

12.04.2019
Court: 2
Item: 2

→ urgent listing appl.

15/4/19 x

16/4/19
Court: 2
Item: 6

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY,

NEW DELHI

APPELLATE JURISDICTION

APPEAL NO. 141 of 2019

Df No. 1629/19



IN THE MATTER OF:-

Maharashtra State Electricity
Distribution Company Ltd.

...APPELLANT

V/s.

Maharashtra Electricity Regulatory
Commission & Anr.

...RESPONDENTS

WITH

I.A. No. of 2019:

Application seeking ad-interim stay of the impugned order dated 26.03.2019 under Rule 30 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007.

AND

I.A. No. 572 of 2019

Application seeking urgent listing of the present Appeal under Rule 30 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007.

PAPER BOOK

FOR INDEX KINDLY SEE INSIDE

ADVOCATE FOR THE APPELLANTS: UDIT KISAN & ASSOCIATES

COURT-II
IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA NO. 572 OF 2019 IN
DFR NO. 1629 OF 2019

Dated: 12th April, 2019

Present: Hon'ble Mr. Justice N.K. Patil, Judicial Member
Hon'ble Mr. Ravindra Kumar Verma, Technical Member

In the matter of:

Maharashtra State Electricity Distribution Company Ltd.

.... Appellant(s)

Versus

Maharashtra Electricity Regulatory Commission & Anr

.... Respondent(s)

Counsel for the Appellant(s) : Mr. Ashish Singh
Mr. Anup Jain
Mr. S. Rama

Counsel for the Respondent(s) :

ORDER

IA No. 572 of 2019 – For urgent listing

Heard learned counsel, Mr. Ashish Singh, appearing for the Appellant.

The counsel for the Appellant, at the outset submitted that the instant application is filed on the ground of urgent listing. Further, he submitted that in the light of the statement made in Paragraph nos. 4 to 8 of the application, the same may kindly be accepted and the instant case may be listed for admission in the interest of justice and equity.

The submission of the counsel for the Appellant, as stated above, is placed on record.

In the light of the submission of the counsel for the Appellant and the statement made in Paragraph nos. 4 to 8 of the application and for the reasons stated for urgency therein, the same are accepted. Accordingly, the IA is allowed.

DFR NO. 1629 OF 2019

Registry is directed to number the appeal and list the matter on 15.04.2019 in the event defects are cured.

(Ravindra Kumar Verma)
Technical Member

mk/bn

(Justice N.K. Patil)
Judicial Member

30/03/2019
D D M M Y Y Y Y

9
8
7
6
5
4
3
2
1

00164-MUMBAI BANDRA EAST 709918
ACCOUNTS OFFICER, MINISTRY OF POWER

को या उनके आदेश पर/OR ORDER

₹ *****103000.00

अथवा FOR VALUE RECEIVED

Purchaser Name: MAHARASHTRA STATE ELECTRI

DIST 44 FA9

अथ बैंक ऑफ महाराष्ट्र FOR BANK OF MAHARASHTRA

06 07 11 01 TL

बैंक ऑफ महाराष्ट्र BANK OF MAHARASHTRA

01091-NEWDELHI SERVICE BRANCH को

IN 709918 IN 0000140000

आधिकृत अधिकारी/AUTHORISED OFFICIAL/S
Please sign above

Signature
28/03/19

MAHARA TECHNOLOGIES LTD. MANUAL / 015 2018
वर्तमान से प्रारंभ होने से पूर्व का उपयोग न करें
WALTON AND OTHERS FROM THE DATE OF ISSUE

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY,

NEW DELHI

APPELLATE JURISDICTION

APPEAL NO. of 2019

IN THE MATTER OF:-

Maharashtra State Electricity
Distribution Company Ltd.

...APPELLANT

V/s.

Maharashtra Electricity Regulatory
Commission & Anr.

...RESPONDENTS

WITH

I.A. No. of 2019:

Application seeking ad-interim stay of the impugned order dated 26.03.2019 under Rule 30 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007.

AND

I.A. No. of 2019

Application seeking urgent listing of the present Appeal under Rule 30 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007.


PAPER BOOK

FOR INDEX KINDLY SEE INSIDE


ADVOCATE FOR THE APPELLANTS: UDIT KISAN & ASSOCIATES

OPENING SHEET

(To be enclosed at the time of filing)

Appeal / DFR No.	Date of filing	Appellant	Respondents	Counsel of Appellant	Full DD/PO Details	Relief sought briefly for accurately record purpose with provisions of law involved
DFR No. _____/2019 	05.04.2019	Maharashtra State Electricity Distribution Company Limited (MSEDCL)	1. Maharashtra State Electricity Regulatory Commission (MERC) 2. Rajlaxshmi Minerals	(ANUP JAIN / UDIT GUPTA) UDIT KISHAN & ASSOCIATES ADVOCATES FOR THE APPELLANT 33, Dakshineswar Building, 10, Hailey Road, New Delhi-01	D.D. No. 709918 dated 30.03 2019 for amount of Rs.10,3,000/- drawn on Bank of Maharashtra	(a) set aside the impugned orders dated 26.03.2019 in Case No. 26 of 2019 passed by Ld. Maharashtra Electricity Regulatory Commission; and/or (b) Award cost of this Appeal against Respondent No. 2 and in favour of the Appellant herein; and/or

Remarks:-


Signature of Verificant

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY,
NEW DELHI

APPELLATE JURISDICTION

APPEAL NO. ____ of 2019

IN THE MATTER OF:-

Maharashtra State Electricity
Distribution Company Ltd.

...APPELLANT

V/s.

Maharashtra Electricity Regulatory
Commission & Anr.


...RESPONDENTS

INDEX

S.No.	PARTICULARS	PAGE No.
1	Synopsis and List of Dates	A-D
2	Memo of Parties	E
3	Memorandum of Appeal U/s 111 of the Electricity Act, 2003 along with Affidavit.	1-18
4	<u>ANNEXURE A/1</u> Impugned Order dated 26.03.2019 in Case No. 26 of 2019 passed by Ld. Maharashtra Electricity Regulatory Commission.	19-29
5	<u>ANNEXURE A/2</u> A copy of Energy Purchase Agreement dated 20.08.2014 entered between the Appellant and the Respondent No. 2 herein.	30-55
6	<u>ANNEXURE A/3</u> A copy of Case No. 26 of 2019 filed on 09.01.2019 by the Respondent No. 2 herein before the Ld. MERC as against the Appellant herein.	56-93

7	<u>ANNEXURE A/4</u> A copy of reply dated 12.03.2019 filed by Appellant herein in Case No. 26 of 2019 before the Ld. MERC.	94-98
8.	<u>I.A. No. _____ of 2019:</u> Application seeking ad-interim stay of the impugned order dated 26.03.2019 under Rule 30 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007.	99-104
9.	<u>I.A. No. _____ of 2019:</u> Application seeking urgent listing of the present Appeal under Rule 30 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007.	105-110
10.	<u>I.A. No. _____ of 2019:</u> Application seeking exemption from filling certified copy of the impugned order dated 26.03.2019 under Rule 30 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007.	111-116
11.	Vakalatnama and Authority Letter.	117-120

Place: NEW DELHI
Date: 05.04.2019


UDIT KISHAN AND ASSOCIATES
ADVOCATE FOR THE APPELLANT
33, Dakshineshwar Building,
10 Hailey Road, New Delhi - 110 001
M: 9312989749 (Anup Jain, Adv.)
E: anup@uditkishan.com

SYNOPSIS

The Ld. Maharashtra Electricity Regulatory Commission ("MERC") has passed an Order dated 26.03.2019 ("Impugned Order") in Case No. 26 of 2019 filed by M/s Rajlakshmi Minerals ("Respondent No. 2") whereby allowed the Petition filed by the Respondent No. 2 and further held the 1.25% interest shall be levied as penal interest every month, in addition to the penalty in the form of "Delayed Payment Charges" ("DPC") for late payment of bills by MSEDCL, envisaged under the "Energy Purchase Agreement" ("EPA") dated 20.08.2014. It is most respectfully submitted that through the present Appeal, MSEDCL raises a limited challenge only to the said portion of the impugned order dated 26.03.2019 vide which the Ld. MERC has held that 1.25% interest shall be levied as penal interest every month, in addition to the penalty in the form of "Delayed Payment Charges" ("DPC") for late payment of outstanding bills by MSEDCL.

LIST OF DATES AND EVENTS

B

DATES

EVENTS

2005 The Appellant – Maharashtra State Electricity Distribution Company Limited is a Company constituted under the provisions of Government of Maharashtra General Resolution No. PLA – 1003 / C. R. 8588 dated 25th January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31st May 2005. The Appellant Company is functioning in accordance with the provisions envisaged in the Electricity Act, 2003 and is engaged, within the framework of Electricity Act, 2003, in the business of distribution of electricity to its consumers situated over the entire State of Maharashtra, except Mumbai City & its suburbs (excluding Mulund & Bhandup).

20.08.2014 The Respondent No. 2 and Appellant entered into a Wind Energy Purchase Agreement (“EPA”), for the entire quantum of electricity generated from the operation of its 3.40 MW power plant, situated in Kolhapur District of

C

Maharashtra. The purchase price was determined to be Rs. 5.81 per Kwh. The EPA, also envisages provision governing delayed payment surcharge ("DPC") at 1.25% per month in case of delay in payment beyond the due date, but clearly there was no other penal charge apart from DPC in EPA.

09.01.2019 The Respondent No. 2 herein filed a petition before MERC, which was registered as Case No. 26 of 2019 as against the Appellant herein, wherein it sought payment towards the outstanding dues including the DPC. However, it also sought interest @ 1.25% p.m., over the said due payments, which included DPC.

12.03.2019 The Appellant herein filed its detailed reply in the aforementioned Petition, before MERC on 12.03.2019.

26.03.2019 The Ld. MERC vide its impugned order dated 26.03.2019 in Case No. 26 of 2019 while allowing the said petition, has also erroneously and in complete contradiction of the terms of the EPA, granted penal interest at 1.25% per month, upon

deviation from the payment plan, which is over and above the DPC.

05.04.2019 Being limitedly aggrieved by portion of the impugned order, which directed for additional penal interest of 1.25% p.m., apart from DPC, the Appellant herein prefers, the present appeal.

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY,
NEW DELHI
APPELLATE JURISDICTION
APPEAL NO. OF 2019

MEMO OF PARTIES

Maharashtra State Electricity Distribution Company Ltd.

through its Chief Engineer (Renewable Energy),

5th Floor, Prakashgadh, Plot No. G-9

Anant Kanekar Marg, Bandra (East)

Mumbai-700051

...APPELLANT

V/s.

1. **Maharashtra Electricity Regulatory Commission**

through its Secretary,

World Trade Centre, Centre No-1

13th Floor, Cuffe Parade,

Colaba, Mumbai- 400 005

2. **Rajlakshmi Minerals**

through its Managing Director,

D. No. 1499/1, P.O. Box No. 38,

Post Hospet 583 201, Bellary District,

Karnataka.

...RESPONDENTS



BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY,
NEW DELHI

APPELLATE JURISDICTION

APPEAL NO. of 2019

IN THE MATTER OF: *Appeal under Section 111 of the Electricity Act, 2003 invoking jurisdiction of this Hon'ble Tribunal assailing the legality, validity and propriety of the order dated 26.03.2019 passed by Ld. MERC in Case No. 26 of 2019 which was preferred by the Respondent No. 2 herein.*

AND

IN THE MATTER OF:-

Maharashtra State Electricity Distribution

Company Limited (MSEDCL)

through its Chief Engineer (Renewable Energy),

5th Floor, Prakashgadh, Plot No. G-9

Anant Kanekar Marg, Bandra (East)

Mumbai-700051

... APPELLANT

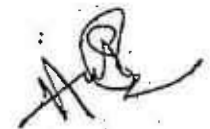
Versus

1. Maharashtra Electricity Regulatory Commission

through its Secretary,

World Trade Centre, Centre No-1

13th Floor, Cuffe Parade,



(A. R. KISHAN & ASSO.)

Colaba, Mumbai- 400 005

2. Rajlakshmi Minerals

through its authorised representative,

D. No. 1499/1, P.O. Box No. 38,

Post Hospet 583 201, Bellary District,

Karnataka.

...RESPONDENTS

APPEAL UNDER SECTION 111 OF THE ELECTRICITY ACT, 2003

The Appellant respectfully submits as under: -

1. DETAILS OF THE APPEAL:

The Appellant herein is preferring the present appeal against an order and judgement dated 26.03.2019 ("**Impugned Order**") passed by Ld. MERC ("**Ld. Commission**") in Case No. 26 of 2019 ("**said case**") which was preferred by the Respondent No. 2 herein wherein the Ld. MERC has *inter alia* held that 1.25% interest shall be levied as penal interest every month, in addition to the penalty in the form of "Delayed Payment Charges" ("DPC") for late payment of outstanding bills by MSEDCL. The said impugned order is completely erroneous as it fails to take note of the fact that there cannot be a double penalty in the form of interest i.e., one on the form of DPC and the other in the form of penal interest.

A copy of the impugned order dated 26.03.2019 passed by Ld. MERC in Case No. 26 of 2019 is annexed hereto and marked as Annexure A/1.

2. DATE ON WHICH THE ORDER APPEALED AGAINST IS COMMUNICATED AND PROOF THEREOF:

The certified copy of the Impugned Order dated 26.03.2019 was uploaded on the website of Ld. MERC on 26.03.2019.

3. THE ADDRESS OF APPELLANT FOR SERVICE IS AS SET OUT HEREUNDER:

APPELLANT:

Maharashtra State Electricity Distribution Company Limited (MSEDCL)

Address: Registered office at 4th Floor, Prakashgadh,
Plot No. G-9, Anant Kanekar Marg,
Bandra (East), Mumbai – 400 051

E-mail: gmppmsedcl@gmail.com

Phone: 9820421534

COUNSEL FOR THE APPELLANT:

UDIT KISHAN & ASSOCIATES

Address: 33, 9th Floor, Dakshineswar Building, 10 Hailey
Road, New Delhi – 110001

E-mail: udit@uditkishan.com; anup@uditkishan.com

Phone: 9911179111; 9312989749

21

4. THE ADDRESS OF RESPONDENTS FOR SERVICE OF ALL NOTICES IN THE APPEAL ARE AS SET OUT HEREUNDER:

Respondent No. 1:

Maharashtra Electricity Regulatory Commission

through its Secretary,

World Trade Centre, Centre No-1

13th Floor, Cuffe Parade,

Colaba, Mumbai- 400 005

Respondent No. 2:

Rajlakshmi Minerals

through its ^{Managing Director} authorised representative,

D. No. 1499/1, P.O. Box No. 38,

Post Hospet 583 201, Bellary District,

Karnataka.

5. JURISDICTION OF THE APPELLATE TRIBUNAL:

The Appellant submits that the subject matter of the appeal is well within the jurisdiction of this Hon'ble Tribunal in terms of Sections 111 of the Electricity Act, 2003.

6. LIMITATION:

It is submitted that as per Section 111(2) of the Electricity Act, 2003 the present Appeal is filed within 45 days of the passing of impugned order dated 26.03.2019 (uploaded

on website of State Commission on 26.03.2019), and hence there is no delay in filing the present Appeal.

7. **DESCRIPTION OF PARTIES & FACTS OF THE CASE:**

Description of Parties:

7.1 Appellant i.e., Maharashtra State Electricity Distribution Company Limited (MSEDCL) is a distribution licensee operating in the State of Maharashtra, having its registered office at 5th Floor, Prakashgadh, Plot No. G-9, Anant Kanekar Marg, Bandra (East), Mumbai – 400 051.

7.2 Respondent No. 1 i.e., Maharashtra Electricity Regulatory Commission (MERC) is a statutory authority constituted under the Electricity Regulatory Commission Act, 1998 with specific powers vested under section 79 of Electricity Act, 2003 and is represented through its Secretary having office at World Trade Centre, Centre No-1, 13th Floor, Cuffe Parade, Colaba, Mumbai- 400 005.

7.3 Respondent No. 2 i.e. Rajlakshmi Minerals is a Wind Power Generator, having its power plant in the State of Maharashtra and had executed a EPA with the Appellant and is represented through its authorised representative having office at D. No. 1499/1, P.O.

Box No. 38, Post Hospet 583 201, Bellary District,
Karnataka.

Brief Background and Facts of the Case:

7.5 That the Appellant – Maharashtra State Electricity Distribution Company Limited is a Company constituted under the provisions of Government of Maharashtra General Resolution No. PLA – 1003 / C. R. 8588 dated 25th January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31st May 2005. The Appellant Company is functioning in accordance with the provisions envisaged in the Electricity Act, 2003 and is engaged within the framework of Electricity Act, 2003, in the business of distribution of electricity to its consumers situated over the entire State of Maharashtra, except Mumbai City & its suburbs (excluding Mulund & Bhandup).

7.6 That The Respondent No. 2 and Appellant entered into a Wind Energy Purchase Agreement (“EPA”), on 20.08.2014 for the entire quantum of electricity generated from the operation of its 3.40 MW power plant, situated in Kolhapur District of Maharashtra. The purchase price was determined to be Rs. 5.81 per Kwh. The EPA, also envisages provision

7

governing delayed payment surcharge ("DPC") at 1.25% per month in case of delay in payment beyond the due date, but clearly there was no other penal charge apart from DPC in EPA. A copy of Energy Purchase Agreement dated 20.08.2014 entered between the Appellant and the Respondent No. 2 herein is annexed herewith and marked as ANNEXURE A/2.

7.7 That the Respondent No. 2 herein filed a petition before MERC, on 09.01.2019 which was registered as Case No. 26 of 2019 as against the Appellant herein, wherein it sought payment towards the outstanding dues including the DPC. However, it also sought interest @ 1.25% p.m., over the said due payments, which included DPC. A copy of Case No. 26 of 2019 filed on 09.01.2019 by the Respondent No. 2 herein before the Ld. MERC as against the Appellant herein is annexed herewith and marked as ANNEXURE A/3.

7.8 That the Appellant herein filed its detailed reply in the aforementioned Petition, before MERC on 12.03.2019. A copy of reply dated 12.03.2019 filed by Appellant herein in Case No. 26 of 2019 before the

8

Ld. MERC is annexed herewith and marked as
ANNEXURE A/4.

7.10 That the Ld. MERC vide its impugned order dated, 26.03.2019 in Case No. 26 of 2019 while allowing the said petition, has also erroneously and in complete contradiction of the terms of the EPA, granted penal interest at 1.25% per month, upon deviation from the payment plan, which is over and above the DPC.

8. (A) **FACTS IN ISSUE:**

Whether the Appellant is entitled to the additional 1.25% penal interest over and above DPC, in complete contradiction to the terms of the EPA?

(B) **QUESTIONS OF LAW:**

(i) Whether the part of the impugned order dated 26.03.2019 passed by Ld. MERC is a non-reasoned order, so far as grant of additional penal interest of 1.25% is concerned?

(ii) Whether the Ld. MERC had granted 1.25% penal interest without appreciating that there can be no double penalty in the form of penal interest on any delayed payment of outstanding bills when there already exists DPC?

- 9
- (iii) Whether the Ld. MERC was withing its legal adjudicatory framework in imposing penalty on the Appellant herein beyond the terms of the Energy Purchase Agreement?
 - (iv) Whether the Ld. MERC has failed to consider that interest penalty is not a pass through in tariff and imposing double penalty in the form of interest would negativeiy burden/effect the Appellant herein?
 - (v) Whether imposition of additional penalty of 1.25% by the Ld. MERC vide impugned order is contrary to the principles of natural justice and thus is bad in law?

9. **GROUND WITH LEGAL PROVISIONS:**

The Appellant is constrained to challenge the Impugned judgement and Order dated 18.12.2018 in case No. 295 of 2018 on account of the following:

- (A) That imposition of the additional penalty of 1.25% by the Ld. MERC vide impugned order is a non-reasoned order as the Ld. MERC has failed to give any reasoning as to why it imposes double penalty in the form of interest on the Appellant herein when

there is no such provision agreed by the Parties in the Energy Purchase Agreement for the same.

(B) That the Ld. MERC has failed to appreciate that the Energy Purchase Agreement is sacrosanct between parties which already has a clause in the name of "Delayed Payment Charges" which has a provision for levy of interest, in case, the Appellant herein delays payment of outstanding bills.

(C) That the Ld. MERC has failed to appreciate that there cannot be a double interest penalty on MSEDCL more so in view of the fact that the DPC clause already exists in the Energy Purchase Agreement, with the same intent.

(D) That the Ld. MERC has failed to consider that interest penalty is not a pass through component in tariff and imposing double penalty in the form of interest would negatively burden/effect the Appellant herein as the same would never be allowed to be a pass through in tariff.

(E) That the Ld. MERC has failed to appreciate that it cannot impose a penalty on the Appellant herein

//

which is not in consonance with the terms of the Energy Purchase Agreement. Once the Energy Purchase Agreement provides for a penalty in the form of DPC in case of delayed payments by the Appellant herein, then there cannot be another penal interest on the Appellant on the same issue.

6

(F) That the Ld. MERC has failed to appreciate that it cannot novate the Energy Purchase Agreement between parties by means of the impugned order. Such action of the Ld. MERC is absolutely contrary to the established principles and precedents in matters of "sanctity of PPA/EPA".

7

(G) That the Ld. MERC has erroneously not considered the precarious financial situation of the Appellant herein and has erroneously inflicted double penalty without assigning any reasons for inflicting 1.25% penal interest in addition to the DPC.

(H) That the entire logic of imposing penal interest of 1.25% when there already exists a penalty in the form of DPC is without any basis and reasoning, as is clear from the impugned order. The said penalty has been imposed by the Ld. MERC out of its own notion

that too without giving any reasoning and without even giving a chance to the Appellant herein to address its case on the same.

- (I) That the Ld. MERC has imposed the 1.25% penal interest on the Appellant herein without following the due process of law and without giving a fair chance of hearing on the said issue. Hence the said portion of the impugned order violates the principles of natural justice and thus is bad in law and needs to be declared as ultra-vires by this Hon'ble Tribunal.

10. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:

The Appellant further declares that the Appellant has not filed any other suit, appeal or has initiated any other legal proceeding against the impugned interim order dated 26.03.2019 passed by the Ld. MERC in Case No. 26 of 2019.

11. SPECIFY BELOW EXPLAINING GROUNDS FOR SUCH RELIEF(S) ANHD THE LEGAL PROVISIONS, IF ANY, RELIED UPON:

The Appellant relies on the submissions/legal provisions and the grounds made in Paragraph 9 above for the relief sought, which are not repeated here for the sake of brevity.

12. DETAILS OF INTERIM APPLICATION, IF ANY, PREFERRED ALONG WITH APPEAL:

The Appellant has filed an Interim Application along with the present Appeal, under Section 120 of the Electricity Act, 2003 read with Rule 30 of the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 seeking stay of the operation and effect of the impugned order dated 26.03.2019 passed by the Ld. MERC in Case No. 26 of 2019. The Appellant has also filed an interim Application seeking urgent listing of the present appeal, along with the present memo of appeal.

13. DETAILS OF APPEAL/S, IF ANY, PREFERRED BEFORE THIS APPELLATE TRIBUNAL AGAINST THE SAME IMPUGNED ORDER/DIRECTION BY RESPONDENTS WITH NUMBERS, DATES AND INTERIM ORDER, IF ANY, PASSED IN THAT APPEAL:

NO.

14. DETAILS OF INDEX:

An index containing the details of the documents relied upon is enclosed in the beginning of the Appeal.

15. PARTICULARS OF BANK DRAFT IN FAVOR OF THE ACCOUNTS OFFICER, APPELLATE TRIBUNAL, IN RESPECT OF THE FEE FOR APPEAL:

Demand Draft No. 709918 dated 30.03.2019 drawn on Bank of Maharashtra Payable at New Delhi in favour of Pay

and Accounts Officer, Ministry of Power for an amount of Rs. 1,03,000/- towards filing fee.

16. **LIST OF ENCLOSURES:**

Annexure A/1: A copy of the impugned order dated 26.03.2019 passed by Ld. MERC in Case No. 26 of 2019.

Annexure A/2: A copy of Energy Purchase Agreement, dated 20.08.2014 entered between the Appellant and the Respondent No. 2 herein.

Annexure A/3: A copy of Case No. 26 of 2019, filed on 09.01.2019 by the Respondent No. 2 herein before the Ld. MERC as against the Appellant herein.

Annexure A/4: A copy of reply dated 12.03.2019 filed by Appellant herein in Case No. 26 of 2019 before the Ld. MERC.

17. **WHETHER THE ORDER APPEALED AS COMMUNICATED IN ORIGINAL IS FILED? IF NOT, EXPLAIN REASON FOR NOT FILING THE SAME:**

Yes.

18. **WHETHER THE APPELLANT/S IS READY TO FILE WRITTEN SUBMISSIONS/ARGUMENTS BEFORE THE FIRST HEARING AFTER SERVING THE COPY OF THE SAME ON RESPONDENTS:**

No.

19. WHETHER THE COPY OF MEMORANDUM OF APPEAL WITH ALL ENCLOSURES HAS BEEN FORWARDED TO ALL RESPONDENTS AND ALL RESPONDENTS AND ALL INTERESTED PARTIES, IF SO, ENCLOSE POSTAL RECEIPT/COURIER IN ADDITION TO PAYMENT OF PRESCRIBED PROCESS FEE:

It is submitted that the Appellant has not supplied a copy of the appeal to the Respondents.

20. ANY OTHER RELEVANT OR MATERIAL PARTICULARS/DETAILS WHICH THE APPELLANT(S) DEEMS NECESSARY TO SET OUT:

The Appellant submits that it would rely on all such documents/submissions, which may be necessary for the proper adjudication of the issues involved in the present Appeal.

21. RELIEFS SOUGHT:

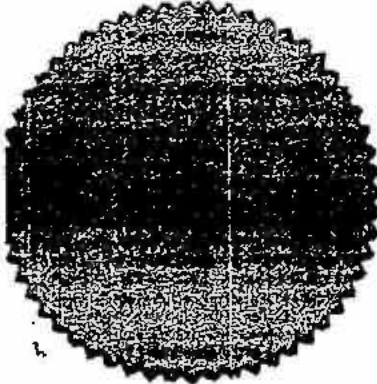
In view of the facts mentioned in paragraph mentioned in paragraph No. 7 above, points in dispute and questions of law set out in paragraph no. 8 and the grounds of appeal stated in paragraph no. 9, the Appellant herein prays for the following reliefs:

- (a) Allow the present appeal and set aside the impugned order dated 26.03.2019 passed by the Ld. MERC in Case No. 26 of 2019 limited to the extent it imposes additional 1.25% penal interest per month over and above the DPC; and/or

(b) Pass such other Order(s) as this Hon'ble Tribunal may deem just and proper.

For Udit Kishan & Associates

For Maharashtra State Electricity Distribution Company Limited



Counsel for the Appellant
Date: 30.03.2019

K.gharat
CHIEF ENGINEER (RE)
APPELLANT
M.S.E.D.C.L.

DECLARATION BY APPELLANT

The Appellant above named hereby solemnly declares(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon filed herewith are true copies of the original.

For Udit Kishan & Associates

For Maharashtra State Electricity Distribution Company Limited



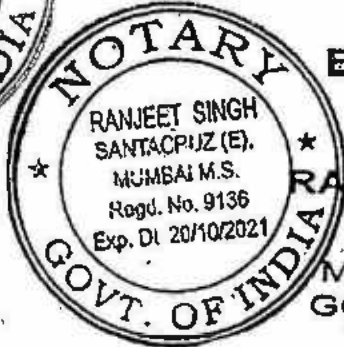
Counsel for the Appellant
Date: 30.03.2019

K.gharat
APPELLANT CHIEF ENGINEER (RE)
M.S.E.D.C.L.

VERIFICATION

I, Mrs. Kavita K Gharat, age about 41 years, working as Chief Engineer (Renewable Energy), in the Appellant Company and having office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (East), Mumbai 400051 do hereby verify that the contents of Para 1 to are based on the records of the Appellant maintained in the ordinary course of business and believed by me to be true and paras to are believed to be true on legal advice and that I have not suppressed any material facts.

Date: 30.03.2019
Place : Mumbai



BEFORE ME Maharashtra State Electricity Distribution Company Limited

Ranjeet Singh
RANJEET SINGH
M.Sc.LL.B.

NOTARY
MAHARASHTRA
GOVT OF INDIA
130 MAR 2019

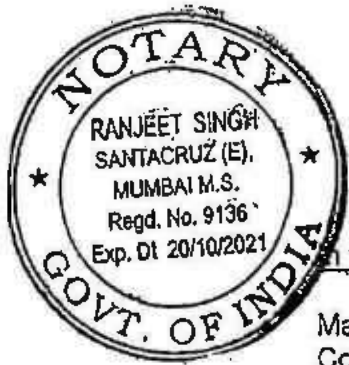
K.gharat
APPELLANT
CHIEF ENGINEER (RE)
M.S.E.D.C.L.

17

BEFORE THE HON'BLE APPELLATE TRIBUNAL FOR ELECTRICITY,
AT NEW DELHI

APPELLATE JURISDICTION

APPEAL NO. ____ OF 2019



in the matter of:

Maharashtra State Electricity Distribution
Company Limited

... Appellant

VERSUS

Maharashtra Electricity Regulatory Commission & Anr.

... Respondent

AFFIDAVIT

I, Mrs. Kavita K Gharat , age about 41 years, working as Chief Engineer (Renewable Energy), in the Appellant Company and having office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (East), Mumbai 400051, do hereby solemnly affirm and declare on oath as under:-

1. That I am duly authorized by the Appellant Company in the present Appeal to sign and verify the present affidavit and also being well conversant with the facts and circumstances of the case is thus competent to swear this affidavit.
2. I state that I have read and understood the contents of the above appeal filed by the Appellant against impugned order dated 26.03.2019 passed by Ld. MERC in Case No. 26 of 2019, which have been drafted under my instruction and I state that the facts stated therein are true to the best of my knowledge and belief.
3. I say that the contents of the above appeal filed by the Appellant are based on the information available with the Appellant in the normal course of business and believed by me to be true.
4. I say that the Annexures to the Memorandum of Appeal are the true and

correct copies of their original.



For Maharashtra State Electricity
Distribution Company Limited

W. Karat

DEPONENT

CHIEF ENGINEER (RE)
M.S.E.D.C.L.

VERIFICATION

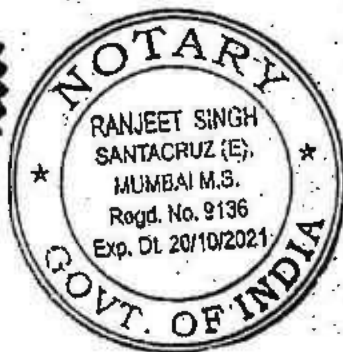
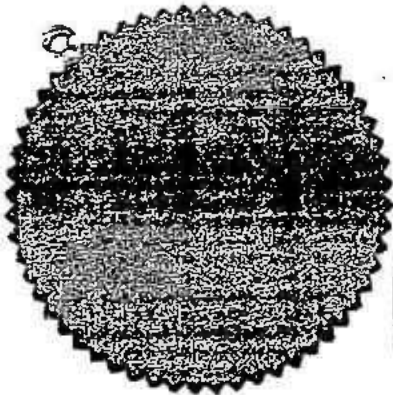
Verified at Mumbai on this the 30th day of March, 2019. I, the above-named deponent, do hereby verify that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

For Maharashtra State Electricity
Distribution Company Limited

W. Karat

DEPONENT

Chief Engineer (Renewable Energy)
MSEDCL
Prakashgad, 5th Floor,
Prof. Anant Kanekar Marg,
Bandra (East), Mumbai-400 051

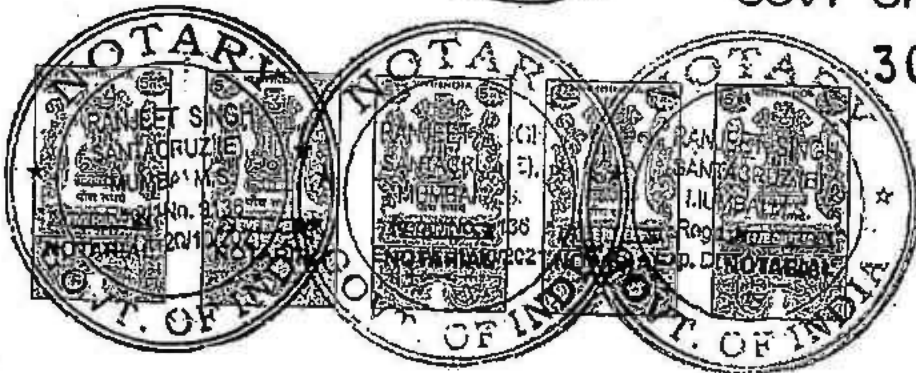


BEFORE ME

Ranjit Singh

RANJEET SINGH
M.Sc.LL.B.
NOTARY
MAHARASHTRA
GOVT OF INDIA

30 MAR 2019



आदेश क्र. २६/२०१९

१९

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.mercindia.org.in / www.merc.gov.in

CASE No. 26 of 2019

Case of M/s Rajlakshmi Minerals for the amount due and payable by Maharashtra State Electricity Distribution Company Limited for electricity supplied under the Wind Energy Purchases Agreement dated 20 August, 2014

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

M/s Rajlakshmi Minerals Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. Respondent

Appearance

For the Petitioner : Shri. Pratek Pai (Adv.)
For the Respondent : Shri Ashish Singh (Adv.)

ORDER

Date: 26 March, 2019

1. M/s Rajlakshmi Minerals (RM) has filed this Case for the amount due and payable by Maharashtra State Electricity Distribution Company Limited (MSEDCL) for electricity supplied under the Wind Energy Purchases Agreement (WEPA) dated 20 August, 2014.
2. Main Prayers of RM are as follows:
 - a) Direct the Respondent to pay a sum of Rs. 3,59,90,095/- towards the principal amounts for electricity generated by the Petitioner in respect of the said monthly electricity bills raised from October, 2017 to October, 2018, as more particularly set out in Annexure 'GG' hereto;

- b) Direct the Respondent to pay a sum of Rs. 57,71,312/- to the Petitioner as delayed payments in respect of the months of May, 2017 to October, 2018, as more particularly set out in Annexure 'HH' hereto;
- c) Direct the Respondent to pay a sum of Rs. 17,77,160/- to the Petitioner as interest on delayed payment charges, as more particularly set out in Annexures 'HH' and 'II' hereto;
- d) Direct the Respondent to comply with the terms of the Wind Energy Purchase Agreement dated 20th August, 2014 for the duration thereof, including by honouring its commitments thereunder;
- e) Direct the Respondent to pay interest pendente-lite till the eventual payment of the sum at the rate of 1.25% per month;
- f) Pending the hearing and final disposal of the present Petition, this Hon'ble Commission be pleased to direct the Respondent to deposit a sum of Rs. 4,35,38,567/- or such other amount as this Hon'ble Commission may deem fit in this Hon'ble Commission;

3. RM's Case is as under:

- 3.1 RM is a partnership concern engaged in the generation of electricity from wind power plant and is also involved in the logistic and transportation business. RM owns a 3.40 MW wind power facility at Pusrali and Altur village, Shahuwadi Taluka, in Kolhapur District, Maharashtra. The said Power Plant was successfully commissioned on 29 March, 2014. Wind Energy Purchase Agreement (WEPA) was executed with MSEDCL on 20 August, 2014
- 3.2 As per the terms of WEPA, MSEDCL is under a contractual obligation to make the necessary payments to RM in respect of the electricity purchased by it within 60 days from the receipt of the monthly energy bills raised by RM. When MSEDCL delayed the payment of the contractual dues to RM, an interest rate of 1.25% per month would be levied on it. Section 11.04 of the WEPAs is reproduced as under:

"Section 11.04 Payments:

The due date of payment shall be 60 days from receipt of the Seller's monthly energy bills by the MSEDCL and will be paid by the account payee's cheque in the name of Seller or authorized representative in whose name power of attorney is given by the seller. In case of delay in payment beyond the due date, the Seller shall be entitled to a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company. The MSEDCL however shall be entitled to make adjustments in the Seller's Invoices for any charges/costs incurred on behalf of the Seller and payable by the Seller under this Agreement. This shall be shown in the audited statement issued by the MSEDCL."

- 3.3 Despite this, MSEDCL has not only delayed the payment of contractual dues to RM, but in respect of several months, has not bothered to make any payments whatsoever for the electricity consumed by it. RM was constrained to approach the Commission and filed Case No. 166 of 2016 under Section 86 of the Electricity Act, 2003(EA). The Commission issued Common Order dated 16 May, 2017, and directed as under:

"In view of the foregoing, the Commission expects MSEDCL to pay the principal amounts due to the Petitioners expeditiously. In the meantime, in line with its Order in Case No. 150 of 2015 and the more recent Orders dated 16 March, 2017, the Commission directs MSEDCL to pay the DPC amounts due within 30 days. Thereafter, interest will accrue at 1.25% per month on an DPC amount remaining to be paid."

- 3.4 RM made some correspondence after issuance of the Order of the Commission, instead of complying with the said Order dated 16 May, 2017, MSEDCL adopted the practice of making selective payments only to those wind power producers who submitted an undertaking, thereby waiving any and all rights to delayed payment charges (DPC) under their respective agreements with MSEDCL. In fact, RM was in receipt of one such draft undertaking in or around October, 2017.
- 3.5 RM refused to sign the Draft Undertaking. However, RM learnt that various other wind power producers complied with the arm-twisting tactics of MSEDCL and provided undertakings in the format provided in the Draft Undertaking. It appears that these wind power producers received payments from MSEDCL for their pending invoices for the months of August, 2016 to October, 2016. At the same time, MSEDCL did not release any payment to RM, in blatant disregard and disobedience of the said Order dated 16 May, 2017.
- 3.6 RM again approached the Commission and filed the contempt Petition in Case No. 177 of 2017 under Sections 142 and 146 read with Section 149 EA for intentional and mala-fide non-compliance of the Commission's Order dated 16 May, 2017 by MSEDCL. The Commission in its Daily Order dated 2 January, 2018 directed RM and MSEDCL to sit together and reconcile the statement of account and submit a report within two weeks. Pursuant to the directions issued by the Commission, RM and MSEDCL reconciled the accounts on 15 January, 2018. At that time, MSEDCL represented that it would make payment towards the DPC due and payable till April, 2017 and principal amount outstanding as per the availability of funds. MSEDCL proceeded to make payment of the DPC due and payable till April, 2017 on 16 January, 2018. In view of the aforesaid reconciliation (as also the part-payment made by MSEDCL), the Commission had recorded in its Order dated 18 January, 2018 that it was not inclined to take action against MSEDCL under Sections 142 and 146 read with Section 149 of the EA and accordingly disposed off the Contempt Petition.
- 3.7 The aforesaid proceedings only dealt with invoices raised prior to May, 2017. However, there was no deliberation and/ or adjudication whatsoever in respect of

invoices raised from May, 2017 onwards by RM towards principal amount and DPC. Despite being directed to make payments towards interest on DPC by the Order dated 16 May, 2017, MSEDCL has failed to make payments of the same till date.

- 3.8 RM highlighted the urgency in the release of the payments owed to it so as to enable it to continue the operation of the said Power Plant and thereby guarantee the supply of the electricity to MSEDCL. MSEDCL always assured RM that the amount due to RM would be released in due course, however MSEDCL did not give any concrete proposal or assurance as to the date and manner of such payment. Further RM made several correspondences for release of outstanding amounts, however MSEDCL failed to respond it.
- 3.9 On 1 January, 2019 an amount of Rs. 2,17,89,095/- was remitted by MSEDCL to RM. In fact, this amount was towards the said electricity bills raised by RM between May, 2017 and September, 2017. The payment was made towards the said electricity bills which were almost 12-18 months overdue. RM has come to learn that this payment was received belatedly, despite other wind energy power producers (particularly those who had executed undertakings in favour of MSEDCL) having received timely payments on a consistent basis.
- 3.10 Following amounts are due and payable by MSEDCL to RM as on 10 January, 2019.

Sr.No	Details	Amount (INR)
1.	Principal amount due and payable	3,59,90,095/-
2.	Delayed Payment Charges	57,71,312/-
3.	Interest due and payable on DPC	17,77,160/-
TOTAL		4,35,38,567/-

- 3.11 Non-payment of the aforesaid amounts by MSEDCL caused RM tremendous difficulty in servicing the Term Loan of Rs. 15,00,00,000 obtained from the State Bank of India. RM has contracted the service of M/s Gamesa Wind Turbines Pvt. Ltd, for the operation and maintenance (O&M) of the said Power Plant. RM is obligated to make payments amounting to approximately Rs. 33,07,500 per annum towards O&M and upkeep of the wind turbines by Gamesa. RM is under immense financial pressure as it continues to make payments to Gamesa, for the O&M of the said Power Plant, without any corresponding payment from MSEDCL for the electricity generated. Failure of the MSEDCL to make payments under the said Agreement is not only an express breach of the contractual stipulations as contained in the said Agreement, but has also placed RM in financial difficulty.
- 3.12 Having no other recourse, RM is constrained to file the present Case seeking payment of the amount due to it under the said Agreement executed with MSEDCL. The present dispute is a dispute between a generating company and a distribution licensee and as such the Commission is fully empowered to hear and decide the present dispute under Sections 86(1) (e) and 86(1) (f) of the EA. The Clause 16.02 of the said

Agreement confers jurisdiction on the Commission to hear and decide disputes arising out of the WEPA executed.

4 MSEDCL in its reply has stated that:

- 4.1 MSEDCL has always obeyed and complied with the Orders of the Commission and always endeavored to make the payment of Wind Generators in time. MSEDCL has submitted its payment plan to the Commission for clearing the outstanding dues as on March, 2018 by March 2019 and it is following the same.
- 4.2 RM in its petition has claimed the Principal amount of Rs. 3,59,90,095/- for the electricity supplied during the period of October-2017 to October -2018. MSEDCL has paid the principal amount of Rs. 2,17,89,095/- from May-2017 to September-2017 Generation month as per payment plan submitted by MSEDCL.
- 4.3 MSEDCL has made payment as per the payment plan submitted to MERC, the prayer of RM for the principal amount for further period beyond payment plan now became infructuous and hence, Petition may be dismissed. The remaining payment for dues from October-2017 to March-2018 will be made as per the availability of funds on best effort basis.
- 4.4 Further, in addition to that as per MERC Order dated 18 January, 2018 in Case No 177 of 2017 MSEDCL had calculated DPC and released DPC of Rs. 21,43,829/- on 31.12.2017 and DPC of Rs.48,02,416 on 16.01.2018 to RM for the generation month March-2014 to March-2017. Thus, the prayer of RM for demanding DPS amount is also infructuous and hence, Petition may be dismissed.
- 4.5 MSEDCL is trying to clear the outstanding payment of wind generators as per the payment plan and availability of funds. Accordingly, MSEDCL has made total payment of Rs. 1524 Crs upto September-2017 generation. Also, MSEDCL paid around Rs. 2965 Cr after submission of payment plan to MERC i.e. from September-2018 to December-2018.
- 4.6 As per section 86 (1) (f) of the EA, the Commission adjudicates upon dispute between the Licensee and Generators. However, MSEDCL never disputes the liability of the Petitioner and hence in absence of any dispute, the Commission is requested not to entertain such Petition which is out of MERC jurisdiction and in fact, it is a civil dispute.
- 4.7 From past many years in the State, agricultural consumers are not paying bills on time. Similarly, the arrears of government departments have accumulated for supply of electricity to public water Works and Street light consumers category. The Commission has allowed provision for bad debts of 1.5% of receivables in MERC MYT Regulation in spite of having largest agricultural consumer base and rural areas covered which has less prospect to pay on time. However, more than 85% arrears are

attributable to agricultural and Government department dues against supply of electricity. Moreover, out of total sales 30% sales are agriculture sales. Thus, the fund availability of MSEDCL is getting affected due to the less probability of collection from agricultural consumers. Hence, it may not be always possible to MSEDCL to make timely payments to the Petitioner.

- 4.8 MSEDCL has already filed Petition for revision of wind zone classification to review the wind zone classification of generators who are availing the benefit of higher tariff although they are falling in higher wind zone category, having lower stipulated tariff as per actual generation data.
- 4.9 MSEDCL has fulfilled its entire cumulative non-Solar RPO target till FY 2017-18 and with present wind generators payment structure and attitude of frequently filing the Petition against MSEDCL is posing problem to MSEDCL and its consumers.
- 4.10 As per the Commission's Order of Wind generators for FY 2017-18, long term PPAs are signed for a period of 13 years only although their useful life is 20 years resulting into higher tariff payable by MSEDCL to the Wind generators as compared to other States. Also, MSEDCL brings to the notice of the Commission that after expiry of PPA term of 13 years, Wind generators are not willing to sell power to MSEDCL at lower tariff. Further, as per directives of the Commission, MSEDCL has carried out bidding process for procurement of Wind power post expiry of EPA. However, no wind generator has participated in the tender process even after extending bid date twice. These wind generators are trying to sell power under open access at higher rate directly to bulk consumers.
- 4.11 In view of above, MSEDCL requests the Commission to dismiss this Petition and such similar Petitions and may give option to MSEDCL to terminate the PPA of the Petitioner and such other wind generators as at present there are no funds available with MSEDCL for payment of DPS to them.
- 5 At the hearing held on 14 March, 2019 the Advocate representing RM reiterated its submissions. Advocate of MSEDCL stated that MSEDCL has never disputed the liability of RM and hence in absence of any dispute, MSEDCL proposes that the Commission should not entertain such Petition which is out of MERC jurisdiction and in fact, it is a civil dispute. The Commission should either dismiss the Petition or allow MSEDCL to terminate the WEPA with RM. Advocate of RM replied that it is submitting its additional submission in reply to MSEDCL's submission dated 12 March, 2019 which covers the issue of jurisdiction and termination of WEPA and requested to place it on record.
- 6 RM in its additional reply dated 14 March, 2019 (submitted during the proceeding of the Hearing held on 14 March, 2019) has summarized its original submission and replies to MSEDCL's contention as follows:

6.1. MSEDCL in its reply has admitted its liability to RM. In fact, MSEDCL has stated that "MSEDCL never disputes the liability of the Petitioner". In view of these admissions, the present case ought to be allowed.

6.2. MSEDCL has also sought to raise certain untenable allegations in its said reply, which needs to be rejected for the following reasons:

- (i) MSEDCL has sought to contend that the claims for the principal amount as also the DPC are infructuous. MSEDCL has attempted to obfuscate the issue by setting out details of payments made to the Petitioner. However, the same pertain to invoices/ electricity bills of earlier vintage, and the same, in any event, do not form a part of the present Complaint.
- (ii) MSEDCL has fallaciously sought to contend that the Commission does not have jurisdiction as the issue in the present Complaint is a purportedly "civil dispute". This is a belated and desperate defense taken by MSEDCL. The EA clearly empowers the Commission to adjudicate on the issues arising in the present Case. In any event, MSEDCL has on multiple earlier occasions acceded to the jurisdiction of the Commission accordingly, it cannot now claim that the Commission does not have the jurisdiction.
- (iii) MSEDCL has sought to rely on a purported payment plan to justify its (in) action. No such payment plan has been furnished to RM till date. In fact, RM has not executed and/ or given its consent in respect of any purported payment plan, and accordingly, the question of the same binding on RM, does not and cannot arise.
- (iv) MSEDCL, in a proceeding initiated by RM, has sought that the Commission may give option to MSEDCL to terminate the PPA of RM and such other wind generators as at present there are no funds available with MSEDCL for payment to them. This conduct of MSEDCL is reprehensible. Once again, MSEDCL is attempting to browbeat RM into giving in to MSEDCL's demands, under the threat of adverse consequences befalling RM. This is in line with MSEDCL's earlier *mala fide* conduct qua the draft undertaking of waving DPC charges. No authority, let alone the State, ought to act in the manner as is sought to be done by MSEDCL.

Commission's Analysis and Ruling;

7 The Commission notes that RM had approached the Commission vide its Petition in Case No. 166 of 2016 regarding non-payment and/or late payment of principal amounts as well as DPC. Some other Wind Energy Generators had also approached the Commission for prolonged non-payment and/or late payment of principal amounts for the supply of energy as well as the DPC for such delayed payments by MSEDCL under the EPAs for their Wind Energy Projects. The Commission had issued a Common Order dated 16 March, 2017 on these Petitions. In that Order, the Commission directed MSEDCL as follows:

"54. In view of the foregoing, the Commission expects MSEDCL to pay the principal amounts due to the Petitioners expeditiously. In the meantime, in line with its Order in Case No. 150 of 2015, the Commission directs MSEDCL to pay the due DPC amounts within 30 days. Thereafter, interest will accrue at 1.25% per month on any DPC amount remaining to be paid. In the Case of those Petitioners who are also consumers of MSEDCL, these amounts could also be adjusted against their consumer energy bills."

- 8 Aggrieved by the Commission's combined Order dated 16 March, 2017, MSEDCL challenged it in APTEL. APTEL in its various Judgments dated 7 May, 2018 disposed off the Cases regarding outstanding payment, delay payment surcharge of Wind Generators in terms of its earlier Judgment dated 24 April, 2018 passed in Appeal No 75 of 2017. In this Judgment, APTEL has upheld Commission's Order in Case No 150 of 2015 (M/s Hindustan Zinc Limited). The Commission in Case No.150 of 2017 had ruled as follows:

"In view of the foregoing, the Commission directs MSEDCL to pay the late payment surcharge due to HZL as per Section 11.04 of the EPA within 30 days. Thereafter, interest will be payable to HZL at 1.25% per month on any surcharge amount remaining to be paid".

- 9 As MSEDCL failed to comply with the Commission's Order dated 16 May, 2017, RM again approached the Commission through contempt Petition in Case No. 177 of 2017 under Sections 142 and 146 read with Section 149 of the EA.
- 10 As there was a dispute on actual amount that MSEDCL owed to RM and the amount actually received by RM, the Commission directed both the parties through its Daily Order dated 2 January, 2018 to sit together and reconcile their accounts. In pursuance of the above, both parties sorted out the issue and finally concluded that some minor amount was still to be received from MSEDCL. The Commission disposed off the Case No 177 of 2017 on 18 January, 2018 and ruled that it is not inclined to proceed against MSEDCL under Sections 142, 146 of the EA.
- 11 Now, RM has again approached the Commission through the instant Petition for outstanding principal amount, DPC amount and interest on DPC totaling Rs 4.35 Crore till 10 January, 2019. The Commission notes that MSEDCL has paid the principal amount of Rs. 2,17,89,095/- for the electricity supplied from May-2017 to Sept- 2017 on 1 January, 2019. However, RM in its Petition has claimed the principal amount of Rs. 3,59,90,095/- for the electricity supplied from the October- 2017 to October - 2018.
- 12 MSEDCL in its reply dated 12 March, 2019 has stated that it has made payment as per the payment plan submitted to the Commission. The prayer of RM for the principal amount for the period beyond payment plan has become infructuous and hence, needs to be dismissed. The remaining payment for from the period of October 2017 to March 18 will be made as per the availability of funds on best effort basis. Similarly the prayer of RM demanding DPS also needs to be dismissed. In this regards, the Commission notes that MSEDCL in its

payment plan submitted to the Commission in Case Nos. 128 and 134 of 2018 has committed to make payment for energy supplied till March, 2018 by March, 2019. Therefore, RM's request of releasing outstanding amount for the period of October 2017 to October 2018, forms part of MSEDCL's committed plan and hence MSEDCL's contention that RM's request of releasing outstanding payment is completely outside of the payment plan is not correct.

- 13 The Commission further notes that MSEDCL in its reply has raised issues such as jurisdiction of the Commission, EPA period of 13 years as against useful life of 20 years of the generation project which results into higher tariff, issue of wind zone classifications, fulfilment of cumulative non-Solar RPO target till FY 2017-18, lower recovery from Agricultural consumers etc. and has requested the Commission either to dismiss the Petitions or allow it to terminate PPA as no funds are available for paying DPC amount.
- 14 On the issue of jurisdiction as raised by MSEDCL, the Commission notes that 'Clause 16.02 - Dispute Resolution' of WEPA reads as follows:

"Any disputes arising, out of, in connection with or with respect to this Agreement, the subject matter hereof, the performance or non-performance of any obligation hereunder, that cannot be resolved by negotiation among the Parties within sixty (60) days, shall be exclusively adjudicated before the MERC and any other Court in Mumbai having jurisdiction in the matter."

Thus as per above provisions of WEPA, issues related to non-performance of any obligations under the EPA shall be adjudicated by the Commission.

- 15 The Commission observed that MSEDCL now contends that it has never disputed the liability of RM and other wind generators and hence in absence of any dispute, the Commission is requested not to entertain such Petitions which are out of the Commission's jurisdiction and in fact, it is a civil dispute. From the above, it is clear that, while there is no dispute in relation to the quantum of power supplied or the outstanding amount of principal and DPC mentioned, there is a consistent failure/ neglect by MSEDCL to pay the outstanding in the manner envisaged under the WEPA. If the dues are not paid by MSEDCL in terms of the WEPAs, that amounts to non-performance of obligations and as per above quoted provision of EPA the Commission has the jurisdiction to adjudicate such dispute. Only provision to adjudicate dispute between Generating Company and Distribution Licensee is under Section 86(1) (f) of the EA. If there is an issue of non-performance of obligations, a Generating Company or a Licensee has a statutory right to invoke the jurisdiction of the State Commission under the EA, to resolve an issue of non-performance of the contract.
- 16 MSEDCL failed to recognize the fact that it is not performing its obligation as per the terms of WEPA. Just by stating that there is no disputes, MSEDCL is not absolved of its obligation and cannot take a stand that it will pay the outstanding whenever the funds are available. MSEDCL never raised the issue of the Commission's jurisdiction when the Commission had provided the dispensation in the recent past on adjudication of disputes for the outstanding dues of Wind generators. MSEDCL could have raised the jurisdiction issue

when it had challenged the Commission's Order dated 16 March, 2017 in APTEL. All other issues raised by the MSEDCL are not related to the instant Petition hence cannot be considered in these instant Petition.

- 17 The Commission notes that considering financial position of MSEDCL, it allows MSEDCL to stage the payment of Wind Generators over the period as per plan submitted by them only. Instead of showing affirmative efforts to comply with the directives given by the Commission, seeking Commission's indulgence to permit termination of EPA is not at all acceptable. The Commission views this attitude very seriously and cautions MSEDCL to comply with the Orders of the Commission forthwith.
- 18 The Commission is sympathetic to the difficulties faced by MSEDCL on account of various factors on which MSEDCL might not have direct control within the prevailing operating mechanism. The Commission is inclined to look into additional burden that MSEDCL gets to bear because of such difficulties provided it makes sincere efforts to find lasting solution to recurring issue of non payment of dues including those of the wind generators. The Commission has already directed MSEDCL in recent Order in Case No 205, 221, 232, 265, 285, 287 and 288 of 2018 dated 9 January, 2019 as under:

34. *The Commission recognizes the fact that MSEDCL in compliance with the Commission's earlier directions has worked out a time bound mechanism vide its letter dated 12 September, 2018, MSEDCL again reiterated the same plan in its submission dated 18 December, 2018 which is specified in para 25 of this Order, to clear the outstanding claims of all the Wind generators. The Commission expects the plan to be adhered to in a very just and fair and transparent manner to cover the payments of all the Wind generators in a chronological manner (Date wise seniority of outstanding dues) irrespective whether the Wind Generators have petitioned or otherwise. Commission did not limit the time period of making payment of DPC within 30 days as directed in its earlier Orders as cited in para 21 and 23 of this Order. Commission treats such payment mechanism an exception and onetime settlement as a practical and pragmatic way to clear long outstanding dues, given the financial situation of MSEDCL. Admittedly, financial issues of MSEDCL post MTR order are getting sorted out and therefore Commission expects the situation to return to normalcy by March-end as per the payment plan given by MSEDCL to the Commission. MSEDCL is bound to make all ancillary payments like DPC, LPS etc. as are committed under PPA and so included in the payment plan, so as to bring financial discipline in its transactions with the generators.*

35. *Further, the Commission notes that the plan is based on objective criteria for clearing outstanding dues in a sequence among concerned wind energy generators. The Commission directs MSEDCL to strictly adhere to the plan as submitted to the Commission in its true letter and spirit and release the amount to the Wind generators without any deviation in chronological order. In order to resolve issues of crystallization of outstanding dues (disputes, if any), the Commission directs the parties involved from both the sides in the present Cases to sit together and reconcile the*

statement of account within two weeks from the date of this Order. At the time of reconciliation, MSEDCL shall inform the Petitioners the exact time limit in which the payment would be made to wind generators for their outstanding dues of principal and DPC amount. Further, MSEDCL should note that if it deviated from its commitment given in the plan, interest will be payable thereafter (beyond the date committed in the plan) at 1.25 % per month on any LPS/DPC". (Underline added)

Accordingly, in order to resolve issues of crystallisation of outstanding dues, the Commission once again directs the parties involved from both the sides in the present Case to sit together and reconcile the statement of account within two weeks from the date of this Order. At the time of reconciliation, MSEDCL shall inform RM the exact time limit in which the payment would be made to RM for its outstanding dues of principal and DPC amount. Further, MSEDCL should note that if it deviates from its commitment, interest will be payable thereafter (beyond the date committed in the plan) at 1.25 % per month on any LPS/DPC.

19 Hence, the following Order.

ORDER

1. The Case No.26 of 2019 is allowed.
2. Maharashtra State Electricity Distribution Co. Ltd., is directed to release the agreed/admitted payments to Rajlakshmi Minerals on account of the principal amount and DPC as per the plan submitted to the Commission. Reconciliation, wherever necessary, shall be completed within two weeks from the date of this Order and Reconciliation Report of outstanding dues along with exact time limit by which the payment would be made shall be intimated to Rajlakshmi Minerals with copy to the Commission within two working days thereafter.
3. Further, Maharashtra State Electricity Distribution Co. Ltd, should note that if it deviates from its commitment given in the payment plan, penal interest will accrue thereafter (beyond the date committed in the plan) at 1.25% per month on any LPS/DPC.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M.Bohari)
Member

(Abhijit Deshpande)
Secretary



Annexure A-2

30

**Wind Energy Purchase Agreement
For
03.40 MW Wind Power Project
(04 Nos. X 850 KW Gamesa make)**

**at Village Pusrale and Altur,
Tal. Shahuwadi, Dist. Kolhapur**

Between

M/s Rajlakshmi Minerals

And

**MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION COMPANY LIMITED**



True Copy

50
31

Wind Energy Purchase Agreement
TABLE OF CONTENTS

	PAGE	
ARTICLE 1	DEFINITION AND RULES OF INTERPRETATION	
Section 1.01	Rules of Construction	06
Section 1.02	Definitions	
ARTICLE 2	REGULATORY APPROVALS	
Section 2.01	MERC Orders	11
ARTICLE 3	CONDITIONS PRECEDENT	11
ARTICLE 4	TERM	
Section 4.01	Terms of Agreement	12
Section 4.02	Option to Renew	
ARTICLE 5	FACILITY DESCRIPTION	
Section 5.01	Summary Description	12
Section 5.02	Location of the Facility	
Section 5.03	General Design of the Facility	
ARTICLE 6	FACILITY DEVELOPMENTS	
Section 6.01	Facility Financing	13
Section 6.02	Facility Permits	
ARTICLE 7	INTERCONNECTION AND EVACUATION	
Section 7.01	Interconnection	13
Section 7.02	Evacuation	
Section 7.03	Evacuation Expenses	
ARTICLE 8	SALE AND PURCHASE OF WIND ENERGY	
Section 8.01	Sale and Purchase	14
Section 8.02	Reactive Energy	
Section 8.03	Operating Charges	
Section 8.04	Transmission and Delivery Arrangements	
Section 8.05	Title and Risk of Loss	
Section 8.06	MSEDCL's right to disconnect/ curtail wind energy due to MSEDCL's system/grid connection	
ARTICLE 9	OPERATIONS AND MAINTENANCE	
Section 9.01	Facility Operations	16
Section 9.02	Outage and Performance Reporting	
Section 9.03	Operations Report	
Section 9.04	Operating Records	
Section 9.05	Access to Facility	
Section 9.06	Data to be provided to State Load Dispatch Center.	
ARTICLE 10	MEASURING AND METERING	
Section 10.01	Metering Equipment	17
Section 10.02	Testing of the Metering Equipment	
Section 10.03	Charges and Penalties	
Section 10.04	Joint Meter Readings	
ARTICLE 11	BILLING AND ENERGY ACCOUNTING	
Section 11.01	Monthly Energy Bills	19
Section 11.02	Accelerated Depreciation Benefit	
Section 11.03	Levelised Tariff For New Wind Energy Projects in FY-2012-13	
Section 11.04	Payments	
Section 11.05	Billing and Payment Records.	
Section 11.06	MSEDCL's right to Disconnect	

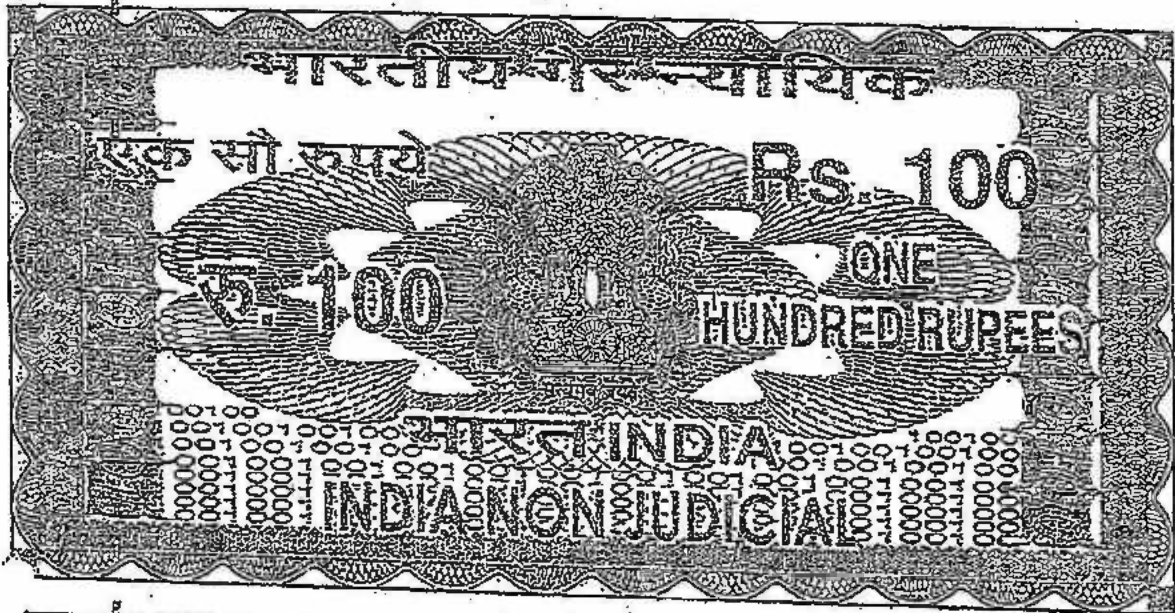


ARTICLE 12	EVENTS OF DEFAULT AND REMEDIES	20
Section 12.01	Events of Default	
Section 12.02	Consequence of Termination	
ARTICLE 13	LIMITATION OF LIABILITY AND DAMAGES	21
Section 13.01	Limitation on Liability	
Section 13.02	Limitation on Damages	
ARTICLE 14	REPRESENTATIONS, WARRANTIES AND COVENANTS	22
Section 14.01	Seller's Representations, Warranties and Covenants	
Section 14.02	MSEDCL's Representations, Warranties and Covenants	
ARTICLE 15	FORCE MAJEURE	23
Section 15.01	Force Majeure	
ARTICLE 16	GOVERNING LAW, DISPUTE RESOLUTION AND CONSENT TO JURISDICTION	23
Section 16.01	Governing Law.	
Section 16.02	Dispute Resolution.	
ARTICLE 17	CDM AND SUBSIDY	24
Section 17.01	CDM	
Section 17.02	CDM Benefit	
Section 17.03	Subsidy	
ARTICLE 18	NOTICES	24
Section 18.01	Notices in Writing	
ARTICLE 19	MISCELLANEOUS	24
Section 19.01	Amendments and Exhibits	
Section 19.02	Disclaimer	
Section 19.03	Entire Agreements.	
Section 19.04	Waiver	
Section 19.05	Captions; Construction.	
Section 19.06	Assignment	
Section 19.07	No Agency.	
Section 19.08	Cooperation.	
Section 19.09	Further Assurances	
Section 19.10	Counterparts	
Section 19.11	Severability.	
Section 19.12	Taxes, Fines and Penalties.	

EXHIBITS:

- EXHIBIT A: FACILITY DESCRIPTION.
- EXHIBIT B: SITE MAPS, POINT OF DELIVERY.
- EXHIBIT C: MONTHLY OPERATION REPORT.
- EXHIBIT D: QUARTERLY GENERATION REPORT.
- EXHIBIT E: FORMAT FOR MONTHLY ENERGY BILL.
- EXHIBIT F: LOCATION OF THE FACILITY.





महाराष्ट्र MAHARASHTRA

LB 651956

व्यक्त कारणावसाठी ज्यांनी मुद्रांक खरेदी केला त्यांनी त्याच कारणासाठी मुद्रांक खरेदी केल्यापासून द महिन्यात यापुढे बंधनकारक आहे.

मुद्रांक प्रतिज्ञापनासाठी (अनुच्छेद-४)

(सधर मुद्रांक लिखित लायसेन्ससाठी नाही.)

प्रतिज्ञापनाकरिता कोणाकडे सादर करावयाचे :- *राजलक्ष्मी*

प्रतिज्ञापनासाठीचे कारणा :- *राजलक्ष्मी*

मुद्रांक विकत घेणाऱ्याचे नाव :- *राजलक्ष्मी मिनी*

य चरित्रासंबंधी पत्ता :- *२२० ११२४*

मुद्रांक किती वायतवी नोंद घ्यावी जमु.क्र. :- *३२१५५*

दरले व्यक्तीचे नांव व सही :- *राजलक्ष्मी*

परमप्राप्त मुद्रांक विकण्याची सही व परमप्राप्त SANGIETAA LOKANDE.

वसोपदेशाचे विवरणे विकण्या/परमप्राप्त नोकरांचे हॉटेल कल्याणज, देवास्वामी रोड, पुणे-१



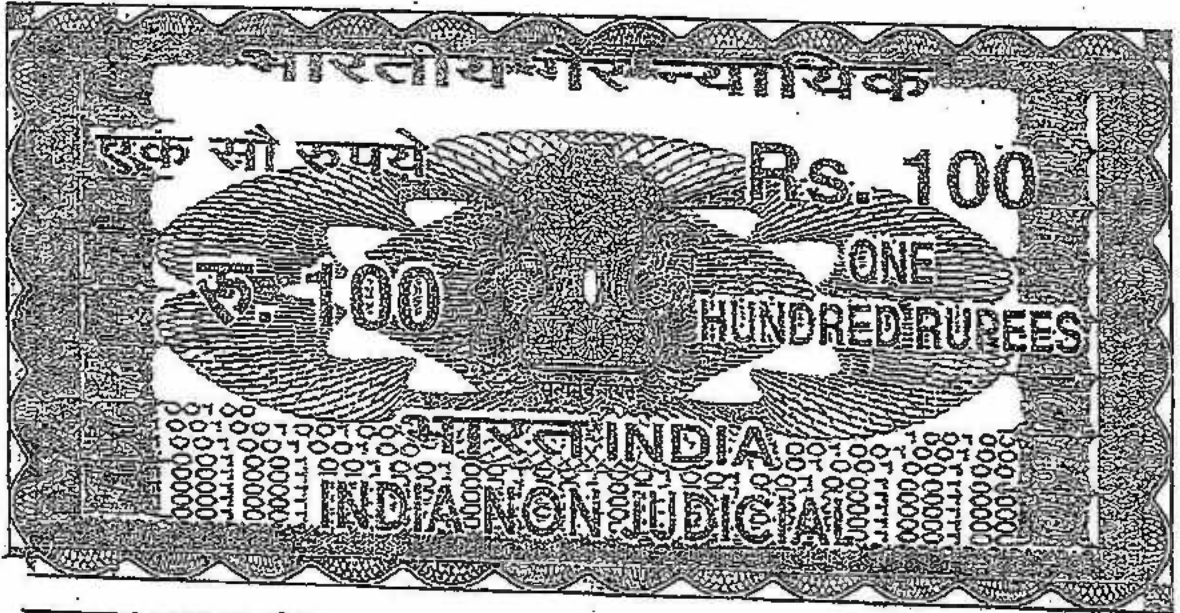
26 JUN 2014

- 4 JUL 2014

Maharashtra State Electricity Distribution Company Limited (MSEDCL), a Company registered under the Companies Act 1956 (1 of 1956), established as per the Govt. of Maharashtra decision under the provision of Part XIII (Reorganization of the Board) of the Electricity Act 2003, having its Registered Office at Prakashgad, Plot G 9, Prof. Anant Kanekar Marg, Bandra (East), Mumbai 400 051 formerly the Maharashtra State Electricity Board (MSEB), a statutory Board constituted under the erstwhile Electricity (Supply) Act 1948, with its Registered Office at Hong Kong Bank Building, 3rd Floor, M.G. Road, Fort, Mumbai 400 023, hereinafter referred to as the "MSEDCL / Purchaser" (which expression shall unless repugnant to the context or meaning thereof include its successor and assigns).
FOR RAJLAKSHMI MINERALS

For MSEDCL
Dr. Anant Kanekar
Executive Director (Comm)





महाराष्ट्र MAHARASHTRA

LB 651958

या कारणासाठी रबांनी मुद्रांक खरेदी केला त्यांनी त्याच कारणासाठी
रुपयें खरेदी केल्यापासून हे महिन्यात वापरणे बंधनकारक आहे.

3

फवई प्रतिज्ञापनासाठी (अनुच्छेद-8)

(खंडर मुद्रांक किंवा लाखसेन्ससाठी नाही.)

प्रतिज्ञापक कोणाकडे सादर करावयाचे :- सांगीता लोकांडे

प्रतिज्ञापनासाठीचे ठावठिकाण :- २१, ए.ए. रोड, बेलारी

मुद्रांक किंवा वेळानुसारचा नोंद :- २१, ए.ए. रोड, बेलारी

प्रतिज्ञापक नमुना :- सांगीता लोकांडे

मुद्रांक किंवा घाबरावरील नोंद वही जमु.क्र. :- ३१५११ 4 JUL 2014

हस्ताक्षरित नांव व तारीख :- सांगीता लोकांडे

महाराष्ट्र शासकीय फवई प्रतिज्ञापनासाठीचे धर्माधिकारी व परवानगी :- सांगीता लोकांडे

वरील मुद्रांक किंवा वेळानुसारचा नोंद वही जमु.क्र. :- ३१५११

THIS WIND ENERGY PURCHASE AGREEMENT [the "Agreement"] is
Made on this 20th day of August 2014.

BETWEEN

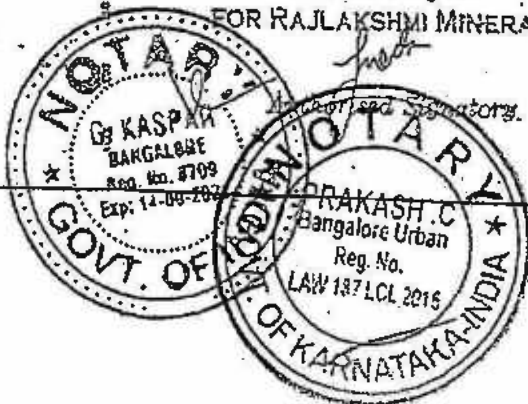
M/s. Rajlakshmi Minerals having its registered Office at D. No.: 1499/1, P.O. Box No. 38, -Post Hospet, -583 201 (Bellary Dt. Karnataka) hereinafter referred to as the "Seller" [which expression shall unless repugnant to the context or meaning thereof include its successor and assigns.

FOR RAJLAKSHMI MINERALS

For MSEDCL

Prakash

Executive Director (Comms)



54
35

AS WHEREAS the Seller desires to develop, design, construct, own and operate a Wind Generating Facility with an expected Installed Capacity of 03.40 MW (04 Nos X 850 KW Each) of M/s Gamesa make WEG at Location Nps: GAL- 01, GAL- 02, Gal- 04 & GAL- 05 at Village - Pusrale & Altur, Tal. Shahuwadi, Dist. Kolhapur commissioned on date 29.03.2014 hereinafter referred to as the "Facility".

and

AS WHEREAS the Seller desires to interconnect the Facility with the State Grid as advised by the MSEDCL and sell and deliver to MSEDCL at the point of Delivery, 100 % of the Wind Energy produced by the Facility from the date of commissioning of the Wind project.

and

AS WHEREAS the MSEDCL as a Utility under the Renewable Purchase Obligation (RPO) has agreed to buy the Wind Energy generated from the Seller's Facility from the date of commissioning of the wind power project in accordance with and subject to the terms and conditions of this Agreement. This EPA will be governed by MERC RE, Tariff Regulation 2010 and MERC Suo-Motu order dated 22.03.2013 in case no 6 of 2013.

NOW THEREFORE in consideration of the mutual covenants herein contained, the parties agree to the following:

ARTICLE-I

DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01: Rules of Construction:

The capitalised terms listed in this Article shall have the meanings set forth herein whenever the term appears in this Agreement either in the singular or plural. Other terms (whether in capital or not) used in this Agreement but not listed in this Article shall have the meanings as commonly used in the English language and where applicable, in Standard Utility Practices and accepted technical or trade parlance. In addition the following rules of interpretation shall apply:

- (i) References to "Articles", "Sections" or "Exhibits" shall be to articles, sections, or exhibits of this Agreement.
- (ii) The Exhibits attached hereto are incorporated in and are intended to be a part of this Agreement, provided that in the event of a conflict between the terms of any Exhibit and the terms of the body of this Agreement, the terms of the body of this Agreement shall take precedence.

Section 1.02: Definitions:

In this Agreement, the following words and expressions shall have the respective meanings set forth herein:

- "Act" means the Electricity Act 2003 as in force from time to time
- "Agreement" means this Wind Energy Purchase Agreement executed between the Seller and MSEDCL (Purchaser) including the Exhibits attached hereto.
- "Active Energy" means the electrical energy supplied or consumed during a time interval, being the integral of Active Power with respect to time, measured in the units of watt - hours or standard multiples thereof. One kilo watt - hour is one unit.

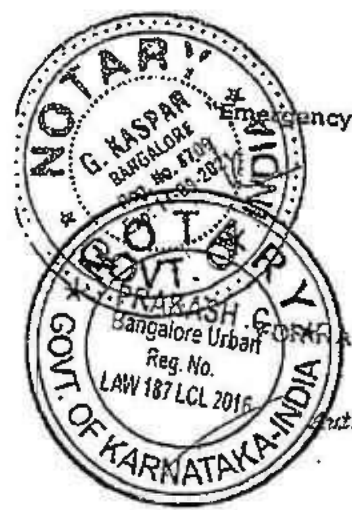


FOR MAJALAKSHMI MINERALS
Jude
Authorized Signatory.



For MSEDCL
Shawaf
Executive Director (Comm)

- "Active Power" means the electrical power in an AC circuit being the product of voltage, current and cosine of the phase angle between the voltage and current complexors and measured in units of 'watt' (W) and in standard multiples thereof.
- "Administrative Charges" means the charges to be paid by the seller to the MSEDCL for providing miscellaneous services as per in Section 8.03.
- "Alternating Current (AC)" means the current that reverses its direction of flow periodically.
- "Auxiliary Energy Consumption" means the electrical energy consumed by the Seller from the MSEDCL's System to meet its own energy requirement as recorded in the energy meter at the Metering Point.
- "Business Day" means any calendar day, which is not a public holiday in Maharashtra.
- "Capacity Utilisation Factor (CUF %)" means the percentage of energy generated and measured at the Metering Point divided by the installed capacity multiplied by the number of hours (8760 Hours) in a calendar year.
- "Capital Cost" means the cost of Wind turbine generator including its auxiliaries, land cost, site development charges and other civil works, transportation charges, evacuation cost up to inter-connection point, financing charges and Interest During Construction (IDC).
- "Commercial Operation Date (COD)" means the date, on which Board makes declaration as set forth in the Section 5.02.
- "Commercial Operation Year" means the period commencing on the Commercial Operations Date and ending twelve months thereafter and each successive twelve-month period thereafter during the Term.
- "Committed Wind Energy" means _____ MUS of energy per year at a Guaranteed Capacity Utilization Factor (CUF) of _____ %
- "Conditions Precedent" bears the meaning set forth in Article 3.
- "Contract Price" bears the meaning set forth in Section 11.03
- "Detailed Project Report (DPR)" Detailed Project Report (DPR), of a wind energy project will consist of the micro-siting drawing, broad technical specifications of the wind turbine employed, plan for interconnection arrangement(s) with the State Grid, prognosis analysis (energy generation per year), details of project cost, financing plan and financial cash flow of the project. DPR would also have specimen approvals required as amended in time by MEDA.
- "Emergency" means any abnormal occurrence in the interconnection or system condition that requires automatic or manual action to prevent or limit loss of the State Grid Electrical load or generation supply that in the reasonable judgment of the MSEDCL could (i) adversely affect the reliability of the MSEDCL's system or generation supply, (ii) adversely affect



Authorised Signatory
 J. LAKSHMI MINERALS

For MSEDCL
 Executive Director (Comm)

56

37

the reliability of any interconnected system or (iii) otherwise result in significant disruption of service to consumers or pose a threat to public safety or property.

"Event of Default" bears the meaning set forth in Section 13.01.

"Extra High Voltage (EHV)" means EHV transmission lines with voltage rating of 66 Kilo-Volts (KV) and above.

"Facility" means the Seller's electricity generating facility as identified and described in Article 5 and Exhibit A to this Agreement, the purpose for which is to produce electricity and deliver such electricity to the Point of Delivery. The facility includes without limitation, the

Seller's wind turbines and generators, together with all associated equipment, control systems, safety devices, property, interconnection facilities, buildings, step-up transformers, output breakers, electric lines, overhead transmission lines and any other facilities necessary to connect to the Point of Delivery.

"Financial Year" means the year commencing from 1st April of the year to 31st March of the next year.

"Force Majeure Event" means any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event is reasonably unforeseeable, beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, including without limitation an act of God or the elements, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event, transportation delays, unavailability of materials, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, strike or other labor difficulty caused or suffered by third parties beyond the reasonable control of such Party or its Affiliates (whether such cause is similar or dissimilar to the foregoing) or any restraint or restriction imposed by law or by rule, regulation or other acts of governmental authorities, whether central, state or local, provided, however, that for Wind Energy generation and operation of the turbines, wind velocity that is beyond the permissible limits shall never be Force Majeure Events; provided, further, that Seller's failure to obtain any of the Permits shall not be a Force Majeure Event.

"Forced Outage" means any condition of the facility that requires immediate disconnection of the Facility, or some part thereof, from service and/or the period of interruption or reduction or shutdown of the Facility attributed to unforeseen conditions other than planned or scheduled outages.

"GOI" means Government of India.

"GOM" means Government of Maharashtra.

"HT Consumers" means all Consumers who obtain three phase supply at a voltage higher than 400/440 volts AC at 50 cycles per second. High Tension means all voltages higher than 400/ 440 Volts.



RAJLAKSHMI MINERALS
Authorized Signatory



For MSEDCL
Executive Director (Comm)

- "kWh" means kilowatt-hour, a unit of energy equal to one kilowatt of power supplied or taken from an electric circuit for one hour.
- "Main Meters" means the meters installed at the Metering Point to primarily measure the Wind Energy for purposes of accounting and/or billing.
- "MERC" means the Maharashtra Electricity Regulatory Commission or any successor agency.
- "Metering Point" is the physical point at which the meters are installed on the State Grid to measure the Wind Energy sold to the MSEDCL at the delivery point.
- "MWh" means megawatt-hour, i.e. a unit of energy equal to one thousand kWh.
- "MUS" means a unit of energy, equal to one million kWh.
- "Operating Procedures" bears the meaning set forth in Article 9.
- "Operating Records" means all the agreements / records associated with the Facility, operating logs, and blueprints for construction, operating manuals, all warranties on equipment and all documents whether in printed or electronic format, that the Seller uses or maintains for the operation and maintenance of the Facility.
- "Permit" means a written consent (Permission) obtained by the Seller from the MSEDCL (Officer designated for the same) for carrying out any maintenance work in the Facility which requires a shut down.
- "Point of Delivery" means the physical point at which the Wind Energy is delivered to the MSEDCL's System through the State Grid EHV Substation on HV side and at which the electrical interconnection is made between the Facility and the MSEDCL's System. The Point of Delivery is shown on Exhibit B.
- "Power Factor" means is the cosine of the electrical angle between the voltage and current complexors in an AC circuit and expressed in decimal form.
- "Reactive Energy" means the integral of Reactive Power in relation to an AC circuit with respect to time and measured in the units of 'volt-ampere' hours reactive (VARh) or in standard multiples thereof.
- "Reactive Power (KVAR)" means the product of voltage, current and the sine of the electrical phase angle between the voltage complexor and current complexor, in relation to AC circuit, measured in volt - amperes reactive (VAR) and in standard multiples thereof.
- "Renewable Purchase Obligation (RPO)" is the total consumption of electricity for purchase from renewable sources of energy in the area of each distribution licensee under Section 86 (i) (e) of Electricity Act 2003.
- "Scheduled Outage" means planned shutdown or outage / reduction of the Facility's generation that both (i) has been coordinated in advance with the MSEDCL, with mutually agreed start date and duration and (ii) is required for inspection or preventive or corrective maintenance.



RAJLAKSHMI MINERALS
[Signature]
 Authorized Signatory.



For MSEDCL
[Signature]
 Executive Director (Comm)

- "SCADA" means the Supervisory Control and Data Acquisition System (SCADA) installed for recording and transferring the data on line.
- "Site" means the immovable property on which the Facility will be constructed and located as more specifically described in Article 5 and Exhibit B to this Agreement.
- "Stabilization Period" means the period between first synchronization of the Facility and Commercial Operations Date.
- "Standard Utility Practices" means the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric power generation industry, MERC and/or any other Governmental agency) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy and expedition. With respect to the Facility, Standard Utility Practices includes, but is not limited to, taking reasonable steps to ensure that:
- (i) Equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Facility's needs;
 - (ii) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to (A) operate the Facility properly and efficiently, and in coordination with MSEDCL, and (B) respond in an appropriately timely manner to reasonably foreseeable Emergency conditions whether caused by events, circumstances or conditions on or off the Site;
 - (iii) Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;
 - (iv) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
 - (v) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization and/or control system limits; and
 - (vi) Equipment and components meet or exceed the standard of durability that is generally used for electric generation operations in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency conditions.



FOR RAJLAKSHMI MINERALS

[Signature]
Authorized Signatory.

For MSEDCL

[Signature]

Executive Director (Comm)

- "State Grid System" means the State Grid Electricity Supply, Distribution and Transmission System, as modified and expanded from time to time, for delivery of electricity to the MSEDCL's consumers in the State of Maharashtra and to interconnected states.
- "Term" means the period of time during which this Agreement shall remain in full force and effect, as set forth in Section 4.01.
- "Test Energy" means the energy, which is produced by the Facility and delivered to the MSEDCL at the Point of Delivery at the time of testing of the Facility prior to Commercial Operations.
- "Wind Energy" means the net electric energy generated exclusively by the Facility (which is electric energy derived from a technology that exclusively relies on a wind energy source) and delivered and metered to the Point of Delivery by the Meters Installed pursuant to Article 9.
- "Wind Turbines" means the generating devices (wind mills) powered by the wind that are included in the Facility.

ARTICLE 2

REGULATORY APPROVAL

Section 2.01: MERC Orders:

The sale of Wind Energy under this Agreement shall be governed by Maharashtra Electricity Regulatory Commission (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2010 and suo-motu order in Case No 6 of 2013, for determination of generic tariff dated 22.03.2013 in the matter of Procurement of Wind Energy & Wheeling for Third Party Sale and/or Self Use and subsequent orders and Electricity Act 2003.

ARTICLE 3

CONDITIONS PRECEDENT

Section 3.01

The obligations under this Agreement are subject to the satisfaction in full of the following conditions precedent:

- [a] The Seller providing the MSEDCL a Detailed Project Report (DPR) in respect of the Facility.
- [b] The Seller obtaining the necessary licenses/ sanctions/ approvals/ clearances from Governmental agencies, inter-alia, including:
 - (1) All approvals and clearances from the Maharashtra Energy Development Agency (MEDA), Government of Maharashtra, as are required;
 - (2) Land Documents (Registered Sale Deed, 7/12 Extract, N.A. Permission)
 - (3) Geology and Mining Permission.
 - (4) NA Permission from Development Commissioner (Industries) for use of Land for Industrial Purpose.
 - (5) Detailed Project Report (DPR).
 - (6) Micrositing Plan.
 - (7) WEG Technical Specification, Power Curve and Type Test certificate.
 - (7) Forest Clearance (if applicable)

Statutory approval from the Electrical Inspectorate, GOM.



RAJLAKSHMI MINERALS
[Signature]
Authorized Signatory.

For MSEDCL
[Signature]
Executive Director (Comm)

- (iii) Connectivity Permission from the MSEDCL and EHV Evacuation Approval including approval of the single line diagram of proposed connectivity with the State Grid System and Protection logic.
 - (iv) Any other statutory permission as may be required.
- [c] The Seller shall ensure that the design and construction of the Facility shall be in line with the provisions of permissions from GOI/ GOM/ MEDA/ MSEDCL and shall be as per the requirements of any Governmental guidelines and standards prescribed.

**ARTICLE 4
TERM**

Section 4.01: Terms of Agreement:

This Agreement shall remain effective as of the date first written above, and shall remain in full force and effect until the 13th anniversary of the Commercial Operations Date unless renewed or extended under section 4.02 unless subjected to any early termination. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

Section 4.02: Option to Renew:

Prior to the expiration of the Term then in effect, the Term may be renewed or extended only by mutual written agreement of the Parties hereto on terms and conditions mutually agreeable to the Parties.

Section 4.03: First Right of Refusal Post Expiring EPA

After completion of EPA tenure of 13 years from the date of commissioning of the wind power project, MSEDCL shall reserve First Right of Refusal to procure power at the same rate (MERC determined tariff as may be applicable for the said wind power project as per MERC RE tariff order dated 22.03.2013 in Case No. 6 of 2013) or the rate as may be decided by the MERC whichever is lower till the end of life of wind power project (i.e. 20/25 years as the case may be).

Section 4.04:

It is mutually agreed that the above said terms and conditions shall form integral part of this Energy Purchase Agreement.

**ARTICLE 5
FACILITY DESCRIPTION**

Section 5.01 Summary Description:

The Seller shall construct, own, operate and maintain the Facility, which shall consist of 04 No 850 KW each Wind Turbines and associated equipment having a maximum installed capacity of 3.4 MW. Exhibit A to this Agreement includes a complete written description of the Facility, including identification of the Wind Turbines and other equipment and components that make up the Facility.

Section 5.02: Location of the Facility:

The facility shall be located on the Site and shall be identified as M/s Rajlakshmi Minerals, the address of the Facility is at Gut No. 238, 169 & 165 at village Pusrale, Altur, and Location No. GAL- 01, GAL-02, GAL-04, GAL-05, Tal. Shahuwadi, Dist. Kolhapur. A scaled map that identifies the Site, the location of the Facility at the Site, the location of the Point of Delivery and the location of the ancillary facilities and the interconnection facilities is included in Exhibit B to this Agreement.



FOR RAJLAKSHMI MINERALS

[Signature]
Authorized Signatory.

For MSEDCL

[Signature]
Executive Director (Comm)

Section 5.03: General Design of the Facility:

The Seller shall design, construct, operate and maintain the Facility according to the permissions/sanctions mentioned in Article 3 and in accordance with the Standard Utility Practices, the relevant technical standards in terms of the Electricity Act 2003. The Seller shall ensure that the Facility at all times:

- [a] Have install SCADA/ any other continuous communication facility for transferring the data of Wind Energy generated from the Facility's switchyard to the State Grid's Sub-Station;
- [b] Have necessary protective equipments and interlocking facilities, which shall be so coordinated that any malfunctioning or abnormality in the Seller's Facility shall not adversely affect the State Grid System and in the event of such malfunctioning or abnormality the Seller's circuit breaker shall trip first to protect the equipments;
- [c] Have provided HV transmission lines and complete installation of allied equipments from Individual Wind Turbines to the Facility's switchyard and from the switchyard up to the State Grid EHV sub-station, for evacuation of the Wind Energy.
- [d] Have Installed at the Facility a capacitor bank of required capacity, so as to maintain the Power Factor as per the MSEDCL's terms and conditions of supply.

ARTICLE 6**FACILITY DEVELOPMENT****Section 6.01: Facility Financing:**

The Seller will be responsible for obtaining all financing necessary to construct, operate and maintain the Facility for the Term of the Agreement and will provide the MSEDCL with evidence of financing arrangement.

Section 6.02: Facility Permits:

In accordance with, the Seller shall be fully responsible for obtaining and maintaining the validity of any and all licenses, permits and approvals necessary for the construction and operation of the Facility. Accordingly, the satisfaction of the foregoing obligation on the part of the Seller will be a condition precedent to Commercial Operations and any obligation of the MSEDCL under Article 3.

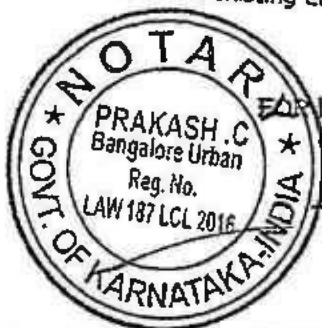
ARTICLE 7**INTERCONNECTION AND EVACUATION****Section 7.01: Interconnection:**

The MSEDCL shall permit the Seller to interconnect and operate in parallel its Facility with the State Grid System subject to the following terms and conditions:

- [a] The Seller shall be responsible for planning, constructing and paying for the procurement, construction and installation of its interconnection facilities at the Point of Delivery at the State Grid EHV Sub-station;
- [b] The Seller shall make all arrangements at its cost for paralleling /connecting the Facility with the State Grid System at the Point of Delivery in consultation with an authorized Officer of the MSEDCL, as may be designated by the MSEDCL in this behalf.

Section 7.02: Evacuation:

The Wind Energy generated from the Facility shall be evacuated to the State Grid System through the State Grid's EHV sub-station. For such purpose, if required, MSEDCL/ MSEDCL may set up a new EHV/ Distribution sub-station, if the same is not available in the vicinity of the Facility and/or upgrade an existing EHV sub-station, by increasing, inter-alia, the number of bays, the transformer capacity, the capacitor banks and the protective system at the existing EHV sub-station.



RAJLAKSHMI MINERALS
Jaiide
 Authorised Signatory.



For MSEDCL
Deenwal
 Executive Director (Comm)

82

43

Section 7.03: Evacuation Expenses:

The Generator shall bear the cost of Generation Facility switchyard and interconnection facilities at the Generation Facility up to the point of energy metering/Inter connection point. MSEDCL shall be responsible for development of evacuation infrastructure beyond the inter-connection point and this evacuation cost shall be recovered from the consumers as per suitable pricing framework developed by the State Commission. The Generator will notify MSEDCL about the readiness of the Generation Facility for commissioning one month in advance. All the transmission systems required for the power off-take shall be installed, commissioned and tested by MSEDCL/MSETCL before the date of commissioning of the generating unit.

- i. The project holder shall bear the total expense for erection of evacuation infrastructure at the time of commissioning of Project in line with GR dated 14.07.2010.
- ii. The evacuation facility shall be handed over to MSEDCL/ MSETCL after commissioning. The ownership of evacuation facility shall be with MSEDCL/ MSETCL from the date of Commissioning. The operation and maintenance (O&M) of the evacuation facility shall be carried out by MSEDCL/ MSETCL.
- iii. The sanctioned estimate by MSEDCL/ MSETCL or the actual expense incurred by the project holder or the amount as specified by the GR dated 14.07.2010, whichever is lower shall be considered as the evacuation expense for refund.
- iv. After handing over the evacuation facility to MSEDCL/ MSETCL, the evacuation expense beyond the interconnection point shall be refunded to the project holder as below:

- Out of the evacuation expense considered for refund to the project holder:
- a. 50 % amount of total expense incurred on evacuation infrastructure beyond the inter-connection point will be refunded to the Non Conventional Energy Project Developers by MEDA, from Green Cess Fund.
 - b. Remaining 50 % amount will be refunded by MSEDCL/ MSETCL in five equal installments spread over a period of five years commencing from one year after the date of commissioning the project.

ARTICLE 8

SALE AND PURCHASE OF WIND ENERGY

Section 8.01: Sale and Purchase:

[a] Commencing at COD, Seller will sell and deliver and the MSEDCL will purchase and accept all of the Wind Energy of the Facility at the Point of Delivery, subject to the terms and conditions of this Agreement. The MSEDCL will pay the Seller for the Wind Energy as metered at the Point of Delivery at the "all-in" fixed tariff set forth in Section 11.03 ("Contract Price"). The Seller undertakes not to sell any Wind Energy (all of which is committed to the MSEDCL) to any other person.

[b] The formula for purchasing Wind Energy and/or the quantum energy sold to the MSEDCL shall be:

$$(ES) = EG - E_{aux}$$

Where:

- ES = Net Energy Supplied by the Seller.
- EG = Energy Generated and delivered to the State Grid System measured at the Point of Delivery.
- Eaux = Auxiliary Energy Consumed by the Seller and measured at the Point of Delivery.

[c] As per clause No. 26.1 of Maharashtra Electricity Regulatory Commission (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2010 dated 7.06.2010. Capacity Utilization Factor (CUF) for the Control Period shall be as follows:



FOR RAJLAKSHMI MINERALS

Jube
Authorized Signatory.



For MSEDCL

Devaraj
Executive Director (Comm)

83
44

Wind Energy Projects	CUF
Annual Mean Wind Power Density (W/m ²)	20%
Wind Zone -1 (≤ 250)	
Wind Zone-2 ($> 250 \leq 300$)	23%
Wind Zone-3 ($> 300 \leq 400$)	27%
Wind Zone-4 (above 400)	30%

For the purpose of classification of wind energy project into particular wind zone class, the State-wise wind power density map prepared by the Centre for Wind Energy Technology (C-WET) and enclosed as Schedule to these Regulations, shall be considered.

Section 8.02 Reactive Energy (KVARh):

- 1) The RE Generator shall maintain the average power factor of his load at levels prescribed by the Indian Electricity Rules, 1956 with such variations, if any, adopted by MSEDCL in accordance with Rule 27 of the Indian Electricity Rules, 1956 and in accordance with the relevant orders of the Commission (MERC).
- 2) The RE Generator shall control harmonics of his load at levels prescribed by the IEEE STD 519-1992, and in accordance with the relevant orders of the Commission (MERC). Penalty for low power factor and for harmonics will be charged in accordance with relevant orders of the Commission (MERC).

Section 8.03 Operating Charges:

As per MERC order dated 16.08.2012 In case no. 19 of 2012, the operating charges as given below, shall be payable by the seller to the MSEDCL office.

Load Requisitioned	Operating Charges Per Month (Rs.)
Up to 5 MW	10,000
More than 5 MW	20,000

Section 8.04 Transmission and Delivery Arrangements:

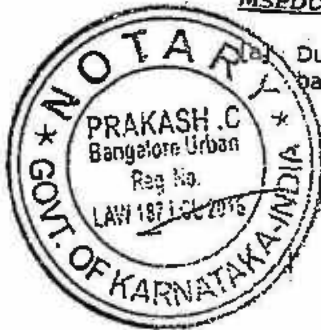
The Seller shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to deliver the Wind Energy and Test Energy, on a firm transmission basis, from the Facility to the MSEDCL at the Point of Delivery. The MSEDCL shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to deliver the Wind Energy and Test Energy received at the Point of Delivery, for delivering such energy, on a firm transmission service basis, to points beyond the Point of Delivery.

Section 8.05 Title and Risk of Loss:

As between the Parties, the Seller shall be deemed to be in control of the Wind Energy and the Test Energy out put from the Facility up to and until delivery and receipt at the Point of Delivery and the MSEDCL shall be deemed to be in control of such energy from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Wind Energy and Test Energy shall transfer from the Seller to the MSEDCL at the Point of Delivery.

Section 8.06 MSEDCL's right to disconnect / curtail Wind Energy due to MSEDCL's System / Grid constraints:

During an Emergency in the MSEDCL's system, the MSEDCL reserves the right to back down or shutdown the Facility and shall be under no obligation to evacuate the



FOR RAJLAKSHMI MINERALS
Jade
Authorised Signatory.



For MSEDCL
Dhanraj
Executive Director (Comm)

64
45

- Wind Energy from the Seller's Facility. The Seller shall suitably back down or shut down, as the case may be, its generation and shall have no right to claim any compensation in such an event. The MSEDCL will however, make reasonable efforts to bring back normalcy at the earliest.
- (b) Notwithstanding anything contained hereinabove, the Seller shall not be entitled to and the MSEDCL shall not be liable to pay any compensation on account of non-draw of energy due to defect in MSEDCL's System / grid or Force Majeure condition or any other circumstances beyond the control of the MSEDCL.

ARTICLE 9
OPERATION AND MAINTENANCE

Section 9.01: Facility Operation:

- (a) The Seller covenants to operate the Facility as an Integrated part of the MSEDCL's System / grid.
- (b) The Seller covenants to operate and maintain the Facility in safe and reliable operating condition and in compliance with Standard Utility Practices and within the specified voltage and frequency ranges. The Seller shall provide suitable automatic disconnection arrangement for the Facility, in case the ranges of electrical characteristics go outside the limits specified, due to the MSEDCL's System constraints. The MSEDCL shall not be responsible for any damages to Seller's equipment due to variation in voltage and frequency in MSEDCL's System and MSEDCL shall not be liable to compensate the Seller for any damages suffered there from.
- (c) The Seller will devise and implement a plan of inspection, maintenance and repair of the Facility and the components thereof ("Operating Procedures") in order to maintain such equipment in a safe and reliable operating condition and in accordance with Standard Utility Practices, and shall keep records with respect to such inspections, maintenance and repairs. The Operating Procedures shall be devised in consultation with the Officer of the MSEDCL as may be designated.
- (d) During the period of generation, the Seller shall liaison and co-ordinate with the Officer of the MSEDCL, as may be designated.
- (e) During the Term of this Agreement the Seller shall arrange for testing and commissioning of the protection system at least once a year and intimate in advance to the officer of the MSEDCL, as may be designated. If requested by the Seller, the MSEDCL shall extend the assistance for the purpose of testing, subject to condition that the Seller shall pay the charges for such assistance provided by the MSEDCL as would be notified or indicated by the officer of the MSEDCL, as may be designated.

Section 9.02 Outage and Performance Reporting:

- (a) The Seller shall comply with all outage-reporting requirements as may be revised from time to time, and as may apply to the Facility.
- (b) When Forced Outages occur, the Seller shall notify the MSEDCL of the existence, nature and expected duration of the Forced Outage as soon as practicable after the Forced Outage occurs. The Seller shall immediately inform the MSEDCL of changes in the expected duration of the Forced Outage unless relieved of this obligation by the MSEDCL for the duration of each Forced Outage.

Section 9.03 Operating and Generation Reports:

On or before the 10th day of each calendar month, the Seller shall submit a monthly operating report summarizing the results of the previous month's operations, outages and maintenance activities. The format and content of the monthly operating report



[Signature]
Authorised Signatory

For MSEDCL
[Signature]
Executive Director (Comm)

is set out in Exhibit "C" to this Agreement, and may be adjusted by the parties as needed from time to time during the Term of this Agreement. The report shall be submitted to the Officer of the MSEDCL, as may be designated and to the concerned officer in MEDA at Pune.

- (b) The Seller shall furnish a Quarterly Generation Report as per the prescribed format to the Chief Engineer (Electrical), Govt. of Maharashtra, and to the Electrical Inspector of the Seller's area and the Officer/s of the MSEDCL, as may be designated, for quarters ending June, September, December and March before the 10th day of the subsequent month in the manner set out in Exhibit "D" to this Agreement.

Section 9.04 Operating Records:

The Seller shall maintain Operating Records at the Facility that contain an accurate and up to date operating log, in electronic format, records of production, changes in operating status, Scheduled Outages and Forced Outages and hourly average wind speed during the Term of this Agreement, including such records as may be required by MERC. The MSEDCL may examine the Operating Records and data kept by the Seller at any time during the period the records are required to be maintained, upon request and during normal business hours.

Section 9.05 Access to Facility:

The Seller shall ensure that appropriate Officers of the MSEDCL shall at all reasonable times, including weekends and nights have access to the Facility to read meters and perform all inspections, maintenance, service and operational reviews as may be appropriate to facilitate the performance of this Agreement.

Section 9.06: Data to be provided to State Load Dispatch Centers:

On demand, the Seller shall provide the data of Generation, the Generation Forecast etc to the Load Dispatch Center.

ARTICLE 10

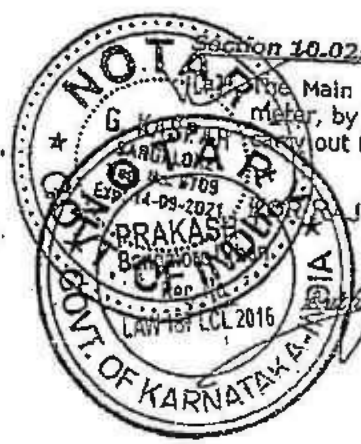
MEASURING AND METERING

Section 10.01 Metering Equipment:

- (a) The Seller shall, at its own expense, duly install the approved ABT (SEM) of 0.2s class Meters with online reading features at the Metering Point ("the Main Meter"). The metering equipment shall be duly approved, tested and sealed by the MSEDCL.
- (b) The Seller shall install Check Meter, with separate CT/PT of 0.2s class at its cost, to measure the delivery of Wind Energy during periods when the Main Meter or its related accessories such as CT/PT have failed or developed a fault. The MSEDCL shall adopt no other method of assessment of delivery of Wind Energy except for the Main Meter and the Check Meter.
- (c) The metering equipment consisting of Main and Check Meters shall be identical in make, technical standards and of 0.2S accuracy class and calibration and comply with the requirements of Electricity Rules. The meters installed at the Metering Point shall have 15 minutes block on line reading.

Section 10.02: Testing of the Metering Equipment:

The Main and Check Meters shall be tested for accuracy, with a portable standard meter, by the MSEDCL's Testing Division, at the cost of the Seller. The MSEDCL shall carry out the calibration, periodical testing, sealing and maintenance of meters in the



Prakash B. Lakshmi Minerals
Authorized Signatory

For MSEDCL
[Signature]
Executive Director (Comm)

presence of the authorized representative(s) of the Seller and the representative(s) of the Seller shall sign on the result thereof.

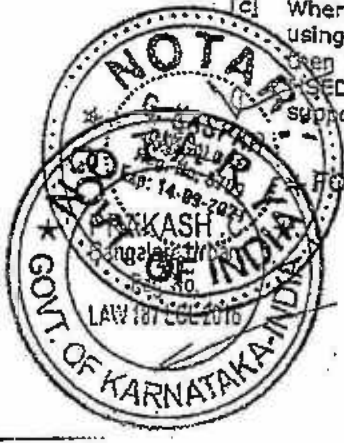
- (b) The frequency of meter testing shall be annually. All the meters will be tested only at the Metering Point. The MSEDCL will provide a copy of the test reports to the Seller.
- (c) If during testing, both the Main and Check Meter are found within the permissible limit of error i.e. 0.5%, the energy computation will be as per the Main Meter. If during test, any of the Main Meters is found to be within the permissible limits of error but the corresponding Check Meter is beyond the permissible limit; the energy computation will be as per the Main Meter. The Check Meter shall be calibrated immediately. If during the tests, the Main Meter is found to be beyond permissible limits of error, but the corresponding Check Meter is found to be within the permissible limits of error, then the energy computation for the month to-date and time of such test check shall be in accordance with Check Meter. The Main Meter shall be calibrated immediately and the energy for the period thereafter shall be as per the calibrated Main Meter.
- (d) If during any of the monthly meter readings, the variation between the main meter and the check meter is more than 0.5%, all the meters shall be re-tested and calibrated immediately by MSEDCL, at the Seller's cost.
- (e) The correction required as per result of the testing will be applied to the generation and consumption of energy for the period from last meter reading to the time of such test checks. Energy for the periods thereafter shall be in accordance with the calibrated Main Meter.

Section 10.03 Charges and Penalties:

- (a) The Seller shall pay all the costs and charges for the testing mentioned in Section 10.02 above. In the event, any of the meters require retesting/ calibration, additional charges as applicable for the MSEDCL's HT Consumers per occasion will be charged to the Seller. The Seller shall be charged testing charges towards the testing of each meter as applicable to the MSEDCL's HT Consumers. Such charges shall be recoverable by the authorized concerned Officer of the MSEDCL as may be designated for the same from the energy bills of the Seller.
- (b) Any fees towards the testing of protection or other equipments are to be paid by the Seller to the MSEDCL as may be applicable from time to time and informed by the authorized Officer of the MSEDCL as may be designated in this behalf and based on the MSEDCL's Commercial Circulars.

Section 10.04 Joint Meter Reading:

- (a) The meter readings at the Metering Point shall be undertaken jointly by the representatives of the State Grid / MSEDCL, and the authorized representative of the Seller on the 1st day of every month for the preceding month. The meter readings shall be jointly certified by both representatives of the State Grid / MSEDCL and the Seller.
- (b) The Joint Meter Reading will be furnished by the State Grid / MSEDCL's Jurisdictional Officer to the Office of the Superintending Engineer, O&M Circle, Kolhapur, for further processing. The total units received for sale of Wind Energy to MSEDCL will be ascertained by S.E. (O&M) Kolhapur on the basis of the Joint Meter Readings.
- (c) Wherever more than one Power Producer(s) are delivering energy produced by them using the common evacuation system and through the common Metering equipment, they shall identify a common agency responsible for Joint Meter Reading with MSEDCL. The Joint Meter Reading taken at common evacuation system shall be supported by meter readings of individual power producers using such common



FOR RAJLAKSHMI MINERALS
[Signature]
 Authorised Signatory.

For MSEDCL
[Signature]
 Executive Director (Comm)

87
418

evacuation system. Based on this break up, limited to total energy delivered, the power generated from the individual power plant shall be certified by MSEDCL.

- [d] In case there arises a dispute between the individual developers using common evacuation system, on attributing the energy generated by individual developers, the matter will be reviewed by a designated Officer in MSEDCL Head Quarters and the developers agree to provide the relevant documents asked for in this regard.
- [e] The Commission has approved the Group Metering of wind generators vide order dated 01.07.2005. The Main and Check TOD meters having on line reading facility as per MERC Order shall be installed and maintained on the feeders at the entry point in MSEDCL/ Board substation at the cost of Wind Developer/Sellers. The metering arrangement shall be as per EA 2003 and as per MERC Order and this shall be approved by MSEDCL/Board's designated Officer. The meter will be tested periodically at the cost of Developer/Seller as per standard practice.

ARTICLE -11

BILLING AND ENERGY ACCOUNTING.

Section 11.01 Monthly Energy Bills:

The Seller shall raise a monthly energy bill based on the Joint Meter Readings no later than 15 days after the end of each calendar month. The Seller will send the monthly energy bills to the MSEDCL by hand delivery / courier, showing all billing parameters, rates and factors, and any other data reasonable pertinent to the calculation of monthly payments to the Seller in the format set out in Exhibit "E".

Section 11.02 Accelerated Depreciation Benefit:

If the Wind generator intends not to avail the benefit of accelerated depreciation, he shall submit an undertaking to that effect prior to execution of EPA. Further he shall submit the certificate from Income Tax Department or IT Return filed with IT department along with the certificate from the Chartered Accountant to MSEDCL within Two years from the date of COD (Commercial Operation Date). If the Certificate /IT Return is not submitted within two years from the COD, then the tariff will be payable considering accelerated benefit has been availed and excess amount paid will be recovered in two installments or as may be decided by the Competent Authority of MSEDCL.

Section 11.03 LEVELLISED TARIFF FOR NEW WIND ENERGY PROJECTS IN FY 2013-14:

Accordingly, the generic tariffs for Wind Energy Projects for FY 2013-14 has been determined as under. The discount factor for carrying out levellisation of Tariff for wind energy projects works out to 15.61%.

Tariff for New RE Projects - Wind:

Particular	Tariff Period (Years)	Levelling Total Tariff (FY 2013-14)	Benefit of Accelerated Depreciation (if availed)	Net Levelling Tariff (upon adjusting for Accelerated Depreciation benefit) (if availed)
Wind Energy Projects				
Wind Zone - 1	13	5.81	(0.35)	5.46
Wind Zone - 2	13	5.05	(0.31)	4.74
Wind Zone - 3	13	4.31	(0.26)	4.05
Wind Zone - 4	13	3.88	(0.23)	3.65

Notes:

The above Tariff shall be valid for Projects Commissioned in FY 2013-14



AKASHI MINERALS

Authorised Signatory

For MSEDCL

Executive Director (Comm)

The above Tariff shall be valid for a Tariff Period of 13 years from the Commercial Operation Date (COD)

Section 11.04 Payments:

The due date of payment shall be 60 days from receipt of the Seller's monthly energy bills by the MSEDCL and will be paid by account payee's cheque in the name of Seller or authorized representative, in whose name power of attorney is given by the Seller. In case of delay in payment beyond the due date, the Seller shall be entitled to a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company. The MSEDCL, however, shall be entitled to make adjustments in the Seller's Invoices for any charges/costs incurred on behalf of the Seller and payable by the Seller under this Agreement. This shall be shown in the audited statement issued by the MSEDCL.

Provided that the payments to the seller for the period from the date of commissioning Of the project up-to 30.09.2013 will not be governed by clause / section no. 11.04 of EPA. The payment for this period will be effected by MSEDCL on best effort basis without interest.

The terms and conditions of the Section 11.04: Payments shall be applicable for the energy injected into grid w.e.f. 01.10.2013.

For the Wind Power Projects in the state of Maharashtra, which are commissioned during FY 2013-14 the tariff as specified in section 3.11 of MERC RE Tariff Order dated 22.03.2013 in case no. 6 of 2013 shall be applicable.

The State Nodal Agency, MEDA has finalized the procedure for classification of wind power project into Wind Zone Class. The same shall form the basis for determination of applicable tariff for Wind Power Projects falling under particular Zone Class.

The Wind Generator shall submit the Wind Zone Class Certificate issued by MEDA along with the invoice for every WTG and the nodal officer shall make the payment in accordance with the tariff applicable for respective Wind Zone Class.

The Wind Generator has proposed not to avail the benefit of accelerated depreciation and has submitted an undertaking to that effect, hence "Levelised Total Tariff" will be applicable in this case.

In case of wind Energy Projects: Reactive energy charge at the rate of Rs.0.10/RKVAh shall apply for reactive energy consumption upto 10% of the active energy delivered to the grid by the Generators. The reactive energy consumption in excess of 10% of active energy delivered to the grid shall be payable at the rate of Rs.0.25/RKVAh.

Section 11.05 Billing and Payment Records:

The Billing and Payment records shall be maintained by the Seller for the reconciliation by the Corporate Office of MSEDCL bi-annually.

Section 11.06 MSEDCL's Right to Disconnect:

Notwithstanding any other provisions of this Agreement, the MSEDCL shall have the right to disconnect the Seller's Facility from the MSEDCL's System, if at any time the MSEDCL determines that:

- (a) The Seller's Facility may endanger the safety of persons; or
- (b) The continued operation of the Seller's Facility may endanger the integrity of the MSEDCL's System or have an adverse effect on the electric service to the MSEDCL's other consumers.



FOR RAJLAKSHMI MINERALS

[Signature]
Authorized Signatory.



For MSEDCL
[Signature]

Executive Director (Comm)

The Seller's Facility shall remain disconnected until such time that the condition(s) referred to above have been corrected and the MSEDCL shall not be obligated to accept or pay for any Wind Energy from the Seller during such period of disconnection.

Section 11.07:

It is mutually agreed that the above said terms and conditions shall form integral part of this Energy Purchase Agreement.

ARTICLE 12

EVENTS OF DEFAULTS AND REMEDIES

Section 12.01 Events of Default:

An "Event of Default" shall mean in respect to a Party ("Defaulting Party"), the occurrence of any one of the following, subject to the applicable opportunity to cure.

- [a] No Opportunity to Cure: Unless otherwise excused or permitted under the terms of this Agreement, any of the following shall constitute an immediate Event of Default, without the opportunity to cure:
 - (i) An act of Insolvency occurs with respect to a party to this Agreement or such party is adjudged bankrupt;
- [b] Thirty (30) Day Opportunity to Cure: Unless otherwise excused or permitted under the terms of this Agreement, any of the following shall constitute an immediate Event of Default, unless the Party shall have cured the same after thirty (30) days of receipt of notice from the other Party:
 - (i) Seller's failure to use reasonable diligence in operating, maintaining or repairing the Facility, such that the safety of persons and property, the MSEDCL's equipment or the MSEDCL's service to others is adversely affected.
 - (ii) Failure or refusal by either Party to perform its material obligations under this Agreement.
 - (iii) Abandonment of its interconnection facilities by the MSEDCL or the discontinuance by the MSEDCL of services covered under this Agreement, unless such discontinuance is caused by Force Majeure or for the reasons beyond the control of the MSEDCL.
 - (iv) Any representation or warranty made by such party herein is false or misleading in any material respect at the time it was made.

Section 12.02 Consequence of Termination:

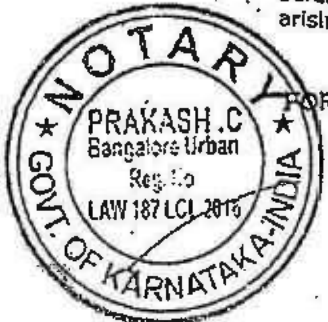
Termination of this Agreement shall be without prejudice to the accrued rights and liabilities of the parties at the date of termination, unless waived in writing by MSEDCL.

ARTICLE 13

LIMITATION OF LIABILITY AND DAMAGES

Section 13.01 Limitation of Liability:

- [a] Each Party shall be responsible for the acts of its employees and will indemnify, defend and hold the other harmless from and all claim, damage or expense arising out of or relating to:



FOR RAJLAKSHMI MINERALS

[Signature]
Authorized Signatory.



For MSEDCL
[Signature]
Executive Director (Comm)

70

51

- (i) An act of the indemnifying party's employees; and
 - (ii) Injury to or death of any of the indemnifying party's employees (except if caused by the gross negligence of the other party) which such employee is on the premises of the other party pursuant to this Agreement.
- (b) Neither party shall be liable for any failure or delay on its part in performing any of its obligations under this Agreement or for any loss, damages, costs, charges or expenses incurred or suffered by the other party by reason of such failure or delay, if and so far as such failure or delay shall be the result of or arising out of Force Majeure.
- (c) The MSEDCL shall not be responsible for the damage if any, caused to the Seller's Facility, or a part thereof, arising from a problem or defect in the MSEDCL's System or any reason beyond the control of the MSEDCL.

Section 13.02 Limitations on Damages:

The parties hereby confirm that the express remedies and measures of damages provided in this agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy and the obligor's liability shall be limited as provided in such provision. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct actual damages only. Neither party shall be liable to the other party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein).

ARTICLE 14

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 14.01 Seller's Representations, Warranties and Covenants:

The Seller hereby represents and warrants as follows:

- (a) The Seller is a [corporation, limited liability company, etc.] duly organized, validly existing and in good standing under Indian laws. The Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver and perform its obligations under this Agreement.
- (b) The execution, delivery and performance of its obligations under this Agreement by the Seller have been duly authorized by all necessary corporate action, and do not
 - (i) Require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the MSEDCL upon its request);
 - (ii) Violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination or award currently in effect having applicability to Seller or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;

Result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which



Authorised Signatory, RAJLAKSHMI MINERALS

For MSEDCL
[Signature]
 Executive Director (Comm)

71

52

could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or

(iv) Result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

(c) This Agreement is a valid and binding obligation of Seller.

(d) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Facility.

(e) To the best knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations mentioned in this Agreement, which Seller anticipates will be obtained by Seller in the ordinary course of business, all permits, consents, approvals, licenses, authorizations or other action required by any Governmental Authority to authorize Seller's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect.

(f) The Seller shall comply with all applicable local, state and central laws, regulations and ordinances, and all applicable central, state, and local environmental laws and regulations presently in effect or which may be enacted during the Term of this Agreement.

Section 14.02 MSEDCI's Representations, Warranties and Covenants:

The MSEDCI hereby represents and warrants as follows:

(a) The MSEDCI is a Company duly organized, validly existing and in good standing under Indian Laws and has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver and perform its obligations under this Agreement.

(b) The execution, delivery and performance of its obligations under this Agreement by the MSEDCI have been duly authorized by all necessary action

ARTICLE 15

FORCE MAJEURE

Section 15.01: Force Majeure:

(a) Except for obligations to pay money and other accrued rights and obligations, the performance of any obligation required hereunder shall be excused during the continuation of any Force Majeure Event suffered by the Party whose performance is required in respect thereof, and the time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure Event shall be extended by the number of Days of the Force Majeure Event; provided, however, that the Party experiencing the delay shall notify the other Party of the occurrence of such Force Majeure Event and the anticipated period of delay within thirty (30) days after the commencement of the Force Majeure Event, provided, further that in no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its Term. Failure to provide timely notice of a Force Majeure shall be deemed to be a waiver of such Force Majeure Event. Each



[Signature]
Authorised Signatory.

For MSEDCI
[Signature]
Executive Director (Comm)

Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to void, nullify, overcome or otherwise to mitigate in all material respects the effects of any Force Majeure Event suffered by either of them and the Parties agree to meet to seek and coordinate appropriate mitigation measures.

[b] In the event that any delay or failure of performance caused by a Force Majeure Event continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 15.1(a), the Party not claiming such Force Majeure Event may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to damages, costs and balances incurred prior to the effective date of such termination.

ARTICLE 16

GOVERNING LAW, DISPUTE RESOLUTION AND CONSENT TO JURISDICTION

Section 16.01: Governing Law:

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the Laws of India.

Section 16.02 Dispute Resolution:

Any disputes arising out of, in connection with or with respect to this Agreement, the subject matter hereof, the performance or non-performance of any obligation hereunder, that cannot be resolved by negotiation among the Parties within sixty (60) days, shall be exclusively adjudicated before the MERC and any other Court in Mumbai having jurisdiction in the matter.

ARTICLE 17

CLEAN DEVELOPMENT MECHANISM (CDM) AND SUBSIDY.

Section 17.01 CDM:

The Project must be posed for CDM benefits wherever applicable. Seller shall complete all the documents required for obtaining CDM benefits.

Section 17.02 CDM Benefit:

All risks, costs and efforts associated with the availing of carbon credits shall be borne by the generating company. Further, the entire proceeds of carbon credit from approved CDM project, if any, shall be retained by the generating company.

Section 17.03 Subsidy:

If the Seller is getting any Subsidy, which is not considered by the MERC while arriving at the normative tariff, the same shall be passed on to the consumer.

ARTICLE 18

NOTICES

Section 18.01 Notices in Writing:

All notices, requests, consent or other communication shall be addressed to the other Party at the addresses noted below or such other address as shall be notified by a Party in writing to the other Party. All such notices, requests, consent or other communication, unless otherwise specified herein, shall be in writing and may be delivered by hand delivery, post, courier service or by facsimile.



FOR RAJLAKSHMI MINERALS
[Signature]
Authorized Signatory.



FOR MSEDCL
[Signature]
Executive Director (Comm)

To Seller:

M/s. Rajlakshmi Minerals
D. No - 1499/1, P.O. Box no -38, Kariganur -Post, Hospet- 583201 (Bellary Dt.,
Karnataka)

The MSEDCL:

The Designated Officer,
Maharashtra State Electricity Distribution Company Limited,
Prakashgad, Bandra (East),
Mumbai 400 051.

ARTICLE 19**MISCELLANEOUS****Section 19.01 Amendments and Exhibits:**

This Agreement may not be changed or amended unless such change or amendment shall be in writing and signed by authorized representatives of both Parties.

Section 19.02 Disclaimer:

No review, approval, consent, advice, recommendation, authorization, notice, inspection, test or other act by a Party regarding the construction, ownership, operation, use or maintenance of the Facility or the delivery of Wind Energy under this Agreement shall constitute or be interpreted as or be relied upon by any other person or entity not a party to this Agreement as a warranty, representation or endorsement by such Party.

Section 19.03 Entire Agreement:

This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

Section 19.04 Waiver:

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter or any other matter. Any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to a subsequent default or other matter.

Section 19.05 Captions: Construction:

All indexes, titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement.

Section 19.06 Assignment:

The Seller shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the MSEDCL. However, the MSEDCL shall be entitled to assign, transfer or otherwise dispose of any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the Seller, in the event of a restructuring or reorganization of the MSEDCL which will be notified to the Seller by the MSEDCL.

Section 19.07 No Agency:

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such



FOR RAJLAKSHMI MINERALS

[Signature]
Authorized Signatory.

For MSEDCL

[Signature]
Executive Director (Comm)

obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

Section 19.08 Cooperation:

The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term hereof, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make reasonable efforts to cooperate and assist each other in making such change.

Section 19.09 Further Assurances:

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 19.09.

Section 19.10 Counterparts:

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 19.11 Severability:

If any of the terms of this Agreement is finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect; provided, however, that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties.

Section 19.12 Taxes, Fines and Penalties:

- (a) Seller shall be solely responsible for any and all present or future Taxes, including without limitation, taxes relating to the construction, ownership or leasing, operation and maintenance of the Facility, or any components or appurtenances thereof, or by reason of the sale and delivery of Wind Energy to the MSEDCL, and all ad valorem taxes relating to the Facility.
- (b) Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors in connection with the design, development, construction, operation and maintenance of the Facility and the satisfaction of Sellers obligations under this Agreement, including obligations imposed under the Permit or by law. If any such fees, fines, penalties or costs are claimed or assessed against MSEDCL by any governmental authority or other person, Seller shall indemnify and hold the MSEDCL harmless against any and all such fees, fines, penalties and costs suffered or incurred by the MSEDCL, including claims for indemnity or contribution made by third parties against the MSEDCL.

FOR RAJAKSIMI MINERALS



[Signature]
Authorised Signatory.



For MSEDCL

[Signature]
Executive Director (Comm)

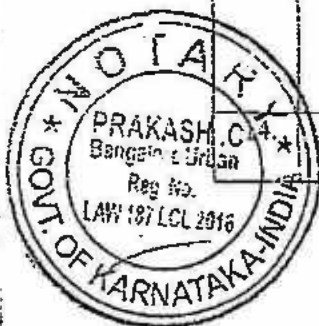
[Signature]
True copy

BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY
COMMISSION, MUMBAI
PETITION NO. 26 OF 2019

M/s. Rajlaxhmi Minerals ...Petitioner
Versus
Maharashtra State Electricity Distribution Company Limited ...Respondent

INDEX

SR. NO.	ANNEXURE	PARTICULARS	PG NO.
1.		Synopsis.	A-G
2.		Petition.	1-27
3.		Vakalatnama	28
4.		Memorandum of Registered Address.	30
5.		List of Documents.	31
6.	Annexure A	Copy of Instrument of Partnership.	32
7.	Annexure B	Copy of the Certificate of Registration of Firm.	36
8.	Annexure C	Copy of the letter of Authorization.	37
9.	Annexure D	Copies of the letter dated 11 th April, 2014 from the Superintending Engineer, MSEDCL to M/s Rajlaxhmi Minerals.	38
10.	Annexure E	Copy of the Letter dated 2 nd May, 2011 from the Chief Engineer, MSETCL to ShriMaruti Wind Park Developers.	47
11.	Annexure F	Copy of the Wind Energy Purchase Agreement executed on 20 th August, 2014 between M/s Rajlaxhmi Minerals and MSEDCL.	49
12.	Annexure G	Copy of the Letter dated 26 th August, 2014 from the Chief Engineer (Commercial), MSEDCL to the Superintending Engineer, MSEDCL, Kolhapur	80
13.	Annexure H	Copies of invoices issued by M/s Rajlaxhmi Minerals to MSEDCL from March, 2014 to October 2018	81
	Annexure I	Copy of the letter dated 4 th May, 2016 from M/s Rajlaxhmi	137



True copy

For Rajlaxhmi Minerals

 Authorised Signatory


		Minerals to the Director of Finance, MSEDCL.	
15.	Annexure J	Acknowledgment of Receipt by MSEDCL of letters dated 4 th May, 2016.	138
16.	Annexure K	Copy of the Letter dated 30 th May, 2016 from M/s Rajlakshmi Minerals to the Director of Finance, MSEDCL.	139
17.	Annexure L	Copy of the Acknowledgment of Receipt by MSEDCL of letters dated 30 th May, 2016.	140
18.	Annexure M	Copy of the Petition in Case No. 166 of 2016 (without the annexures thereto).	141
19.	Annexure N	Copy of the Notice dated 4 th January, 2017	155
20.	Annexure O	Copy of the Letter dated 7 th January, 2017 (without the annexure thereto) along with the proof of service	157
21.	Annexure P	Copy of the Reply filed by the Respondent in the Earlier Petition (Petition No. 156 of 2016)	166
22.	Annexure Q	Copy of the Daily Order dated 16 th March, 2017 passed by this Hon'ble Commission <i>inter alia</i> in the Earlier Petition	181
23.	Annexure R	Copy of the Final Order dated 16 th May 2017 passed by this Hon'ble Commission <i>inter alia</i> in the Earlier Petition	184
24.	Annexure S	Copy of the Letter dated 29 th June, 2017 addressed by the Petitioner to the Respondent	199
25.	Annexure T	Copy of the Letter dated 28 th July 2017 addressed by the Petitioner to the Respondent	205
26.	Annexure U	Copy of the Draft Undertaking as received by the Petitioner	213
27.	Annexure V	Copy of the Letter dated 3 rd November, 2017 addressed by the Petitioner to the Respondent together with the relevant Speed Post acknowledgement evidencing the delivery of the said letter on the Respondent	214
28.	Annexure W	Copy of the Contempt petition in Case No. 177 of 2017 filed by the Petitioner (without its annexures)	233
29.	Annexure X	Copy of the Notice dated 20 th December, 2017 issued by this Hon'ble Commission directing the Petitioner to serve a copy of the Contempt Petition upon <i>inter alia</i> the Respondent.	254
30.	Annexure Y	Copy of the Letter dated 21 st December, 2017 addressed by the	258



For Rajlakshmi Minerals

[Signature]
Authorised Signatory



		Petitioner to the Respondent.(without its enclosures)	
31.	Annexure Z	Copy of the Reply filed by the Respondent in the Contempt Petition No. 177 of 2017	261
32.	Annexure AA	Copy of the Daily Order dated 2 nd January, 2018 passed by this Hon'ble Commission in the Contempt Petition	265
33.	Annexure BB	Copy of the Reconciliation statement dated 15 th January, 2018 addressed by the Respondent to Petitioner	267
34.	Annexure CC	Copy of the Order dated 18 th January, 2018 passed by this Hon'ble Commission in the Contempt Petition	268
35.	Annexure DD	Copy of the Letter dated 20 th May, 2018 (together with the annexure thereto) addressed by the Petitioner to the Respondent together with the relevant Speed Post acknowledgement evidencing the delivery of the said letter on the Respondent	282
36.	Annexure EE	Copy of the Letter dated 16 th July, 2018 addressed by the Petitioner to the Respondent together with the relevant Speed Post acknowledgement evidencing the delivery of the said letter on the Respondent	292
37.	Annexure FF	Copy of the Letter dated 13 th October, 2018 (together with the Annexures thereto) addressed by the Petitioner to the Respondent together with the relevant Speed Post acknowledgement evidencing the delivery of the said letter on the Respondent.	298
38.	Annexure GG	Copy of the Table reflecting/ summarising the principal amount of Rs. 3,59,90,095/- due and payable by in respect of the said monthly electricity bills	305
39.	Annexure HH	Copy of the Table reflecting/ summarising the Delayed Payment Charges of Rs. 57,71,312/- due and payable in lieu of the delay in making payments in respect of the said monthly electricity bills	306
40.	Annexure II	Copy of the Table reflecting/ summarising the interest of Rs. 17,77,160/- due and payable by in lieu of the delay in making payments in respect of the Delayed Payment Charges Delayed Payment Charges	307
41.	Annexure JJ	Copy of the Operation and Maintenance Agreement dated 19 th November, 2013 between Gamesa Wind Turbines Pvt. Ltd. and M/s Rajlaxhmi Minerals	308



For Rajlaxhmi Minerals

Authorised Signatory



42.	Annexure KK	Copy of the Operation and Maintenance Agreement dated 19 th November, 2013 between Gamesa Wind Turbines Pvt. Ltd. and M/s Rajlaxhmi Minerals	335
43.		Affidavit in Support of the Petition.	363
44.		Last Page.	365

For Rajlaxhmi Minerals
[Signature]
Authorised Signatory



60
A

BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY
COMMISSION, MUMBAI

PETITION NO. _____ OF 2019

M/s. Rajlaxhmi Minerals ...Petitioner

Versus

Maharashtra State Electricity Distribution Company Limited ...Respondent

SYNOPSIS

I. Brief Facts:

1. The Petitioner is a partnership concern engaged in the generation of electricity from wind power plants and is also involved in the logistic and transportation business. The Petitioner owns four wind power plants in Pusrali and Altur villages, Shahuwadi Taluka, in Kolhapur District, Maharashtra with a Total Installed Capacity of 3.4 MW (04 nos. X 850 KW each) ("said wind power plants").
2. The Respondent is a company incorporated under the Companies Act, 1956 and is a distribution licensee under the Electricity Act, 2003. It supplies electricity to consumers across the State of Maharashtra, except Mumbai.
3. Upon receiving valid approval for interconnection with the State Grid on 2nd May, 2011 and successful commissioning of the said wind power plants on 11th April, 2014, the Respondent entered into a Wind Energy Purchase Agreement with the Petitioner on 26th August, 2014 ("said Energy Purchase Agreement"). Under the terms of the said Energy Purchase Agreement, the Respondent was obligated to purchase the entirety of the electricity generated by the Petitioner at a purchase price

For Rajlaxhmi Minerals

Sudhivada Joshi
Authorised Signatory



61
18

determined on the basis of the relevant MERC Orders. Under the said Energy Purchase Agreement, the Respondent was required to remit the amounts within a stipulated time period in respect of the invoices/ monthly electricity bills raised by the Petitioner, failing which the Respondent was required to remit charges towards delayed payment to the Petitioner.

4. As per the terms of the said Energy Purchase Agreement, the Petitioner has supplied to the Respondent, electricity starting from March, 2014 till date. However, the Respondent has not only delayed the payment of contractual dues to the Petitioner, but in respect of several months, has not bothered to make any payments whatsoever for the electricity consumed by it. As on date, the Respondent owes to the Petitioner (i) Rs. 3,59,90,095/- towards unpaid invoices; (ii) Rs. 57,71,312/- towards delayed payment charges; and (iii) Rs. 17,77,160/- towards interest due and payable on the delayed payment charges (in terms of the this Hon'ble Commission's Order dated 16th May, 2017). Hence, the Respondent owes a total amount of Rs. 4,35,38,567/- to the Petitioner as on date.
5. Despite the receipt of the Petitioner's invoices/ monthly electricity bills and the issuance of various letters (and the receipt thereof), the Respondent has failed and neglected to make payments to the Petitioner in the manner as contemplated in the said Energy Purchase Agreement. This conduct on behalf of the Respondent had resulted in the Petitioner filing earlier proceedings before this Hon'ble Commission.
6. On 13th December, 2016, the Petitioner was constrained to file Case No. 166 of 2016 under Section 86 of the Electricity Act 2003 ("the Earlier Petition") before this Hon'ble Commission against the Respondent, seeking payment of the amounts due and payable to it.



For Rajlaxhmi Minerals
Sudhakar Sahu,
Authorised Signatory



7. On 16th May, 2017, this Hon'ble Commission was pleased to pass its Common Final Order in the Earlier Petition. This Hon'ble Commission was pleased to direct the Petitioner to pay the principal amounts due to the Petitioner expeditiously. Further, this Hon'ble Commission also directed the Respondents to pay the DPC amounts due, within 30 days therefrom.
8. Accordingly, in terms of the said Common Final Order dated 16th May, 2017, the Respondent was obligated make the following payment on or before 17th June, 2017: (a) total principal amount of 2,11,01,783/-; and (b) Delayed Payment Charges of Rs. 60,42,876.44.
9. Despite the said Common Final Order dated 16th May, 2017, the Respondent failed to comply with the same and no payments were made in compliance of the said Common Final Order dated 16th May, 2017.
10. The Respondent, to the shock and surprise of the Petitioner, only made selective payments to those wind power producers who submitted an undertaking, thereby waiving any and/ or all rights to Delayed Payment Charges under their respective agreements with the Respondent. The Petitioner was not one such wind power producer.
11. In view of the Respondent's failure to comply with the said Common Final Order dated 16th May, 2017, the Petitioner was constrained to file Case No. 177 of 2017 under Sections 142 and 146 r/w. Section 149 of the Electricity Act, 2003 ("the Contempt Petition"), before this Hon'ble Commission.
12. On 2nd January 2018, after hearing the parties, this Hon'ble Commission was pleased to reserve the Contempt Petition for final orders.



For Rajlakshmi Minerals
Rajlakshmi Minerals
 Authorised Signatory



13. Pursuant to the directions issued by this Hon'ble Commission, the Petitioner and the Respondent *inter alia* reconciled their accounts on 15th January 2018. The Respondent represented that it would make payment of the amounts towards the delayed payment charges due and payable till April, 2017.
14. In view of the aforesaid reconciliation, this Hon'ble Commission was pleased to record in its Order dated 18th January, 2018 in the Contempt Petition that it was not inclined to take action against the Respondent under the Electricity Act, 2003.
15. The Earlier Petition and the Contempt Petition only dealt with invoices raised prior to 2017. However, there was no deliberation and/ or adjudication whatsoever in respect of invoices raised from May, 2017 by the Petitioner towards principal amounts as also Delayed Payment Charges, as also the amounts payable towards interest on Delayed Payment Charges, as directed by the said Common Final Order dated 16th May, 2017.
16. Despite the orders of this Hon'ble Commission, the Respondent have failed to honour its contractual commitments and has miserably failed in making timely payments to the Petitioner. In the circumstances, the Petitioner was constrained to issue numerous letters reminding the Respondent of the contractual dues owed to it and requesting the same to be cleared at the earliest. The Respondent failed to respond to the letters or make payments to the Petitioner.
17. Significantly, it was only on 1st January 2019 that an amount of Rs. 2,17,89,095/- was remitted by the Respondent to the Petitioner. Despite this payment, there are significant amounts due and payable by the

For Rajlakshmi Minerals

Budhiwade Joshi

Authorised Signatory



Respondent. It is apposite to note that a total amount of Rs. 4,35,38,567/- is still due and unpaid to the Petitioner.

18. Having no other recourse the Petitioner is constrained to file the present Petition before this Hon'ble Commission seeking payments of the amounts due and payable to it.

II. Issues:

19. Whether the Respondent is liable to pay to the Petitioner a total amount of Rs. 4,35,38,567/- (Rupees Four Crores Thirty-Five Lakh Thirty-Eight Thousand Five Hundred and Sixty-Seven Only) under the said Energy Purchase Agreement; the Petitioner's invoices/ monthly electricity bills; and the Order dated 16th May, 2017 passed by this Hon'ble Commission, together with interest thereon?

III. Case Law/ Acts referred to:

- Electricity Act, 2003.
- Order passed by the Hon'ble Supreme Court of India in *Chairman, Tamil Nadu Electricity Board v. M/s Indian Wind Power Association and Ors.*, Civil Appeal No. 2397 of 2014.
- MERC *Suo-Motu* Order dated 22nd March, 2013 in Case No. 6 of 2013.
- Such other Acts/ Authorities as may be advised.

IV. Reliefs Sought:

The Petitioner humbly prays that this Hon'ble Commission be pleased to *inter alia* issue the following directions:

For Rajlakshmi Minerals

Rajlakshmi Joshi
Authorised Signatory



- A. Direct the Respondent to pay a sum of Rs. 3,59,90,095/- towards the principal amounts for electricity generated by the Petitioner in respect of the said monthly electricity bills raised from October, 2017 to October, 2018, as more particularly set out in Annexure 'GG' to the present Petition;
- B. Direct the Respondent to pay a sum of Rs. 57,71,312/- to the Petitioner as delayed payments in respect of the months of May, 2017 to October, 2018, as more particularly set out in Annexure 'HH' to the present Petition;
- C. Direct the Respondent to pay a sum of Rs. 17,77,160/- to the Petitioner as interest on delayed payment charges, as more particularly set out in Annexures 'HH' and 'II' to the present Petition;
- D. Direct the Respondent to comply with the terms of the Wind Energy Purchase Agreement dated 20th August, 2014 for the duration thereof, including by honouring its commitments thereunder;
- E. Direct the Respondent to pay interest *pendente-lite* till the eventual payment of the sum at the rate of 1.25% per month;
- F. For costs; and
- G. For such other and further reliefs as this Hon'ble Commission may deem fit and proper in the nature and circumstances of the present Petition.

V.

Interim/ Ad-Interim Reliefs Sought:

For Rajlaxhmi Minerals
 Sudhakar S. S. S.
 Authorised Signatory



The Petitioner humbly prays that pending the final disposal of the Petition, this Hon'ble Commission be pleased to issue the following directions:

- A. Pending the hearing and final disposal of the present Petition, this Hon'ble Commission be pleased to direct the Respondent to deposit a sum of Rs. 4,35,38,567/- or such other amount as this Hon'ble Commission may deem fit in this Hon'ble Commission.
- B. For ad-interim reliefs in terms of the above.

Ata. K. Kapade

KEYSTONE PARTNERS
ADVOCATES & SOLICITORS

For Rajlakshmi Minerals

Siddhanta Jais

Authorised Signator



Advocates for the Petitioner



67
R

BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY
REGULATORY COMMISSION, MUMBAI

PETITION NO. _____ OF 2019

Filing No.

Case No.

In the matter of:

The amounts due and payable by Maharashtra State Electricity Distribution Company Limited to Rajlakshmi Minerals for electricity supplied under the Wind Energy Purchase Agreement dated 20th August, 2014.

AND

In the matter of:

M/s. Rajlakshmi Minerals	}
A Partnership Concern registered under	}
The Indian Partnership Act, 1932,	}
Having its office at: D. No. 1499/1,	}
PO Box No. 38, Post Hospet 583 201,	}
Bellary District, Karnataka,	}
Represented herein by its Authorized Representative,	}
Mr. Sudhindra V. Joshi.]...Petitioner



For Rajlakshmi Minerals
Sudhindra V. Joshi
Authorized Signatory



Versus

Maharashtra State Electricity Distribution]
 Company Limited]
 A Company registered under the Companies Act, 1956,]
 Having its Registered Office at: Prakashgad,]
 Plot G 9, Prof. Anant Kanekar Marg,]
 Bandra (East), Mumbai 400 051, Maharashtra.]...Respondent

MEMORANDUM OF ORIGINAL PETITION FILED UNDER SECTIONS
86(1)(e) and 86(1)(f) OF THE ELECTRICITY ACT, 2003

The Petitioner above named humbly submits as follows:

1. The address of the Petitioner for the purpose of court notice and process of this Hon'ble Commission is as shown in the cause title above. The Petitioner may also be served through its counsel, M/s. Keystone Partners, having their offices at: Office Nos. 311-312, 3rd Floor, Hari Chambers, 58/64, Shahid Bhagat Singh Road, Next to 1441 Pizzeria, Fort, Mumbai 400 001. The address of the Respondent for the same purpose is as shown in the cause title above.
2. The Petitioner is a partnership concern engaged in the generation of electricity from wind power plants and is also involved in the logistic and transportation business and is a "generating company" within the meaning of Section 2(28) of the Electricity Act, 2003. A copy of the partnership deed of the Petitioner is produced herewith as Annexure "A". A copy of the certificate of registration of the Petitioner evidencing its registration under the Partnership Act, 1932 is produced herewith as Annexure "B". The Petitioner is represented in the present proceedings by its authorised representative Mr. Sudhindra V. Joshi. A copy of the letter of authorisation

For Rajlakshmi Minerals

Sudhindra V. Joshi
 Authorised Signatory



issued by the Petitioner in favour of Mr. Sudhindra V. Joshi is produced herewith as Annexure "C".

3. The Respondent is a company registered under the Companies Act, 1956, having its Registered Office at the address set out in the cause title hereinabove. The Respondent is a "distribution licensee" within the meaning of Section 2(17) of the Electricity Act, 2003, and in pursuance thereof admittedly supplies electricity to various regions in Maharashtra excluding the city of Mumbai.

4. Amongst other business activities, the Petitioner owns a 3.40 MW wind power facility in Pusrali and Altur village, Shahuwadi Taluk, in Kolhapur District, Maharashtra ("the said Power Plant"). The installed capacity of the said Power Plant is 3.4 MW (04 nos. X 850 KW each) of M/s. Gamesa make. The WEG location in respect of the said wind power plants are as follows: GAL - 01, GAL - 02, GAL - 04, GAL - 05. The said Power Plant was successfully commissioned on 29th March, 2014. A copy of the commissioning certificates dated 11th April, 2014 in respect of the said Power Plant is produced herewith as Annexure "D" (Collv.). It is pertinent to note that the said Power Plant forms a part of a larger wind farm, which was being developed by M/s. Shri Maruti Wind Park Developers to an extent of 50 MW sanctioned capacity of wind power. The interconnection approval in respect of the said wind farm was sanctioned by the office of the Maharashtra State Electricity Transmission Company Ltd. by its letter dated 2nd May, 2011. A copy of the said letter dated 2nd May, 2011 is produced herewith as Annexure "E".

5. Upon the successful commissioning of the said Power Plant as well as the valid interconnection approval with the state grid, the Petitioner was desirous of entering into a Wind Energy Purchase Agreement with the Respondent, with a view to offer for sale 100% of the electricity generated



For Rajlaxhmi Minerals
Sudhindra Joshi
Authorised Signatory



from the operation of the said Power Plant. After a series of discussions with the Respondent and on the Respondent being satisfied that the Petitioner had complied with the necessary regulations in this regard, the Respondent was agreeable to enter into a Wind Energy Purchase Agreement and purchase the electricity generated from the said Power Plant.

6. Accordingly, a Wind Energy Purchase Agreement came to be duly executed between the Respondent and the Petitioner on 20th August, 2014 ("the said Agreement"). A copy of the said Agreement is produced herewith as Annexure "F". The executed version of the said Agreement was provided to the Petitioner under cover of the Respondent's letter dated 26th August, 2014. A copy of the said letter dated 26th August, 2014 is produced herewith as Annexure "G".

7. Accordingly, under the terms of the said Agreement, the Petitioner was under an obligation to offer for sale the entire quantum of electricity generated from the operation of the said Power Plant. Similarly, the Respondent was under an obligation to purchase the entirety of the electricity generated by the Petitioner and the purchase price in respect of the said electricity would be governed by the MERC RE: TARIFF REGULATIONS 2010 and MERC Suo-Motu Order dated 22nd March, 2013 in Case No. 6 of 2013. It is humbly submitted that the applicable tariff to the purchase of the generated wind electricity was Rs. 5.81 per Kwh. The Petitioner craves leave to refer to and/ or rely on the said Suo-Motu Order dated 22nd March, 2013 as also the concerned Regulations, when produced.

8. It is pertinent to note that the Respondent is/ was under a contractual obligation to make the necessary payments to the Petitioner in respect of the electricity purchased by it within 60 days from the receipt of the

For Rajlakshmi Minerals

Budhendra Jale
Authorised Signatory



monthly energy bills raised by the Petitioner. It is also pertinent to note that where the Respondent delayed the payment of the contractual dues to the Petitioner, an interest rate of 1.25% per month would be levied on it. It is humbly submitted that Section 11.04 of the said Agreement governs the contractual obligations of the Respondent and the relevant portion is extracted herein below for ease of reference:

"Section 11.04 Payments:

The due date of payment shall be 60 days from receipt of the Seller's monthly energy bills by the MSEDCL and will be paid by the account payee's cheque in the name of Seller or authorized representative in whose name power of attorney is given by the seller. In case of delay in payment beyond the due date, the Seller shall be entitled to a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company. The MSEDCL however shall be entitled to make adjustments in the Seller's Invoices for any charges/costs incurred on behalf of the Seller and payable by the Seller under this Agreement. This shall be shown in the audited statement issued by the MSEDCL."

9. It is therefore clear that the terms of the said Agreement mandate that the Petitioner would raise monthly electricity bills (essentially being monthly invoices) ("said electricity bills") in respect of the electricity generated by it in respect of the concerned month and submit the said electricity bills to the Respondent for the payment of amounts falling due thereunder. Upon the receipt of the said electricity bills, the Respondent was under an obligation to make the necessary payments within a period of 60 days from the receipt of the said electricity bills. It is further unambiguously clear that where the Respondent fails or omits in any manner to make the payment within the stipulated period of 60 days, interest at the rate of 1.25% per month would be levied on it for any delayed payments.

10. This being the contractual agreement between the Petitioner and the Respondent, the Petitioner generated electricity from the said Power Plant and the same was duly injected into the grid for the purchase and utilization by the Respondent. Significantly, the Respondent has accepted the electricity supplied by the Petitioner without any demur or protest whatsoever, being fully satisfied therewith. It is respectfully submitted that

For Rajakshmi

Sudhakar Joshi
Authorized Signatory



72
8

the electricity supplied by the Petitioner has thereafter been supplied by the Respondent across the State of Maharashtra (excluding Mumbai), and accordingly the Respondent has made generous profits in this regard. As required by the contract, the Petitioner duly raised electricity bills in respect of the electricity generated and injected into the state grid from the said Power Plant. Copies of the said electricity bills from the month of March, 2014 to the month of October, 2018 are produced herewith as Annexure "H" (Colly).

11. Upon the delivery of the said electricity bills to the office of the Respondent, the Petitioner was under the earnest belief that the Respondent would honour its contractual dues and make timely payments to the Petitioner as required of it under Section 11.04 of the said Agreement. However, much to the shock and dismay of the Petitioner, despite having submitted the necessary monthly electricity bills and despite the consumption of the electricity generated by the Petitioner, the Respondent did not honour its contractual commitments and has miserably failed in making timely payments to the Petitioner herein. Significantly, till date, the Respondent has neither raised any complaints nor objections whatsoever with respect to the said electricity bills. It is pertinent to note that in fact, no dispute whatsoever has been raised by the Respondent in this regard till date, as it could never have.

12. Despite the aforesaid, the Respondent has not only delayed the payment of contractual dues to the Petitioner, but in respect of several months, has not bothered to make any payments whatsoever for the electricity consumed by it. In fact, the Petitioner has on various occasions beseeched the Respondent and its officials to make the payment of the amounts due and payable, so that the Petitioner could continue to operate the said Power Plant. In these discussions, the Petitioner highlighted the urgency in the release of the payments owed to them, so as to enable them to continue the



For Rajlaxhmi Minerals
Buddhida Sali
Authorised Signator



operation of the said Power Plant and thereby guarantee the supply of the electricity to the Respondent. The Respondent always assured the Petitioner that the amount due to them would be released in due time. However, they did not give any concrete proposal or assurance as to the date and manner of such payment. In fact, no monies were released to the Petitioner, in blatant violation of the said Agreement.

13. In fact, the conduct of the Respondent which has necessitated the filing of the present Petition, is consistent with its earlier conduct, which constrained the Petitioner to earlier approach this Hon'ble Commission for redressal of its grievances. In this regard, it is relevant to note the following:

- A. In or around May, 2016, despite several meetings with the representatives of the Respondent and assurances that amounts would be remitted to the Petitioner, no payments were released to it, and the Respondent failed to honour the commitments made to the Petitioner. In these circumstances, the Petitioner was constrained to issue a letter dated 4th May, 2016, reminding the Respondent of the contractual dues owed to it and requesting the same to be cleared at the earliest. As on the date of the said letter, the Petitioner demanded the payment of Rs. 2,08,88,988/- which were the contractual dues in respect of the electricity generated by the Petitioner from July, 2015 to March, 2016. The said letter underscored the financial difficulty being faced by the Petitioner on account of the prolonged and sustained non-payment of contractual dues to it. A copy of the letter dated 4th May, 2016 is produced herewith as Annexure "I". The relevant Speed Post acknowledgement evidencing the delivery of the said letter dated 4th May, 2016 on the Respondent is produced herewith as Annexure "J".



For Rajlakshmi Minerals
Sudhakar S. S.
Authorised Signatory



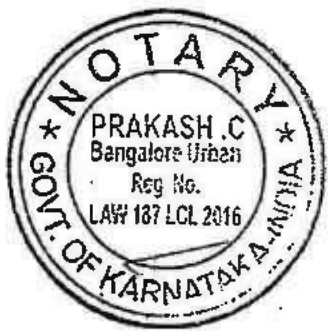
B. In view of the failure of the Respondent to take any action whatsoever pursuant to the receipt of the said letter dated 4th May, 2016, the Petitioner was constrained to address a further letter dated 30th May, 2016 to the Respondent *inter alia* once again demanding that the contractual dues owed to it be paid at the earliest. As on the date of the issuance of the said letter dated 30th May, 2016, the amounts due and payable to the Petitioner had increased to Rs. 2,26,73,562/-. A copy of the said letter dated 30th May, 2016 is produced herewith as Annexure "K". The relevant Speed Post acknowledgement evidencing the delivery of the said letter dated 30th May, 2016 on the Respondent is produced herewith as Annexure "L".

C. Despite the issuance of the letters dated 4th May, 2016 and 30th May, 2016 and the receipt of the same, the Respondent failed to respond to the same, with the contents thereof remaining uncontroverted. Moreover, no payments whatsoever were made by the Respondent to the Petitioner.

D. As of December, 2016, the Respondent owed the Petitioner a total sum of Rs. 3,37,76,810.55 towards electricity generated and Rs. 21,43,829.28 towards delayed payment charges in accordance with Clause 11.04 of the said Agreement. Having no other recourse, on 13th December, 2016, the Petitioner was constrained to file Case No. 166 of 2016 under Section 86 of the Electricity Act, 2003 ("the Earlier Petition") before this Hon'ble Commission against the Respondent, *inter alia* seeking the following reliefs:

- A. "Direct the Respondent to pay a sum of Rs. 3,37,76,810.55/- towards electricity generated by the Petitioner in respect of September, 2015 to August 2016;
- B. Direct the Respondent to pay a sum of Rs. 21,43,829.28/- to the Petitioner as interest on

For Rajlaxhmi Minerals
Sudhakar Joshi
Authorised Signatory



delayed payments in respect of month of March 2014 to August 2015;

- C. Direct the Respondent to pay interest pendente-lite till the eventual payment of the sum at 1.25% per month;"

A copy of the petition in Case No. 166 of 2016 (without the annexures thereto) is produced herewith as Annexure "M".

- E. By its Notice dated 4th January, 2017, this Hon'ble Commission was pleased to direct the Petitioner to serve a copy of the Earlier Petition upon the Respondent, and was also pleased to direct the Respondent to file its reply to the Earlier Petition within two weeks thereof. A copy of the Notice dated 4th January, 2017 is produced herewith as Annexure "N".

- F. In compliance with the said Notice dated 4th January, 2017, the Petitioner duly served a copy of the Earlier Petition upon the Respondent. The Earlier Petition was duly received by the Respondent on 9th January, 2017. A scanned copy of the letter dated 7th January, 2017 (without the annexure thereto) along with the proof of service is produced herewith as Annexure "O". Significantly, as per the Notice dated 4th January, 2017, the Respondent was required to file its reply within two weeks of receiving the Petition, i.e. on or before 23rd January, 2017.

- G. However, in non-compliance with directions set out in the said Notice dated 4th January, 2017 issued by this Hon'ble Commission, the Respondent only filed its Reply to the Earlier Petition on 14th March, 2017, more than 45 days after the stipulated date for filing its reply. A copy of the Reply filed by the Respondent in the Earlier Petition is produced herewith as Annexure "P". A bare perusal of this Reply will demonstrate that the Respondent effectively admitted its liability to make payments to the Petitioner for the



For Rajlaxhmi Minerals
Sudhakar Jolu
Authorised Signatory



principal payments due at that time as also the delayed payment charges payable under the said Agreement.

H. On 16th March, 2017, this Hon'ble Commission was pleased to direct the Respondent *inter alia* to "submit the details of outstanding payments with a copy to the concerned Petitioners." A copy of the said Daily Order dated 16th March, 2017 passed by this Hon'ble Commission *inter alia* in the Earlier Petition is produced herewith as Annexure "O". However, in non-compliance of the said Daily Order dated 16th March, 2017, the Respondent failed to submit the details of the outstanding payments to this Hon'ble Commission and/ or the Petitioner.

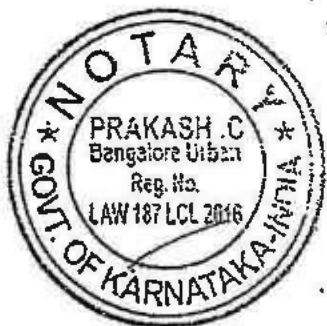
I. Subsequently, on 16th May, 2017, this Hon'ble Commission was pleased to pass its common Final Order *inter alia* in the said Earlier Petition. By the Final Order dated 16th May, 2017, this Hon'ble Commission was pleased to *inter alia* record as under:

18. The Petitioners in these Cases are Wind Energy Generators (and an Association of such Generators) who have not been paid by MSEDCL for the power supplied by them under their respective EPAs since long, or the DPC arising from this delay as required under the EPAs.

19. MSEDCL has, in effect, not disputed its liability to pay the principal amounts and the DPC to the Petitioners under the terms of the EPAs, but stated that the delay is because of its financial difficulties and is not deliberate or with mala fide intention. However, it has also sought deletion or relaxation of the EPA provisions.

20. All the EPAs contain standard clauses requiring MSEDCL to pay DPC for delay in paying the principal amounts (at 2% per annum above the SBI short-term lending rate beyond 60 days in some, and at 1.25% per month after 45 days in others). These clauses are based on the Commission's first Wind Energy Order dated 18 September, 2003 and subsequent Orders, the relevant Regulations, and other dispensations from time to time. However, while some specifics may differ, such provisions for delayed payments are not peculiar to Wind EPAs, and are also specified in the Commission's Multi-Year Tariff Regulations, RE Tariff Regulations and Open Access Regulations.

For Rajlaxmi Minerals
Sethinder Jorhal
Authorised Signatory



- 77
K
21. In general, DPC is in the nature of a surcharge for default in making timely payments. While delay in making payments impacts the concerned Generators, the DPC liability also affects MSEDCL since it cannot pass it on to its consumers because it arises out of default in duly making payments. Its impact on MSEDCL could have been cushioned by adjusting the payments due against the energy bills of Generators in their capacity as consumers, as some Petitioners suggested, but it did not do so either. In any event, the financial difficulties cited by MSEDCL are extraneous to its contractual obligation to pay Generators in time, along with DPC to the extent of any delay. MSEDCL's claim that the Petitioners have recovered their investments is also not relevant to its liability to pay the DPC, which is a basic commercial principle and provided for in the EPAs (and also ignores the basis of the EPA term mandated by the Commission.)
22. ...
23. In view of the foregoing, the Commission expects MSEDCL to pay the principal amounts due to the Petitioners expeditiously. In the meantime, in line with its Order in Case No. 150 of 2015 and the more recent Orders dated 16 March, 2017, the Commission directs MSEDCL to pay the DPC amounts due within 30 days. Thereafter, interest will accrue at 1.25% per month on an DPC amount remaining to be paid. (Emphasis supplied)

A copy of the said Final Order dated 16th May 2017 passed by this Hon'ble Commission *inter alia* in the Earlier Petition is produced herewith as Annexure "R".

- J. In fact, at Paragraph 17 of the said Final Order dated 16th May, 2017, this Hon'ble Commission was also pleased to record that the Respondent was in non-compliance of its Daily Order dated 16th March 2017. In this regard, this Hon'ble Commission was pleased to record that, "Vide letter dated 20 April, 2017, RM (the Complainant) has communicated that it has not received details of outstanding payments from MSEDCL. The Commission has also not received these details."



For Rajlakshmi Minerals
Sudhakar Jorhi
Authorised Signatory,



K. Accordingly, in terms of the said Final Order dated 16th May 2017, the Respondent was obligated to make the following payments to the Petitioner on or before 17th June, 2017:

- a. A total principal amount of Rs. 2,11,01,783/- under the said Agreement; and
- b. Delayed payment charges of Rs. 60,42,876.44.

L. To the Petitioner's shock and dismay, despite the unambiguous directions set out in the said Final Order dated 16th May 2017, the Respondent failed to comply with the same. In fact, no payments whatsoever were received by the Petitioner from the Respondent on or before 17th June, 2017, as ought to have been done.

M. The Petitioner, through its advocates, addressed a letter dated 29th June, 2017 *inter alia* requesting that the payments of the outstanding principal amounts as also the outstanding delayed payment charges - both of which were more particularly quantified therein - be made to the Petitioner within two weeks from the receipt of that letter. A copy of the said letter dated 29th June, 2017 (without the annexures thereto) is produced herewith as Annexure "S".

N. Unfortunately, no response whatsoever was received by the Complainant to the said letter dated 29th June, 2017. In fact, despite receipt of the said letter dated 29th June 2017, only an amount of Rs. 86,86,093/- was remitted to the Petitioner by the Respondent in respect of the principal payments due under the said Agreement. Moreover, no amounts whatsoever were remitted to the Petitioner towards the delayed payment charges, in continuing violation of the said Final Order dated 16th May, 2017.



For Rajlakshmi Minerals
Sudhakar Jolu
Authorised Signatory



O. In the aforesaid circumstances, the Petitioner, through its advocates, were constrained to address a further letter dated 28th July, 2017 *alia* once again requesting that the payments of the outstanding principal amounts as also the outstanding delayed payment charges (both of which were once again more particularly quantified therein) be made to the Petitioner within one week from the receipt of that letter. A copy of the said letter dated 28th July 2017 (without the annexures thereto) together with the proof of service thereof is produced herewith as Annexure "T".

P. Regrettably, no response whatsoever was received by the Petitioner to even the said letter dated 28th July 2017. However, to the Petitioner's complete shock and surprise, instead of complying with the said Final Order dated 16th May, 2017, the Respondent adopted the practice of making selective payments only to those wind power producers who submitted an undertaking, thereby waiving any and all rights to delayed payment charges under their respective agreements with the Respondent. In fact, the Petitioner was in receipt of one such draft undertaking in or around October, 2017 ("Draft Undertaking"). From a perusal of the contents of the Draft Undertaking, it would appear that if the Draft Undertaking was executed, the same would amount to a complete waiver of the Petitioner's right to delayed payment charges, which were of a significant quantum. The Draft Undertaking *inter alia* stated as follows:

2. *Considering our Agreement with MSEDCL, I / We hereby declare and voluntarily undertake and assure that I / We have off 100% (Hundred Percent) of Delayed payment Surcharge amount, against outstanding dues in respect of all invoices raised for generation of power from our wind generators, having due date upto 30.6.2017 or corresponding to generation of power upto 31st March, 2017. This waiver is applicable for payments received till 30.9.2017.*

For Rajlakshmi Minerals
Sudhishka Soli
Authorised Signatory



3. I / We further undertake that I / We or our successor on our behalf will not claim this waived-off Delayed Payment Surcharge amount in future and I / We understand that the Invoices upto 30.6.2017 or generation of power from our wind generators upto 31st March 2017 will be fully paid and sealed after receipt of amount from MSEDCL.

A scanned copy of the Draft Undertaking as received by the Petitioner is produced herewith as Annexure "U".

Q. The Petitioner, being unwilling to waive it's right to delayed payment charges, refused to sign the Draft Undertaking. However, the Petitioner learnt that various other wind power producers complied with the arm-twisting tactics of the Respondent and provided undertakings in the format provided in the Draft Undertaking. To the Petitioner's complete shock and surprise, it appears that these wind power producers received payments from the Respondent for their pending invoices for the months of August, 2016 to October, 2016. At the same time, however, the Respondent arbitrarily and *mala fide*ly did not release any monies whatsoever to the Petitioner, in blatant disregard and disobedience of the said Final Order dated 16th May, 2017.

R. In the aforesaid circumstances, the Petitioner, through its advocates, addressed a further letter dated 3rd November 2017 *inter alia* once again requesting that the payments of the outstanding principal amounts as also the outstanding delayed payment charges (both of which were once again more particularly quansified therein) be made to the Petitioner within one week from the receipt of that letter. By this letter, the illegal and *mala fide* actions of the Respondent in deliberately singling our the Petitioner for not providing the undertaking, and accordingly omitting to release the payments due to the Petitioner were also recorded. A copy of the said letter dated 3rd November, 2017 (without the annexures

For Rajlaxhmi Minerals
Sudhinda Joshi
Authorised Signatory



thereto) together with the proof of service is produced herewith as Annexure "V".

S. Regrettably, neither was any response whatsoever received by the Petitioner to the said letter dated 3rd November, 2017 nor were any further monies remitted to the Petitioner towards the outstanding principal amounts as also the outstanding delayed payment charges. In the circumstances, the Petitioner was constrained to file Case No. 177 of 2017 ("Contempt Petition") under Sections 142 and 146 read with Section 149 of the Electricity Act, 2003 before this Hon'ble Commission, being aggrieved by the continuing, intentional and *maia-fide* non-compliance by *inter alia* the Respondent with the said Final Order dated 16th May, 2017. A copy of the petition in Case No. 177 of 2017 (without the annexures thereto) is produced herewith as Annexure "W".

T. By its Notice dated 20th December, 2017, this Hon'ble Commission was pleased to direct the Petitioner to serve a copy of the Contempt Petition upon *inter alia* the Respondent, and was also pleased to record that the hearing of the Contempt Petition would take place on 2nd November, 2018. A copy of the Notice dated 20th December, 2017 issued by this Hon'ble Commission is produced herewith as Annexure "X".

U. In compliance with the said Notice dated 20th December, 2017, the Petitioner duly served a copy of the Contempt Petition upon *inter alia* the Respondent on or around 21st December, 2017/ 22nd December, 2017. A scanned copy of the letter dated 21st December, 2017 (enclosing therewith the Contempt Petition) is produced herewith as Annexure "Y".



For Rajlakshmi Minerals

Sudhakar Joshi
Authorised Signatory



V. The Respondent only filed its Reply to the Contempt Petition on or around 30th December, 2017. A copy of the Reply filed by the Respondent in the Contempt Petition is produced herewith as Annexure "Z". A bare perusal of this Reply will demonstrate that the Respondent *inter alia* admitted its liability to make payments to the Petitioner towards the principal payments as also the delayed payment charges payable under the said Agreement. However, the Respondent sought to contend that the default was neither deliberate nor intentional. This was in the teeth of the Respondent's conduct *inter alia* including in making payments only to those entities who had executed undertakings in favour of the Respondent.

W. On 2nd January, 2018, after hearing the parties, this Hon'ble Commission was pleased to reserve the Contempt Petition for final orders. This Hon'ble Commission was further pleased to direct the Petitioner and the Respondent to sit together and reconcile the statement of accounts and submit a report within two weeks therefrom. A copy of the said Daily Order dated 2nd January, 2018 passed by this Hon'ble Commission in the Contempt Petition is produced herewith as Annexure "AA".

X. Pursuant to the directions issued by this Hon'ble Commission, the Petitioner and the Respondent reconciled the accounts on 15th January, 2018. In fact, at this time, the Respondent represented that it would make payments of the amounts towards the delayed payment charges due and payable till April, 2017. It was also represented to the Petitioner that the Respondent would make payments of the principal amounts outstanding as per the availability of funds. The Respondent proceeded to record the aforesaid in the Joint Reconciliation Statement dated 15th January,



For Rajlakshmi Minerals

Sudhinda Sooki
Authorised Signatory



2018, which was filed on or around 17th January, 2018 with this Hon'ble Commission. Significantly, a bare perusal of the said Joint Reconciliation Statement dated 15th January, 2018 will indicate that the Respondent acknowledged and accepted that the Petitioner was not giving up its right in respect of its claim. A copy of the said Joint Reconciliation Statement dated 15th January, 2018, executed by both the Petitioner and the Respondent is produced herewith as Annexure "BB". In fact, the Respondent proceeded to make payments of the delayed payment charges due and payable till April, 2017 only on 16th January, 2018. The Petitioner craves leave to refer to and/ or rely on the documents reflecting the same as also the correspondence exchanged between the parties while arriving at the said Joint Reconciliation Statement dated 15th January, 2018, when produced.

Y. In view of the aforesaid reconciliation (as also the part-payment made by the Respondent), this Hon'ble Commission was pleased to record in its Order dated 18th January, 2018 that it was not inclined to take action against *inter alia* the Respondent under the Electricity Act, 2003, and accordingly disposed of the Contempt Petition. A true copy of the Order dated 18th January, 2018 passed by this Hon'ble Commission in the Contempt Petition is produced herewith as Annexure "CC".

14. Significantly, the aforesaid proceedings only dealt with invoices raised prior to May, 2017. However, there was no deliberation and/ or adjudication whatsoever in respect of invoices raised from May, 2017 onwards by the Petitioner - both towards principal amounts as also delayed payment charges, as there could never have been. Significantly, despite being directed to make payments towards interest on the delayed

For Rajlakshmi Minerals
Sudhinda Joshi
Authorised Signatory



payment charges by the Final Order dated 16th May, 2017, the Respondent has failed to make payments of the same till date.

15. Much to the shock and dismay of the Petitioner, despite having submitted the necessary monthly electricity bills and despite the consumption of the electricity generated by the Petitioner, the Respondent has once again failed to honour its contractual commitments and has miserably failed in making timely payments to the Petitioner. This is consistent with the earlier *mala fide* conduct of the Respondent, as set out hereinbefore. Significantly, once again, the Respondent has neither raised any complaints nor objections whatsoever with respect to the electricity bills raised by the Petitioner, as it could never have. It appears that the Respondent's failure to make the payments towards the principal amounts as also the delayed payment charges is actuated by *mala fides*, much to the detriment of the Petitioner.

16. The Respondent has not only delayed the payment of contractual dues to the Petitioner, but in respect of several months, has not bothered to make any payments whatsoever for the electricity consumed by it. Noticing the breach of the terms of the said Agreement, the Petitioner has approached the office of the Respondent to request that contractual dues owed to the Petitioner be paid at the earliest so that the Petitioner could continue to operate the said Power Plant. In these discussions, the Petitioner highlighted the urgency in the release of the payments owed to them so as to enable them to continue the operation of the said Power Plant and thereby guarantee the supply of the electricity to the Respondent. The Respondent always assured the Petitioner that the amount due to the Petitioner would be released in due course, however they did not give any concrete proposal or assurance as to the date and manner of such payment.



For Rajlakshmi Minerals
Sudhakar Joshi
Authorised Signatory



17. The Petitioner was once again shocked to realize that despite the Respondent's assurances that amounts would be remitted to it, no payments were being released to it, and the Respondent once again failed to honour the commitments made to the Petitioner. In these circumstances, the Petitioner was constrained to issue a letter dated 20th May, 2018 reminding the Respondent of the contractual dues owed to it and requesting the same to be cleared at the earliest. As on the date of the said letter dated 20th May, 2018, the Petitioner demanded the payment of Rs. 3,16,01,207/-, the particulars whereof are more particularly set out therein. A true copy of the letter dated 20th May, 2018 (together with the annexures thereto) together with the relevant Speed Post acknowledgement evidencing the delivery of the said letter on the Respondent is produced herewith as Annexure "DD".
18. The Respondent failed to respond to the said letter dated 20th May, 2018 and/ or take any action whatsoever pursuant to the receipt thereof. Accordingly, the Petitioner was constrained to address a further letter dated 16th July, 2018 to the Respondent *inter alia* once again demanding that the contractual dues owed to it be paid at the earliest. A true copy of the letter dated 16th July, 2018 together with the relevant Speed Post acknowledgement evidencing the delivery of the said letter on the Respondent is produced herewith as Annexure "EE".
19. Despite the issuance of the said reminder letters dated 20th May, 2018 and 16th July, 2018 (and the receipt thereof), the Respondent failed to respond to the same. Accordingly, the contents thereof remain uncontroverted till date. The Respondent also failed to remit any monies whatsoever to the Petitioner towards (i) principal amounts under the electricity bills raised; (ii) the delayed payment charges; and/ or (iii) the interest on the delayed payment charges. In the circumstances, the Petitioner, through its Advocates, was once again constrained to address a letter dated 13th

For Rajlakshmi Minerals
Sudhinda Joshi
Authorised Signatory



October, 2018, calling upon the Respondent to remit an amount of Rs. 5,96,74,734/- as was due and payable to the Petitioner as on that date. It was also recorded that the Petitioner was being singled out in this regard, seemingly on account of its failure to execute the aforesaid Draft Undertaking in favour of the Respondent. A true copy of the letter dated 13th October, 2018 (together with the Annexures thereto) together with the relevant Speed Post acknowledgement evidencing the delivery of the said letter on the Respondent is produced herewith as Annexure "FF". The Petitioner (nor its Advocates) have received a response to this letter dated 13th October, 2018 till date.

20. Significantly, it was only on 1st January, 2019 that an amount of Rs. 2,17,89,095/- was remitted by the Respondent to the Petitioner. In fact, this amount was towards the said electricity bills raised by the Petitioner between May, 2017 and September, 2017. It is apposite to note that this payment was made towards the said electricity bills which were almost 12-18 months overdue. The Petitioner has come to learn that this payment was received belatedly, despite other wind energy power producers (particularly those who had executed undertakings in favour of the Respondent) having received timely payments on a consistent basis. The Petitioner craves leave to refer to and/ or rely on the documents evincing this payment of Rs. 2,17,89,095/- by the Respondent to the Petitioner towards the said electricity bills raised by the Petitioner between May, 2017 and September, 2017, when produced.

21. It is clear that the Respondent has remitted the aforesaid amount only after the receipt of the said letters dated 20th May, 2018; 16th July, 2018; and 13th October, 2018, thereby *inter alia* admitting the amounts due and payable by the Respondent to the Petitioner. Despite the aforesaid payment, there are significant amounts due and payable by the Respondent, as more particularly quantified hereinbelow, which remain

For Rajlaxhmi Minerals
 Sudeepa Joshi
 Authorised Signatory



287
28

outstanding till date. This failure of the Respondent to clear all its dues qua the Petitioner demonstrates that while amounts are admittedly and unequivocally due and payable to the Petitioner, no *bona fide* action whatsoever has been taken by the Respondent to amicably settle the issues raised in the present Petition (except for the amount belatedly received by the Petitioner on 1st October, 2019) *inter alia* including by making the payments to the Petitioner, in a timely manner or even otherwise.

22. It is apposite to note that the following amounts are due and payable by the Respondent to the Petitioner as on 10th January, 2019, under *inter alia* the said Agreement, the said monthly electricity bills and the Order dated 16th May, 2017 passed by this Hon'ble Tribunal:

Sr. No.	Details	Amount (INR)
1.	Principal amount due and payable in respect of the said monthly electricity bills.	3,59,90,095/-
2.	Delayed Payment Charges due and payable in lieu of the delay in making payments in respect of the said monthly electricity bills.	57,71,312/-
3.	Interest due and payable in lieu of the delay in making payments in respect of the Delayed Payment Charges.	17,77,160/-
TOTAL		4,35,38,567/-

23. It is therefore apparent that the Respondent herein is liable to pay to the Petitioner a total amount of Rs. 4,35,38,567/- (Rupees Four Crore Thirty Five Lakh Thirty Eight Thousand Five Hundred Sixty Seven Only) as on 10th January, 2019. A table reflecting/ summarising the principal amount



For Rajlakshmi Minerals

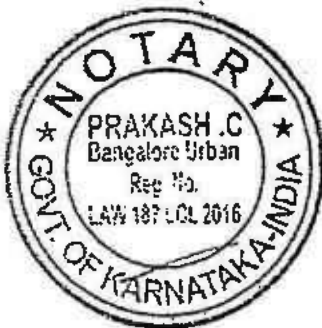
Sudhakar Joshi
Authorised Signatory



of Rs. 3,59,90,095/- due and payable in respect of the said monthly electricity bills is produced herewith as Annexure "GG". A table reflecting/ summarising the Delayed Payment Charges of Rs. 57,71,312/- due and payable in lieu of the delay in making payments in respect of the said monthly electricity bills is produced herewith as Annexure "HH". A table reflecting/ summarising the interest of Rs. 17,77,150/- due and payable in lieu of the delay in making payments in respect of the Delayed Payment Charges Delayed Payment Charges is produced herewith as a part of Annexure 'HH' and Annexure "II".

24. It is humbly submitted that the non-payment of this sum by the Respondent to the Petitioner, is not only a flagrant breach of the terms of the said Agreement, but also causes immense financial hardship to the Petitioner. In fact, the non-payment of the aforesaid amounts by the Respondent caused the Petitioner tremendous difficulty in servicing the Term Loan obtained by the Petitioner from the State Bank of India for an amount of Rs. 15,00,00,000/- (Rupees Fifteen Crore Only). The Petitioner was able to service this Term Loan by digging into its own reserves, no thanks to the Respondent's *mala fide* conduct.

25. It is also pertinent to note that the Petitioner has contracted the service of M/s Gamesa Wind Turbines Pvt. Ltd. ("the said Gamesa"), for the operation and maintenance of the said Power Plant. It is humbly submitted that under the said operation and maintenance agreement in respect of the said Power Plant, the Petitioner is obligated to make payments amounting to approximately Rs. 33,07,500/- per annum towards the operation, maintenance and upkeep of the wind turbines by the said Gamesa. Copies of the operation and maintenance agreements in respect of the said wind power plants are produced herewith as Annexures "JJ" and "KK" respectively. It is humbly submitted that in view of the fact that the Respondent has failed to honour its contractual dues, the Petitioner is



For Rajlakshmi Minerals

Sudhakar Joshi
Authorised Signatory



under immense financial pressure as it continues to make payments to the said Gamesa, for the operation and maintenance of the said Power Plant, without any corresponding payment from the Respondent for the electricity generated therefrom. It is therefore submitted that the failure of the Respondent to make payments under the said Agreement is not only an express breach of the contractual stipulations as contained in the said Agreement, but has also placed the Petitioner in financial difficulty.

26. It is pertinent to note that the Hon'ble Supreme Court of India as well as this Hon'ble Commission, in a catena of judgements have consistently held that State authorities cannot fail in making contractual payments and must be fair in their commercial dealings. The Hon'ble Supreme Court of India has also repeatedly held that the State is duty bound to pay the contractual agreed rate of interest, where the State authority has failed in making timely payments, as is required under the terms of the contract. This is evident *inter alia* in the Order passed by the Hon'ble Supreme Court of India in *Chairman, Tamil Nadu Electricity Board v. M/s Indian Wind Power Association and Ors.* (Civil Appeal 2397 of 2014). In this judgment, the Hon'ble Supreme Court of India was pleased to direct the Electricity Board to pay interest on the delayed payments made by it, at the contractually agreed rate. The Petitioner craves leave of the Order passed by the Hon'ble Supreme Court of India in *Chairman, Tamil Nadu Electricity Board v. M/s Indian Wind Power Association and Ors.* (Civil Appeal 2397 of 2014), when produced. It is respectfully submitted that the earlier orders passed by this Hon'ble Tribunal (*inter alia* including on 16th May, 2017) in respect of the Petitioner's disputes with the Respondent, in identical/ analogous circumstances, will also be of assistance to this Hon'ble Tribunal in adjudication of the present Petition.

27. Having no other recourse, the Petitioner is constrained to file the present Petition before this Hon'ble Commission seeking payment of the amounts

For Rajlakshmi Minerals
Rudhira Jodi
Authorised Signatory



due to it under the said Agreement executed with the Respondent. It is humbly submitted that the Respondent, being a *distribution licensee* under the Electricity Act, 2003, and being a Public Utility Service for the benefit of the public at large, cannot be allowed to consume and make use of electricity generated by the Petitioner and fail in making any payments towards the utilization of such energy. It is further submitted that, it is most unbecoming of a State Authority to make use of goods delivered to it for the benefit of the larger public and deliberately, with *mala fide* intent, fail to make requisite contractual payments for the use of such goods. In these circumstances, the intervention of this Hon'ble Commission is sought in the manner as prayed for.

28. Moreover, it is clear that the Respondent is a persistent defaulter insofar as the Petitioner is concerned. In fact, any payments remitted by the Respondent is seemingly only on the threat of adverse legal consequences befalling it in the proceedings initiated by the Petitioner. It is respectfully submitted that no entity, let alone the State, can act in such an arbitrary and *mala fide* manner. In fact, the Petitioner is constrained to consistently approach this Hon'ble Tribunal for the redressal of its grievances (including by incurring significant costs and legal expenses towards the same), although the release of payments for the electricity utilised by the Respondent ought to be the bounded duty and obligation of the Respondent.

29. In view of the aforesaid facts and circumstances, it is respectfully submitted that the balance of convenience is in favour of the Petitioner and against the Respondent. The Petitioner submits that grave harm and/ or prejudice and/ or loss would be caused to the Petitioner if the Respondent continues to fail to remit the amounts due and payable to it. It is respectfully submitted that the Petitioner, having supplied 100% of the electricity generated by it to the Respondent, is now unable to reap the



For Rajlakshmi Minerals
Rajlakshmi Minerals
 Authorised Signatory



rewards for its labour. On the other hand, no harm and/ or prejudice whatsoever would be caused to the Respondent, if the reliefs as sought are granted.

30. **Jurisdiction:** It is humbly submitted that the present dispute is a dispute between a *generating company* and a *distribution licensee* and as such this Hon'ble Commission is fully empowered to hear and decide the present dispute under Sections 86(1)(e) and 86(1)(f) of the Electricity Act, 2003. It is further submitted that the Clause 16.02 of the said Agreement confers jurisdiction on this Hon'ble Commission to hear and decide disputes arising out of the Energy Purchase Agreement executed between the Petitioner and the Respondent.
31. **Court Fee:** The Petitioner has paid an amount of Rs. 5,00,00 (Rupees ~~One Lakh~~ Fifty ~~thousand~~ Only) towards the applicable Court Fee in relation to the institution of the present Petition.
32. The Petitioner has not approached either this Hon'ble Commission or any other Commission and/ or judicial fora for the same reliefs.
33. **Limitation:** It is respectfully submitted that the first invoice in respect of which payment has been delayed is of October, 2017 and all other invoices in respect of which payments have been delayed and/ or not paid were issued thereafter. Moreover, the Delayed Payment Charges due and payable by the Respondent are in respect of the said monthly electricity bills raised from May, 2017 onwards. Further, the interest on the Delayed Payment Charges payable by the Respondent to the Petitioner is in lieu of the Order dated 16th May, 2017 passed by this Hon'ble Tribunal. Hence, it is humbly submitted that the present Petition has been filed well within the time limit prescribed under the Limitation Act, 1963.



For Rajlakshmi Minerals
Siddhanta Joshi
Authorised Signatory



PRAYER

Wherefore in the circumstances aforesaid, the Petitioner humbly prays that this Hon'ble Commission be pleased to issue the following directions:

- A. Direct the Respondent to pay a sum of Rs. 3,59,90,095/- towards the principal amounts for electricity generated by the Petitioner in respect of the said monthly electricity bills raised from October, 2017 to October, 2018, as more particularly set out in Annexure 'GG' hereto;
- B. Direct the Respondent to pay a sum of Rs. 57,71,312/- to the Petitioner as delayed payments in respect of the months of May, 2017 to October, 2018, as more particularly set out in Annexure 'HH' hereto;
- C. Direct the Respondent to pay a sum of Rs. 17,77,160/- to the Petitioner as interest on delayed payment charges, as more particularly set out in Annexures 'HH' and 'II' hereto;
- D. Direct the Respondent to comply with the terms of the Wind Energy Purchase Agreement dated 20th August, 2014 for the duration thereof, including by honouring its commitments thereunder;
- E. Direct the Respondent to pay interest *pendente-lite* till the eventual payment of the sum at the rate of 1.25% per month;
- F. Pending the hearing and final disposal of the present Petition, this Hon'ble Commission be pleased to direct the Respondent to deposit a sum of Rs. 4,35,38,567/- or such other amount as this Hon'ble Commission may deem fit in this Hon'ble Commission;
- G. For ad-interim reliefs in terms of prayer clause (F);



For Rajlaxhmi Minerals
Sudhakar S. S. S.
Authorized Signatory



H. For costs; and

I. For such other and further reliefs as this Hon'ble Commission may deem fit and proper in the nature and circumstances of the present Petition.

Prakash C Kapady

KEYSTONE PARTNERS
ADVOCATES & SOLICITORS
Advocates for the Petitioner
Office Nos. 311-312, 3rd Floor,
Hari Chambers, 58/64,
Shahid Bhagat Singh Road,
Fort, Mumbai 400 001.
Advocate Code No. I-2098
O.S. Code I-8929

For Rajlakshmi Minerals

Sudhindra Joshi
Authorized Signatory
RAJLAKSHMI MINERALS

Petitioner
(Through the hands of its
Authorized Representative, Mr.
Sudhindra V. Joshi)



VERIFICATION

I, Mr. Sudhindra V. Joshi, the Authorized Representative of the Petitioner, having my office at D. No. 1499/1, PO Box No. 38, Post Hospet 583 201, Bellary District, Karnataka, do hereby on solemn affirmation say and submit that what is stated in the foregoing paragraphs of the present Petition is true to my knowledge and belief, save and except the legal submissions which are based on legal advice and I believe the same to be true.

Dated this 9th day of January, 2019

Place: Bangalore

Prakash C Kapady

KEYSTONE PARTNERS
ADVOCATES & SOLICITORS
Advocates for the Petitioner
Office Nos. 311-312, 3rd Floor,
Hari Chambers, 58/64,
Shahid Bhagat Singh Road,
Fort, Mumbai 400 001.
Advocate Code No. I-2098
O.S. Code I-8929

For Rajlakshmi Minerals

Sudhindra Joshi
Authorized Signatory
RAJLAKSHMI MINERALS

Petitioner
(Through the hands of its
Authorized Representative, Mr.
Sudhindra V. Joshi)



True Copy

94

Enclosure A-4

**BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY REGULATORY
COMMISSION**

AT MUMBAI

Case No. 26 of 2019



IN THE MATTER OF:

Petition of M/s Rajlakshmi Minerals against Maharashtra State Electricity Distribution Company Ltd. under Section 86 (1) (f) for adjudication of dispute on the issue of Pay the outstanding payments of power purchases in time as per PPA and Late payment surcharge on delayed payment for wind power supplied by It to MSEDCL.

AND

IN THE MATTER

M/s Rajlakshmi Minerals Petitioner
Post Box No. 38, Post Hospet 583201,
Bellary District, Karnataka.
E-mail: rbsnwindpower@rbsn.com / rbsnwindpower@gmail.com

Versus

Maharashtra State Electricity Distribution Co. Ltd
5th Floor, Plot No G-9, Station Road,
Prakashgad, Bandra (East),
Mumbai- 400 051 Respondent

True copy

Affidavit In Reply On Behalf Of Respondent (MSEDCL):

I, Kavita K. Gharat, aged 41 years, Chief Engineer (Renewable Energy) of the Respondent, having my office at MSEDCL, Prakashgad, Bandra (East), Mumbai- 400 051, do hereby solemnly affirm and state as under;

I say that I have read the copy of the petition and I have perused the relevant records pertaining to the above matter as available in the office of MSEDCL as such I am conversant with the present case so as to depose to the same.

That the submission is being filed on behalf of Respondent MSEDCL and all allegations made inconsistent with the records of the present case are denied in entirety and nothing stated herein below shall be deemed to be admitted unless the same has been admitted thereto specifically. The answering Respondent seeks the liberty of this Hon'ble Commission to file additional submission, if required.

**SUBMISSION ON BEHALF OF RESPONDENT (MSEDCL) TO THE PETITION FILED BY THE PETITIONER:****MOST RESPECTFULLY SHOWETH:**

1. At the very outset the Respondent most respectfully submits that MSEDCL has always obeyed and complied with the Orders of this Hon'ble Commission. MSEDCL respectfully submits that it always endeavor to make the payment of Wind Generators in-time. MSEDCL has submitted its payment plan to MERC for clearing the outstanding dues as on March-18 by March-19 and MSEDCL is following the same.
2. It is submitted that petitioner in its petition has claimed the Principal amount of Rs. 3,59,90,095/- from the Oct-17 to Oct-18 generation month. It is submitted to the Hon'ble Commission that MSEDCL has paid the principal amount of Rs. 2,17,89,095/- from May-17 to Sept-17 Generation month as per payment plan submitted by MSEDCL.
3. MSEDCL has made payment as per the payment plan submitted to MERC, the prayer of the petitioner for the principal amount for further period beyond payment plan now became infructuous and hence,

Petition may be dismissed. It is also submitted that remaining payment for dues from Oct 17 to March 18 will be made as per the availability of funds on best effort basis.

4. Further, in addition to that as per MERC order dated 18th Jan 2018 in case no 177 of 2017 MSEDCL had calculated DPC and released DPC of Rs. 21,43,829/- on dated 31.12.2017 and DPC of Rs. 48,02,416 on dated 16.01.2018 to petitioner for the generation month March 14 to March 17. Thus, the prayer of the Petitioner for demanding DPS amount is also infructuous and hence, Petition may be dismissed.
5. MSEDCL respectfully submits to the Hon'ble Commission that MSEDCL is trying to clear the outstanding payment of wind generators as per the payment plan and availability of funds. Accordingly, MSEDCL has made total payment of Rs. 1524 Crs upto Sep-2017 generation. Also, MSEDCL paid around Rs. 2965 Cr after submission of payment plan to MERC i.e. from Sep-2018 to Dec-2018.
6. MSEDCL submits that as per section 86(f) of Indian Electricity Act, Commission adjudicate upon dispute between the Licensee and Generators. However, MSEDCL never disputes the liability of the Petitioner and hence in absence of any dispute, the Hon'ble Commission is requested not to entertain such petition which is out of jurisdiction and in fact, it is a civil dispute.
7. MSEDCL respectfully submits to the Hon'ble Commission that the delay in payment is neither deliberate nor intentional and is solely attributable to the financial constraints of MSEDCL which has been arises due to increase in revenue gap and shortfall in collection as per ARR and MSEDCL has never willingly delayed payment of generator.
8. MSEDCL further submit that from past many years in the state, agricultural consumers are not paying bills on time. Similarly, the arrears of government departments for supply electricity to public water Works and Street light consumers category are accumulated. Hon'ble Commission has allowed provision for bad debts of 1.5% of receivables in MERC MYT regulation in spite of having largest agricultural consumer base and rural areas covered which has less prospective to pay on time.



However, more than 85% arrears are attributable to agricultural and Government department dues against supply of electricity. Moreover out of total sales 30% sales are agriculture sales. Thus, the fund availability of MSEDCL is getting affected due to the less probability of collection from particular agricultural consumers. Hence, it may not be always possible to MSEDCL to make timely payments to the Petitioner.

9. MSEDCL further submits that it has already taken up the matter through petition for revision of wind zone classification to review the wind zone classification of generators who are availing the benefit of higher tariff although they are falling in low wind zone tariff category as per actual generation data.

10. MSEDCL respectfully submits to Hon'ble Commission that MSEDCL has also fulfilled its all cumulative Non solar RPO target till FY 17-18 MSEDCL and its consumers.

11. Also it is to submit that as per Commission's order of Wind generators for financial year 2017-18 long term PPAs are signed for a period of 13 years only although their useful life is 20 years resulting into higher tariff payable by MSEDCL to the Wind generators as compared to other states. The state wise comparison of Wind generator tariff for FY 2017-18 is as shown below:

(Rs. Per unit)

State	Maharashtra	Gujarat	Tamil Nadu	Madhya Pradesh	Andhra Pradesh	Karnataka
Wind Zone	Zone 1	5.42	4.92	4.72	4.19	4.16
	Zone 2	4.75	4.33	4.16	3.7	4.78
	Zone 3	3.96	3.61	4.76	4.35	3.74
	Zone 4	3.71	3.38			



Also, MSEDCL bring to the notice of Hon'ble commission that after expiry of PPA term of 13 years, Wind generators are not willing to sell power to MSEDCL due to lower tariff. Further, as per directives of Hon'ble Commission, MSEDCL has carried out bidding process for procurement of Wind power post expiry of EPA. However, no wind generator has participated in the tender process even after extending

bid date twice. These wind generators are trying to sell power under open access at higher rate directly to bulk consumers.

12. However it is to humbly submit that with present wind generators payment structure and attitude of frequently filing the petition against MSEDCL it is posing problem to MSEDCL and it's consumers.

13. In view of above, MSEDCL once again request to Hon'ble Commission to dismiss this petition & such similar petitions and may give option to MSEDCL to terminate the PPA of the Petitioner & such other wind generators as at present there are no funds available with MSEDCL for payment of DPS to them.

14. The Respondent craves leave of this Hon'ble Commission to file additional submissions/replies, etc. including but not limited to the question of law involved in the present matter as well as calculation of amount if directed by this Hon'ble Commission on a subsequent date.

Contents of the abovementioned paragraphs of this Affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Place: Mumbai
Date: 11/12/2019

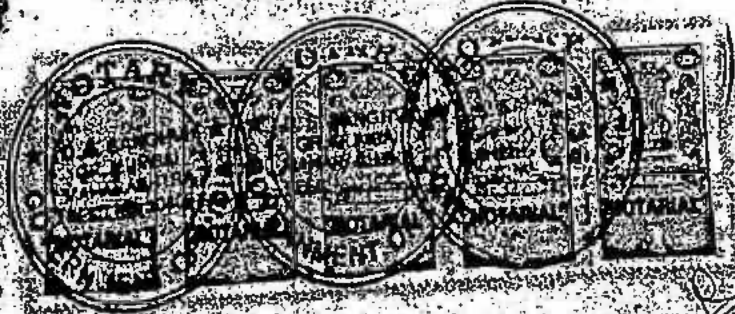
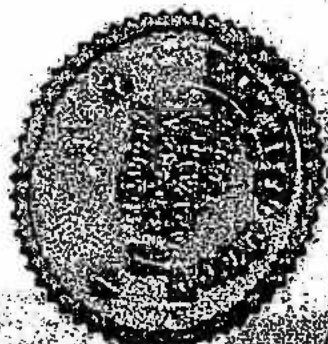
Chharat
Chief Engineer (Renewable Energy)
MSEDCL (Respondent)

BEFORE ME

Hon'ble Notary

DIVYA S. SANGHVI
NOTARY GOVT. OF INDIA
GREATER MUMBAI
REGD. NO. 10408

Reg. Sr. No. 299
Date: 12/3/2019



True copy

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY,

AT NEW DELHI

APPELLATE JURISDICTION

I.A. NO. _____ OF 2019

IN

APPEAL NO. _____ of 2019

In the matter of:

Maharashtra State Electricity Distribution
Company Ltd.

...Appellant

V/s.

Maharashtra
Central Electricity Regulatory Commission
& Ors.

...Respondents

APPLICATION SEEKING AD-INTERIM STAY OF THE
IMPUGNED ORDER DATED 26.03.2019 UNDER RULE 30 OF
THE APPELLATE TRIBUNAL FOR ELECTRICITY
(PROCEDURE, FORM, FEE AND RECORD OF
PROCEEDINGS) RULES, 2007

1. The accompanying Appeal has been preferred by the Appellant against an interim order dated 26.03.2019 ("*Impugned Order*") passed by Ld. MERC ("*Ld. Commission*") in Case No. 26 of 2019 ("*said case*") which was preferred by the Respondent No. 2 herein wherein the Ld. MERC has *inter alia* held that 1.25% interest shall be levied as penal interest every month, in addition to the penalty in the form of "Delayed Payment Charges" ("DPC") for late payment of outstanding bills by MSEDCL. The said impugned order is completely erroneous

as it fails to take note of the fact that there cannot be a double penalty in the form of interest i.e., one on the form of DPC and the other in the form of penal interest.

2. The Appellant refers and relies the contents of the accompanying appeal and states that the same may be read as part and parcel of the present application, which is not being repeated herein for the sake of brevity.
3. That vide present application, the Appellant herein is seeking the following reliefs, on the grounds enumerated in the paragraphs herein below:
 - (a) grant ad-interim stay of the impugned order dated 26.03.2019 passed by the Ld. MERC in Case No. 26 of 2019 limited to the extent it imposes additional 1.25% penal interest per month over and above the DPC; and/or
 - (b) pass such other Order(s) as this Hon'ble Tribunal may deem just and proper.
4. The Appellant submits that the Ld. MERC vide impugned order had held that 1.25% interest shall be levied as penal interest every month, in addition to the penalty in the form of "Delayed Payment Charges" ("DPC") for late payment of outstanding bills by MSEDCL. The said impugned order is completely erroneous as it fails to take note of the fact that there cannot be a double penalty in the form of interest i.e., one on the form of DPC and the other in the form of penal interest..

5. That the Ld. MERC had completely failed to consider the financial implication of the same upon the Appellant herein, as the said imposition cannot also made part of tariff via pass through mechanism.
6. Therefore, in view of the above, if the impugned order is not stayed, then the same would gravely impact the financial and economical position of the Appellant, and would also burden the Appellant herein with obligation of payment of interest, imposition of which otherwise has been challenged in the present appeal.
7. Hence, balance of convenience also lies in favour of the Appellant herein as compared with the interest in question of the Respondent No. 2 as their rights to claim the penal interest has already being taken due care in EPA through DPC.
8. It is further submitted that the Appellant has a strong case to succeed on merits. In view thereof, the present application is being preferred in the interest of justice and equity.

PRAYER

In the facts and circumstances of the case, it is most respectfully submitted that this Hon'ble Court may be pleased to:

- (a) grant ad-interim stay of the impugned order dated 26.03.2019 passed by the Ld. MERC in Case No. 26 of 2019 limited to the extent it imposes additional 1.25% penal interest per month over and above the DPC; and/or

(b) pass such other Order(s) as this Hon'ble Tribunal may deem just and proper.

For Udit Kishan & Associates

For Maharashtra State Electricity Distribution Company Limited


Counsel for the Appellant
Date: 30.03.2019


CHIEF ENGINEER (RE)
M.S.E.D.C.L.
APPELLANT


DECLARATION BY APPELLANT

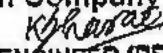
The Appellant above named hereby solemnly declares(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon filed herewith are true copies of the original.

For Udit Kishan & Associates

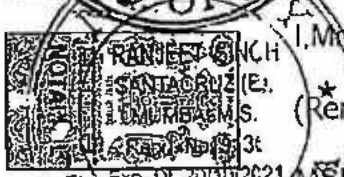
For Maharashtra State Electricity Distribution Company Limited




Counsel for the Appellant
Date: 30.03.2019


CHIEF ENGINEER (RE)
M.S.E.D.C.L.
APPELLANT

VERIFICATION

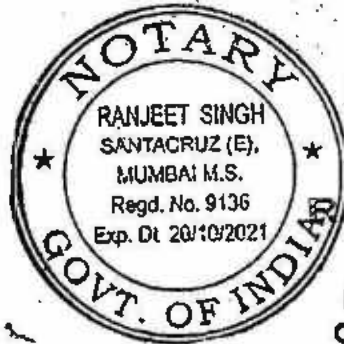
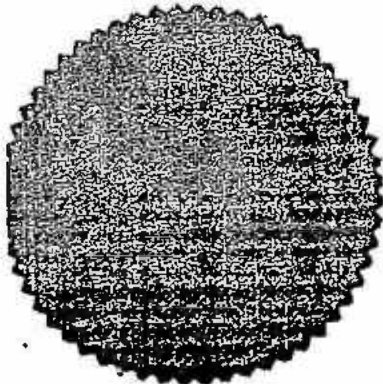


I, Mrs. Kavita K Gharat, age about 41 years, working as Chief Engineer (Renewable Energy), in the Appellant Company and having office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (East), Mumbai 400051 do hereby verify that the contents of accompanying application are believed to be true on legal advice and that I have not suppressed any material facts.




Date: 30.03.2019
Place : Mumbai

For Maharashtra State Electricity Distribution Company Limited



BEFORE ME

RANJEET SINGH
M.Sc.LL.B.
NOTARY
MAHARASHTRA
GOVT OF INDIA
30 MAR 2019


CHIEF ENGINEER (RE)
M.S.E.D.C.L.
APPELLANT

103

BEFORE THE HON'BLE APPELLATE TRIBUNAL FOR

ELECTRICITY, AT NEW DELHI

APPELLATE JURISDICTION

I.A. NO. ____ OF 2019

IN

APPEAL NO. ____ OF 2019



In the matter of:

Maharashtra State Electricity Distribution
Company Limited

... Appellant

VERSUS

Maharashtra Electricity Regulatory Commission & Arr. ... Respondents

AFFIDAVIT

I, Mrs. Kavita K Gharat, age about 41 years, working as Chief Engineer (Renewable Energy), in the Appellant Company and having office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (East), Mumbai 400051, do hereby solemnly affirm and declare on oath as under:-

1. That I am duly authorized by the Appellant Company in the present Appeal to sign and verify the present affidavit and also being well conversant with the facts and circumstances of the case is thus competent to swear this affidavit.
2. I state that I have read and understood the contents of the above application seeking stay of the impugned order dated 26.03.2019 passed by Ld. MERC in Case No. 26 of 2019, which have been

104

drafted under my instruction and I state that the facts stated therein are true to the best of my knowledge and belief.



3. I say that the contents of the above application filed by the Appellant are based on the information available with the Appellant in the normal course of business and believed by me to be true.

For Maharashtra State Electricity Distribution Company Limited

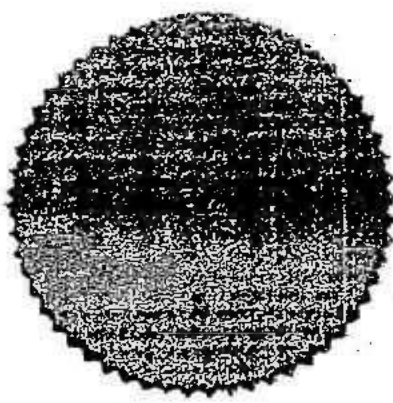
Kpharant
CHIEF ENGINEER (RE)
M.S.E.D.C.L.

DEPONENT

VERIFICATION

Verified at Mumbai on this the 30th day of March, 2019. I, the above-named deponent, do hereby verify that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

For Maharashtra State Electricity Distribution Company Limited



BEFORE ME

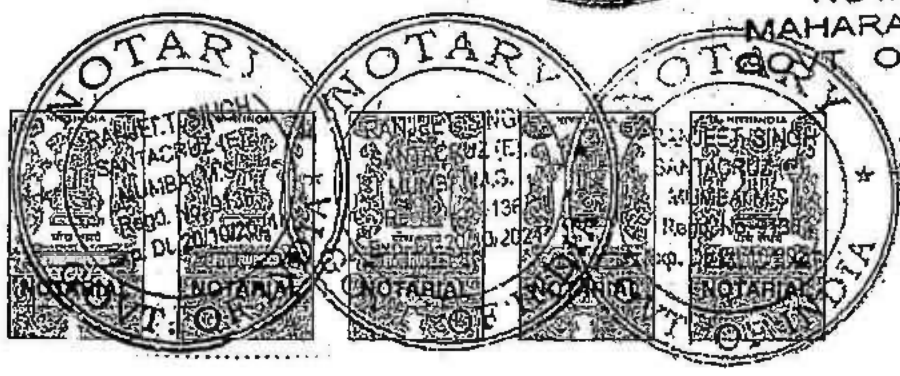
Rn

Kpharant

RANJEET SINGH
M.Sc.L.B.
NOTARY

DEPONENT

MAHARASHTRA Chief Engineer (Renewable Energy)
MSEDCL
Prakashgad, 5th Floor,
Prof. Anant Kanekar Marg,
Bandra (East), Mumbai - 400 051



30 MAR 2019

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY,

AT NEW DELHI

APPELLATE JURISDICTION

I.A. NO. _____ OF 2019

IN

APPEAL NO. _____ of 2019

In the matter of:

Maharashtra State Electricity Distribution

Company Ltd.

...Appellant

V/s.

~~Central~~ Maharashtra
Electricity Regulatory Commission

& Ors.

...Respondents

APPLICATION SEEKING URGENT LISTING OF THE PRESENT
APPEAL UNDER RULE 30 OF THE APPELLATE TRIBUNAL FOR
ELECTRICITY (PROCEDURE, FORM, FEE AND RECORD OF
PROCEEDINGS) RULES, 2007

1. The accompanying Appeal has been preferred by the Appellant against an interim order dated 26.03.2019 ("*Impugned Order*") passed by Ld. MERC ("*Ld. Commission*") in Case No. 26 of 2019 ("*said case*") which was preferred by the Respondent No. 2 herein wherein the Ld. MERC has *inter alia* held that 1.25% interest shall be levied as penal interest every month, in addition to the penalty in the form of "Delayed Payment Charges" ("DPC") for late payment of outstanding bills by MSEDCL. The said impugned order is completely erroneous as it fails to take note of the fact that there cannot be a double penalty in the form of interest i.e., one

on the form of DPC and the other in the form of penal interest.

2. The Appellant refers and relies the contents of the accompanying appeal and states that the same may be read as part and parcel of the present application, which is not being repeated herein for the sake of brevity.
3. That vide present application, the Appellant herein is seeking the following reliefs, on the grounds enumerated in the paragraphs herein below:
 - (a) List the present appeal and the interim application for stay urgently on 12th April, 2019 or such other earliest date as convenient to this Hon'ble Tribunal; and/or
 - (a) pass such other Order(s) as this Hon'ble Tribunal may deem just and proper.
4. The Appellant submits that the Ld. MERC vide impugned order had held that 1.25% interest shall be levied as penal interest every month, in addition to the penalty in the form of "Delayed Payment Charges" ("DPC") for late payment of outstanding bills by MSEDCL. The said impugned order is completely erroneous as it fails to take note of the fact that there cannot be a double penalty in the form of interest i.e., one on the form of DPC and the other in the form of penal interest..
5. That the Ld. MERC had completely failed to consider the financial implication of the same upon the Appellant

herein, as the said imposition cannot also made part of tariff via pass through mechanism.

6. Therefore, in view of the above, if the accompanying appeal for analysing the implication of the directions issued in the impugned orders are not heard urgently and if not stayed, then the same would gravely impact the financial and economical position of the Appellant.
7. Hence, balance of convenience also lies in favour of the Appellant herein as compared with the interest in question of the Respondent No. 2 as their rights to claim the penal interest has already being taken due care in EPA through DPC.
8. It is further submitted that the Appellant has a strong case to succeed on merits. In view thereof, the present application is being preferred in the interest of justice and equity.

PRAYER

In the facts and circumstances of the case, it is most respectfully submitted that this Hon'ble Court may be pleased to:

- (a) List the present appeal and the interim application for stay urgently on 12th April, 2019 or such other earliest date as convenient to this Hon'ble Tribunal; and/or

(b) pass such other Order(s) as this Hon'ble Tribunal may deem just and proper.

For Udit Kishan & Associates

For Maharashtra State Electricity Distribution Company Limited


Counsel for the Appellant


CHIEF ENGINEER (RE)
M.S.E.D.C.L.
APPELLANT

Date: 30.03.2019

DECLARATION BY APPELLANT

The Appellant above named hereby solemnly declares(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon filed herewith are true copies of the original.

For Udit Kishan & Associates

For Maharashtra State Electricity Distribution Company Limited


Counsel for the Appellant


CHIEF ENGINEER (RE)
M.S.E.D.C.L.
APPELLANT

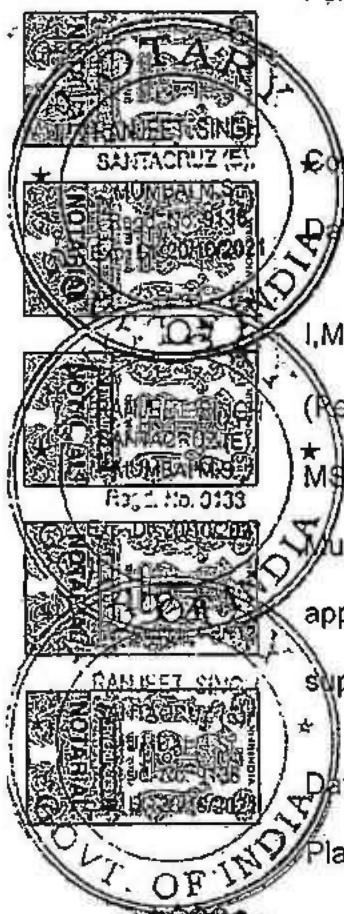
Date: 30.03.2019

VERIFICATION

I, Mrs. Kavita K Gharat, age about 41 years, working as Chief Engineer (Renewable Energy), in the Appellant Company and having office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (East), Mumbai 400051 do hereby verify that the contents of accompanying application are believed to be true on legal advice and that I have not suppressed any material facts:

Date: 30.03.2019


Place : Mumbai

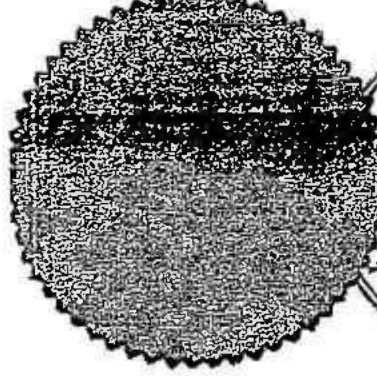


For Maharashtra State Electricity Distribution Company Limited

BEFORE ME

RANJEET SINGH
M.Sc.L.B.
NOTARY
MAHARASHTRA
GOVT OF INDIA
30 MAR 2019


APPELLANT
Chief Engineer (Renewable Energy)
MSEDCL
Prakashgad, 5th Floor,
Prof. Anant Kanekar Marg,
Bandra (East), Mumbai -400 051



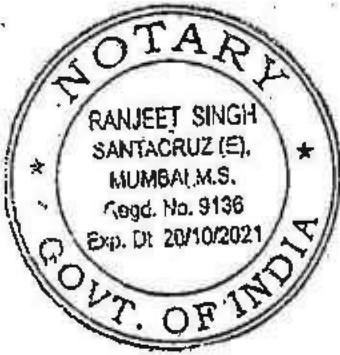
BEFORE THE HON'BLE APPELLATE TRIBUNAL FOR
ELECTRICITY, AT NEW DELHI

APPELLATE JURISDICTION

I.A. NO. ____ OF 2019

IN

APPEAL NO. ____ OF 2019



In the matter of:

Maharashtra State Electricity Distribution
Company Limited

... Appellant

VERSUS

Maharashtra Electricity Regulatory Commission & Anr. ... Respondents

AFFIDAVIT

I, Mrs. Kavita K Gharat, age about 41 years, working as Chief Engineer (Renewable Energy), in the Appellant Company and having office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (East), Mumbai 400051, do hereby solemnly affirm and declare on oath as under:-

1. That I am duly authorized by the Appellant Company in the present Appeal to sign and verify the present affidavit and also being well conversant with the facts and circumstances of the case is thus competent to swear this affidavit.
2. I state that I have read and understood the contents of the above application seeking urgent listing of the present appeal filed against impugned order dated 26.03.2019 passed by Ld. MERC in Case No. 26 of 2019, which have been drafted under my



instruction and I state that the facts stated therein are true to the best of my knowledge and belief.

3. I say that the contents of the above application filed by the Appellant are based on the information available with the Appellant in the normal course of business and believed by me to be true.

For Maharashtra State Electricity Distribution Company Limited



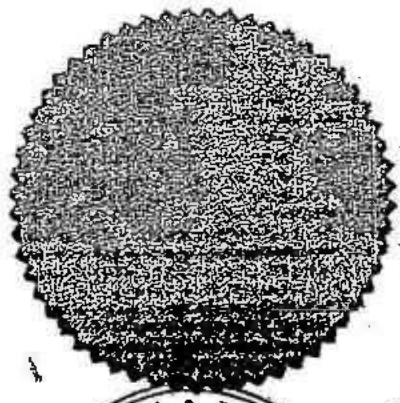
Kharat

DEPONENT

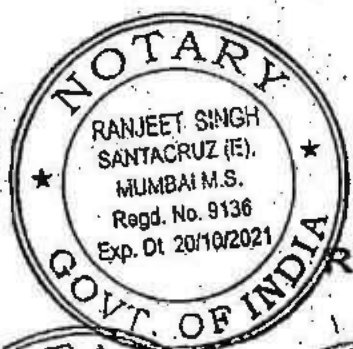
CHIEF ENGINEER (RE)
M.S.E.D.C.L.

VERIFICATION

Verified at Mumbai on this the 30th day of March, 2019. I, the above-named deponent, do hereby verify that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.



For Maharashtra State Electricity Distribution Company Limited



BEFORE ME

Ran

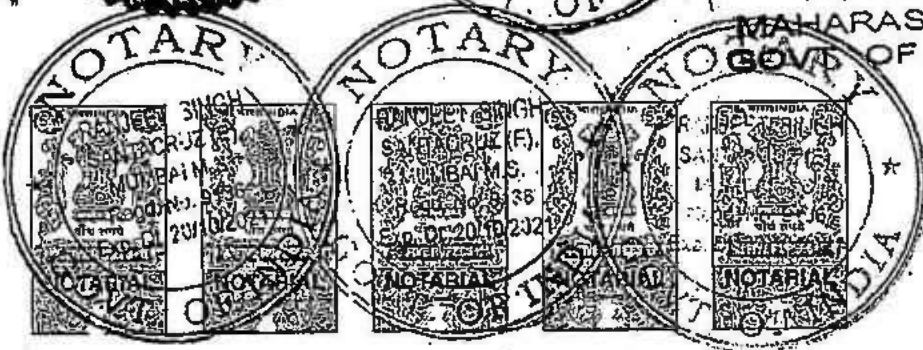
RANJEET SINGH
M.Sc.LL.B.

NOTARY

Kharat
DEPONENT

MAHARASHTRA
GOVT. OF INDIA

Chief Engineer (Renewable Energy)
MSEDCL
Prakashgad, 5th Floor,
Prof. Anant Kanekar Marg,
Bandra (East), Mumbai - 400 051



30 MAR 2019

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY,

AT NEW DELHI

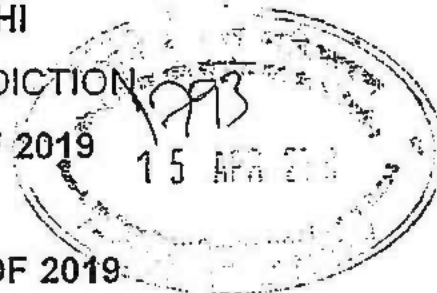
APPELLATE JURISDICTION

I.A. NO. _____ OF 2019

IN

APPEAL NO. ____ OF 2019

[DFR No. 1629 of 2019]



In the matter of:

Maharashtra State Electricity Distribution
Company Ltd.

...Appellant

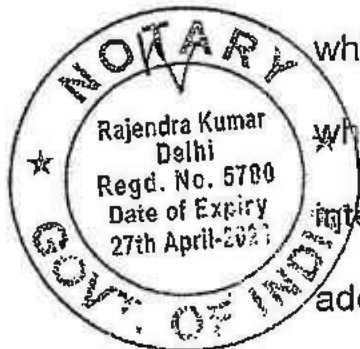
Maharashtra
Central Electricity Regulatory Commission
& Ors.

V/s.

...Respondents

APPLICATION SEEKING EXEMPTION FROM FILING CERTIFIED
COPY OF THE IMPUGNED ORDER DATED 26.03.2019 UNDER
RULE 30 OF THE APPELLATE TRIBUNAL FOR ELECTRICITY
(PROCEDURE, FORM, FEE AND RECORD OF PROCEEDINGS)
RULES, 2007

1. The accompanying Appeal has been preferred by the Appellant against an interim order dated 26.03.2019 ("*Impugned Order*") passed by Ld. MERC ("*Ld. Commission*") in Case No. 26 of 2019 ("*said case*") which was preferred by the Respondent No. 2 herein wherein the Ld. MERC has *inter alia* held that 1.25% interest shall be levied as penal interest every month, in addition to the penalty in the form of "Delayed Payment Charges" ("DPC") for late payment of outstanding bills by



MSEDCL. The said impugned order is completely erroneous as it fails to take note of the fact that there cannot be a double penalty in the form of interest i.e., one on the form of DPC and the other in the form of penal interest.

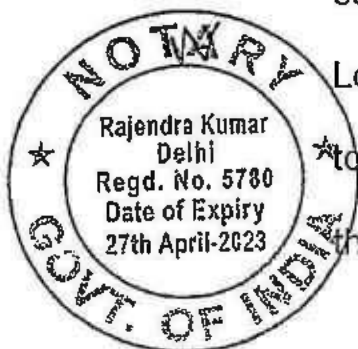
2. The Appellant refers and relies the contents of the accompanying appeal and states that the same may be read as part and parcel of the present application, which is not being repeated herein for the sake of brevity.

3. That vide present application, the Appellant herein is seeking the following reliefs, on the grounds enumerated in the paragraphs herein below:

(a) exempt the Appellant herein from filling certified copy of the impugned order dated 26.03.2019 passed by Ld. MERC in Case No. 26 of 2019; and/or

(a) pass such other Order(s) as this Hon'ble Tribunal may deem just and proper.

4. The Appellant are in the process of obtaining certified copy of the impugned order dated 26.03.2019 passed by Ld. MERC in Case No. 26 of 2019 and hereby undertakes to file the same as and when the same is so obtained. Till the said time, through the present application, the



Appellant herein seeks the present matter to be heard on the true copy of the impugned order dated 26.03.2019, which is already part of the memo of appeal and accordingly exempt the Appellant herein to file the certified copy of the said order.

5. It is further submitted that the Appellant has a strong case to succeed on merits. In view thereof, the present application is being preferred in the interest of justice and equity.

PRAYER

In the facts and circumstances of the case, it is most respectfully submitted that this Hon'ble Court may be pleased to:

- (a) exempt the Appellant herein from filing certified copy of the impugned order dated 26.03.2019 passed by Ld. MERC in Case No. 26 of 2019; and/or
- (b) pass such other Order(s) as this Hon'ble Tribunal may deem just and proper.



For Udit Kishan & Associates

Counsel for the Appellant

Date: 13.04.2019

For Maharashtra State
Electricity Distribution
Company Limited

K. Khanat
CHIEF ENGINEER (RE)
M.S.E.D.C.L.

APPELLANT

DECLARATION BY APPELLANT

The Appellant above named hereby solemnly declares(s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon filed herewith are true copies of the original.

For Udit Kishan & Associates

For Maharashtra State
Electricity Distribution
Company Limited *Kharat*

CHIEF ENGINEER (RE)
M.S.E.D.C.L.

[Signature]
Counsel for the Appellant

APPELLANT

Date: 13.04.2019

VERIFICATION

I, Kavita K Gharat, age about 41 years, working as Chief Engineer (Renewable Energy), in the Appellant Company and having office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (East), Mumbai 400051 do hereby verify that the contents of accompanying application are believed to be true on legal advice and that I have not suppressed any material facts.

Date: 13.04.2019
Place : New Delhi

For Maharashtra State Electricity
Distribution Company Limited

Kharat
CHIEF ENGINEER (RE)
M.S.E.D.C.L.
APPELLANT



BEFORE THE HON'BLE APPELLATE TRIBUNAL FOR

ELECTRICITY, AT NEW DELHI

APPELLATE JURISDICTION

I.A. NO. ___ OF 2019

IN

APPEAL NO. ___ OF 2019

In the matter of:

Maharashtra State Electricity Distribution
Company Limited

... Appellant

VERSUS

Maharashtra Electricity Regulatory Commission & Anr. ... Respondents

AFFIDAVIT

I, Kavita K Gharat, age about 41 years, working as Chief Engineer (Renewable Energy), in the Appellant Company and having office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (East), Mumbai 400051, do hereby solemnly affirm and declare on oath as under:-

1. That I am duly authorized by the Appellant Company in the present Appeal to sign and verify the present affidavit and also being well conversant with the facts and circumstances of the case is thus competent to swear this affidavit.
2. I state that I have read and understood the contents of the above application seeking exemption from filing certified copy of the impugned order dated 26.03.2019 passed by Ld. MERC in Case No. 26 of 2019, which have been drafted under my

instruction and I state that the facts stated therein are true to the best of my knowledge and belief.

- 3. I say that the contents of the above application filed by the Appellant are based on the information available with the Appellant in the normal course of business and believed by me to be true.

**For Maharashtra State Electricity
Distribution Company Limited**

DEPONENT

VERIFICATION

Verified at _____ on this the ___ day of April, 2019. I, the above-named deponent, do hereby verify that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.

**For Maharashtra State Electricity
Distribution Company Limited**

DEPONENT