

# Court of Appeal clears the way for the implementation of Southern Nexus Hambantota 150MW Solar Project with Landmark Judgment.

One of Sri Lanka's most ambitious renewable energy initiatives began in 2021, with a series of modest solar projects, each with a maximum generation capacity of 10MW. Today, that early vision has evolved into a strategically significant solar park, spearheaded by . Bandula Vithanarachchi and Charana Cumaranatunga. With a projected investment of USD 150 million, this project of national importance plays a vital role in advancing Sri Lanka's commitment under the Paris Agreement to generate 70% of its electricity from renewable sources by 2030. It is also a cornerstone of Sri Lanka's broader energy transition strategy.

This nationally important project had to navigate a series of crises of historic scale, beginning with the Covid-19 pandemic, which brought the whole world to a screeching halt. Soon after, Sri Lanka plunged into economic crisis, marked by suspension of foreign debt payment and the country's first ever sovereign debt default. The turmoil led to severe shortages of fuel and essential goods, triggering widespread public unrest and protests. As the economic crisis deepened the Ceylon Electricity Board (CEB) defaulted on payments due to developers of renewable energy projects.

Moreover, in the course of its development, the project withstood three changes in political leadership and the accompanying bureaucratic reshuffles resulting in a policy environment that has often been in a state of flux.

Amidst these overlapping crises, securing the necessary investment for the project was a formidable task. Despite these monumental challenges, the initiative remained on course, a testament to the persistence and steadfast commitment of Bandula Vithanarachchi and Charana Cumaranatunga.

This project used advanced technical studies on panel capacities and land utilization and was instrumental in the change of policy of the Sri Lanka Sustainable Energy Authority (SLSEA) on land allocation which was brought down to 3 acres per 1MW from the previous 5 acres per 1MW.

Given the 150MW AC cumulative capacity of this project, the existing grid infrastructure was inadequate and a '220kV Level Transmission Facility', inclusive of the construction of a 220/33 kV, 2 x 90MVA Gonnoruwa Solar Collector Substation, 5.6 km, 220 kV double circuit transmission line from Gonnoruwa Solar Collector Substation to Hambantota National Grid Substation and the necessary Hambantota Grid Augmentations to connect 10 MW \*13 and 5 MW \* 4 Nos. of Solar Plants which was necessary to augment the supply from the project to the national grid.

Development of transmission facilities have historically been undertaken by the CEB. However, amidst the economic crisis, the financial health of the CEB could not accommodate such construction. Therefore, a groundbreaking business model was developed by the CEB and the project developers to form a consortium where the cost of the Transmission Facility would be borne by the consortium members in proportion to their solar energy generation capacity. In effect, the Transmission Facility would be constructed at no cost to the CEB and without any burden to the coffers of the Government of Sri Lanka.

Despite the interconnection cost of the project escalating by approximately 20%, the aforementioned model was rendered feasible due to the prevailing policy of the Government of Sri Lanka at the time which encouraged investments in the renewable energy sector by announcing a Feed in Tariff (FIT) approved by the Cabinet of Ministers and published by the CEB that recognized the inherently high country risk of Sri Lanka by providing a commensurate return.

This was the birth of the "Southern Nexus 150MW Hambantota Solar Consortium Project". At the time, the project was well received at the Ministry of Power and Energy and viewed as a singular solution to the annually occurring Southern Province power cuts which lead to the procurement of emergency power from firm power plants at high prices by the CEB during the drought season.

This project officially received the greenlight on March 13, 2024, when the CEB executed the Standardized Power Purchase Agreements and incorporated it into its Long-Term Generation Plan as a flagship renewable energy integration to the national grid by 2026. By this time, the Consortium had overcome multiple hurdles, secured the necessary financing and had



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commenced construction. However, then this nationally important project was dealt with another devastating blow. A combination of lapses in communication between certain state authorities and propagation of malicious and falsified information led to an arbitrary suspension of the land release for the project. This was a massive setback as this project had to comply with stipulated timelines. Having exhausted all avenues to discuss and resolve this matter with the concerned authorities, the only recourse available to the Consortium was to seek redress in the Court of Appeal.

The Consortium represented by Bandula Vithanarachchi and Charana Cumaranatunga with advice of Dulanga Cumaranatunga, Legal Adviser to the Southern Nexus Consortium and Managing Counsel at FortuneX, sought the expertise of a team of veteran litigators to invoke the writ jurisdiction of the Court of Appeal of Sri Lanka.

The litigation team representing the Consortium comprised of Presidents' Counsel . Ali Sabry, Kuvera de Zoysa, Saliya Pieris and Upul Kumarapperuma along with Senior Attorneys-at-Law Ruwantha Cooray and Chandika Silva supported by Attorneys-at-Law, Joshua Moraes, Shehani Alwis, Samuditha Kumarasinghe, Duvini Godagama, Sajana de Zoysa, Geeth Karunaratne and Rukshan Mendis instructed by Pubudu Kalahewatta.

This litigation had to navigate many obstacles as state authorities attempted to renegotiate agreed terms and conditions. In their submissions to the Court of Appeal, Counsel argued that the project had secured the necessary approvals from multiple state institutions, and that project progress was halted due to an axiomatic issue arising from lapses in communication between certain state institutions. The learned Presidents' Counsel emphasized that the

abrupt suspension of the project, without affording a fair hearing to the petitioner companies violated their legitimate expectations and contravened the principles of natural justice. Counsel further contended that this is a project of national importance, involving substantial local and foreign investment, and that such arbitrary action of state institutions undermines investor confidence at a time when Sri Lanka is in dire need of foreign investment to support its economic recovery.

Eventually, the strategic insight and legal acumen of Counsel retained by the petitioner companies and the commitment of the Lordships of the Court of Appeal to justice prevailed to bring about a positive and cohesive outcome to facilitate the project's progress by focusing on core issues and their eventual amicable resolution by the state authorities and the Consortium. Furthermore, Senior State Counsel representing the Attorney General's Department conveyed the consent of the Mahaweli Authority of Sri Lanka, the CEB and the SLSEA for the grant of the relief sought by the petitioners, thereby enabling the project to proceed.

This is a significant victory not just for the Consortium but also for other renewable energy projects in the nation and the citizens of Sri Lanka who will benefit from low-cost clean energy. Further, this reinstates lost confidence of local and foreign investors in the renewable energy sector of Sri Lanka.

**This project is a testament to the investment opportunities available in Sri Lanka. The benefits of this project alone to the nation are as follows:**

1. Transforming 500 Acres of abandoned waste land to a productive 150MW national utility scale power project.
  2. Providing opportunities for numerous professionals and contractors.
  3. Delivering an annual generation of 235,000 MWh of clean energy to the national grid.
  4. Boosting Sri Lanka's Carbon Emission Setoff Target by approximately 180,000 tones of CO2 carbon emission set offs annually.
  5. Enabling the CEB to pass on the benefits to the citizens of Sri Lanka by way of reduced consumer electricity tariffs.
- This project expects to be connected to the national grid by end 2026.

