF REFLECTED IN THE SPPA?

59. The Petitioner seeks for an extension of the commercial operation date and/or the timelines in the SPPA at the prevailing tariff rate pending the final adjudication by this Court in respect of the applicable tariff. It was submitted that the Petitioner has made out a *prima facie* case that the Petitioner is entitled for an extension of the SPPA timelines or the commercial operation date; the SPPA has stipulated the applicable tariff which the parties have agreed to; in such circumstances, the Petitioner will

eventually be entitled in terms of the SPPA for the tariff stipulated in it; thus, the Petitioner is entitled to the tariff stipulated in the SPPA.

60. It is pertinent to note that in 22 other similar matters, the CEB has agreed to provide a tariff other than the prevailing tariff. Thus, I cannot find any reason for the CEB to treat the Petitioners differently.
61. There are arguable questions to be gone into at the argument stage.
62. In the above circumstances, this Court takes the view that this matter raises questions of law that has to be assayed and evaluated along with the merits of the arguments in this application. Therefore, this Court is of the view that the Petitioners have satisfied the initial threshold requirement which warrants this Court to issue formal notice of this application on the Respondents.
63. Depending on the nature and the strength of the preliminary objections raised by the Respondents, those objections can even be fully considered at the final hearing of this Case after entertaining the full affidavits of the respondents.

WHETHER THE PETITIONERS ARE ENTITLED TO THE INTERIM RELIEFS?

64. Having considered the issuance of notice, the question arises whether this Court can grant interim reliefs that the Petitioner has sought in the prayer of the Petition.
65. Now, I advert to the tests applicable to the grant of interim reliefs.

“The whole purpose of granting interim relief is to preserve the status quo which existed prior to the purported exercise of power complained of. The effect of an interim restraining order is twofold: firstly, an exercise of power in violation of it is a nullity: secondly, any purported exercise of power or any physical act or omission, done in violation of it is an act of contempt of court punishable as such” (vide - Sunil F.A. Cooray, Principles of Administrative Law in Sri Lanka, 4th edition, Vol. II, Chapter 23, p. 1428)

66. As discussed in *Duwearatchi & another vs. Vincent Perera & others* (1984 2 SLR 94) an interim stay order in a writ application is an incidental order made in the exercise of the inherent or implied powers of the Court and the Court should be guided by the following principles:

- i. *Will the final order be rendered nugatory if the petitioner is successful?*
- ii. *Where does the balance of convenience lie?*
- iii. *Will irreparable and irremediable mischief or injury be caused to either party?*

67. In the instant matter, the Petitioner has thus far carried out the preliminary site preparation work including the following: Site survey assessment, obtaining permissions and approvals, finalized the system design including the panel layout, and overall electrical setup, ordering of Solar panels inverters and mounting structures, Letters of Credit have been opened to import the necessary equipment, supply of electricity and water to the project site, land clearing, constructing elephant fences and security fences, excavation for installation of panel mounting base, constructing panel mounting bases and irrigation work in the premises (vide video photos of the project site marked as P23).

68. It was revealed that the Petitioners,

- (a) Have invested a sum of Rs 688,453,175/- and Rs. 678,369,350/- respectively on the two projects,
- (b) From the said amount, Letters of Credit amounting to Rs. 346 million and Rs. 342 million have been opened to import the necessary equipment including Solar Panels, Inverters and ancillary equipment and the same is awaiting to be shipped,
- (c) The Petitioners have placed orders with suppliers in China and has also been issued proforma invoices in respect of equipment for the Petitioner's project and are awaiting to be shipped. [vide P24, P25(I)(a) to P25 (viii) (f)]

69. It was further revealed that the Petitioners have paid a sum of Rs. 3,380,184.62 each as the cost estimate for the line construction for single phase connection for the Petitioners' two project. [vide P15(I) and P15(ii)]
70. It was submitted that since the SPPA timeline is not extended, the Petitioners are not entitled to the bonded warehousing facility and unless the SPPA timelines are extended, the Petitioners have to inevitably bear high cost of imports, which would make the projects financially unviable.
71. It is established that some of the said goods have arrived at the Port and are incurring demurrages and Petitioners has obtained financial facilities to finance the imports and the same are incurring interests on a daily basis. (vide X1 to X5)
72. If an interim order is not granted, the Petitioners' investment of Rs. 688,453,175/- and Rs. 678,369,350/- respectively in setting up the projects would be depreciated and of no use for either party causing severe loss and damage to the Petitioners.
73. It is trite law that where the interim relief sought is substantially similar to the final relief, such relief is not normally granted. Interim relief, by its very nature, is intended to preserve the status quo pending final determination and not to pre-emptively grant the ultimate remedy sought by a party. It was contended for the Respondents that the grant of such interim relief (allowing the Petitioner to proceed with the project) would cause significant prejudice to them. A notice of default already been issued and the SPPA stands liable for termination; if the Court were to grant the interim relief sought and permit the Petitioners to continue the two projects, but subsequently decide the matter in favour of the Respondents, the Petitioners would meanwhile have continued the two projects without legal entitlement. It was submitted that such a situation would result in grave and irreparable prejudice for the Respondents.
74. It is my considered view that if in such an eventuality, the party who would suffer most will be clearly the Petitioners. The petitioners have to stop their projects and leave the sites. So that, it is up to the Petitioners to face that risk and continue until the final determination of this matter. On the other hand, if the final judgment is in favour of the

Respondents, they would be able to re-bid and/or enter into new agreements (SPPAs) with new parties on new tariff rates and earn profits as if nothing had happened.

75. Therefore, whatever loss which will be caused to 1st to 9th respondents by amending the SPPA timelines (if the interim reliefs granted) is far minimal than the damage caused to the Petitioners by not granting the interim relief. In other words, the damage which can be caused to the petitioners if interim relief not granted would outweighs the damage caused to the Respondents if the interim reliefs are granted. Thus, the balance of convenience favours the Petitioners.
76. Therefore, the interim orders in both cases CA/WRT/1029/2025 and CA/WRT/1033/2025 are granted permitting extension of the SPPA timeline at the prevailing tariff rate and accordingly interim orders **O, P, Q, R, and S** are granted in both applications.
77. The Parties should bear their own costs.

Judge of the Court of Appeal

Hon. Rohantha Abeyseriya PC, J.(P/CA)

I agree.

President of the Court of Appeal