

**Maharashtra State Electricity Distribution Co. Ltd.**

(A Govt. of Maharashtra Undertaking)

CIN : U40109MH20005SGC153645

PHONE No. 26474753 (P)/26474211 (O)

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PLOT No. G-9, PRAKASHGAD

Prof. ANANT KANEKAR MARG

BANDRA (East)

MUMBAI-400051

No. Comm/ Review Petition / **No 20387**

Date: **23 AUG 2018**

To,  
**The Secretary,**  
Maharashtra Electricity Regulatory Commission,  
Mumbai

Sub: Filing of Petition for Review of order in Case No. 37 of 2017 and 38 of 2017.

Ref: MERC order dated 04.05.2018 in case no. 37 of 2017 and 38 of 2017.


Respected Sir,

Please find enclosed herewith the MSEDCL's petition, seeking review of order in Case No. 37 of 2017 and 38 of 2017.

The requisite fee is submitted by RTGS no. MAHBH 18235425296 dated 23.08.2018.

Thanking You,

Yours faithfully,

  
**Chief Engineer (Commercial)**


Copy S.w.r. to:-

The Director, (Commercial), MSEDCL, Mumbai.

Copy to:

- 1) M/s Kores (India) Ltd., 301/302/202, Ashford Chambers Lady Jamshedji Road, Mahim (West), Mumbai - 400 016.
- 2) Cooper Corporation Pvt. Ltd., Nariman House, M 60-1, Addl. MIDC, Post-Kodoli, Satara - 415 004
- 3) Maharashtra Energy Development Agency, II Floor, MHADA Complex, Tridal Nagar, Pune-411006.
- 4) Prayas (Energy Group), Amrita Clinic, Athawale Corner, Deccan Gymkhana Karve Road, Pune 411 004.
- 5) Mumbai Grahak Panchayat, Grahak Bhavan, Behind Cooper Hospital, Vile Parle (West), Mumbai 400 056.
- 6) The General Secretary, Thane Belapur Industries Association, Robale Village, Post Ghansoli, Navi Mumbai 400 701.
- 7) Vidarbha Industries Association, 1<sup>st</sup> Floor, Udyog Bhavan, Civil Line, Nagpur 440 001.
- 8) Chamber of Marathwada Industries & Agriculture, Bajaj Bhavan, P-2, MIDC Industrial Area, Railway Station Road, Aurangabad - 431005
- 9) Maharashtra Chamber of Commerce, Industries & Agriculture, Oricon House, 6th Floor, 12 K, Dubash Marg, Fort, Mumbai - 400001.

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24-8-18

OFFICE OF THE  
MAHARASHTRA ELECTRICITY  
REGULATORY COMMISSION  
WTC, CUFFE PARADE, MUMBAI - 400 005.

BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY

REGULATORY COMMISSION

AT MUMBAI

REVIEW CASE NO \_\_\_\_\_ OF 2018

IN

CASE NO 37 & 38 OF 2017

**IN THE MATTER OF:**

Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 requesting the Hon'ble Commission to review its order dated 04.05.2017 passed in Case No. 37 and 38 of 2017

**AND**

**IN THE MATTER OF:**

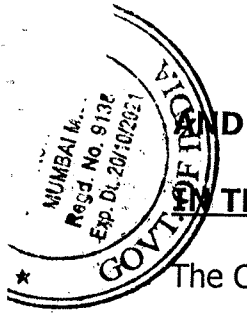
Petition of Kores (India) Ltd. for restoration of its Contract Demand for August, 2016 and consequential reliefs from Maharashtra State Electricity Distribution Co. Ltd.

**AND**

**IN THE MATTER OF:**

Petition of Cooper Corporation Pvt. Ltd. for restoration of its Contract Demand for August, 2016 and consequential reliefs from Maharashtra State Electricity Distribution Co. Ltd.





**IN THE MATTER OF:**

The Chief Engineer (Commercial),  
Maharashtra State Electricity Distribution Co. Ltd  
Plot No G-9, Prakashgad, 5th floor, Station Road,  
Bandra (East), Mumbai – 400051  
E-mail : cecomm@mahadiscom.in

**....Review Petitioner/Applicant**

**Versus**

**1. Kores (India) Ltd**

301/302/202, Ashford Chambers Lady Jamshedji Road,  
Mahim (West), Mumbai - 400 016.  
E-mail:- advraksha79@gmail.com

**2. Cooper Corporation Pvt. Ltd.**

Nariman House, M 60-1,  
Addl. MIDC, Post-Kodoli, Satara - 415 004  
E-mail:- advraksha79@gmail.com

**....Respondents**



**REVIEW PETITION ON BEHALF OF PETITIONER (MSEDCL)**

**MOST RESPECTFULLY SHEWETH:**

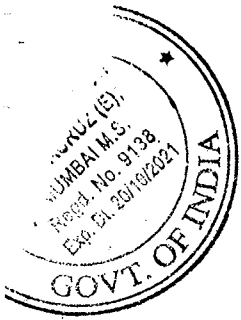
**1. DESCRIPTON OF PARTIES:**

**PETITIONER:**

- (i) Maharashtra State Electricity Distribution Company Limited (*hereinafter referred to as "MSEDCL" or "The Review Petitioner"*) is a Company constituted under the provisions of Government of Maharashtra General Resolution No. PLA – 1003 / C. R. 8588 dated 25<sup>th</sup> January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31<sup>st</sup> May 2005. The Petitioner 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).

**RESPONDENTS:**

- (ii) M/s Kores (India) Limited, Chakan Foundry Division, Consumer No. 176099030420 is located at Gat No. 149, Chakan, Talegaon Road, Tal. Khed, Pune



(hereinafter referred to as "**Respondent No. 1 or Kores**") It is a partial Open Access (OA) consumer availing Short Term Open Access (STOA) and had entered into an Agreement with a Trading Licensee, Adani Enterprises Ltd. (AEL), for purchasing thermal power of 3150 kVA for the month of August, 2016.

(iii) CCPL at Plot L3, Addl. MIDC, Satara ('L3 Division') having Consumer No. 190569006591 (hereinafter referred to as "**Respondent No. 2 of Cooper**") It is a partial OA consumer availing STOA. CCPL has entered into an agreement with a Trading Licensee, AEL, for purchasing thermal power of 2500 kVA from August, 2016. In accordance with that agreement, it applied to MSEDCL for NOC to buy 2400 kVA power through STOA for that month.

## **2. PROVISIONS FOR REVIEW:**

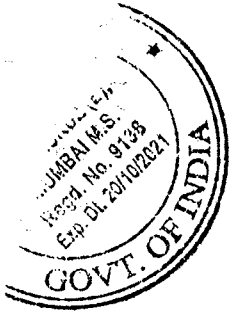
- Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004:

### **85. Review of decisions, directions, and orders:**

- (a) *Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is*

allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.

- (b) An application for such review shall be filed in the same manner as a Petition under these Regulations.
- (c) The Commission, shall for the purposes of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.
- (d) When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.
- (e) When the Commission is of the opinion that the review application should be granted, it shall grant





*the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for.*

- Section 94 (1) (f) of Electricity Act, 2003:

**Section 94. (Powers of Appropriate Commission):**

*(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -*

*(a) .....*

*(f) reviewing its decisions, directions and orders;*

*.....*

**3. DISPUTED PERIOD:**

(A) August, 2016.

#### **4. DISPUTE/REVIEW IN SHORT:**

The dispute in short is that this Hon'ble Commission vide its order dated 04.05.2018 has held that:

- (i) *The application for surrender of contract demand was an integral part of the process of open access and was not independent of it and cannot be seen in isolation. (Para 14.9)*
- (ii) *Regulation 4.2 of DAOR, 2016 provides that retention or reduction of contract demand shall be governed by the provisions of Supply Code and the SOP Regulations only in respect of a consumer availing LTOA and STOA. (Para 14.10)*
- (iii) *However no material has been placed on record by MSEDCL to rebut CCPL's contention that it had not applied for reducing its contract demand for August, 2016 in the first place for sourcing either thermal power from AEL or the RE Power from other sources. (Para 15.2)*
- (iv) *MSEDCL has also not shown that CCPL had applied for reduction in Contract Demand in the months prior to August, 2016 independently of its OA applications, in which case it might have been justified in not*



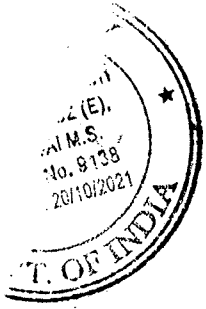


*restoring it without a specific application for the propose. (Para 15.3)*

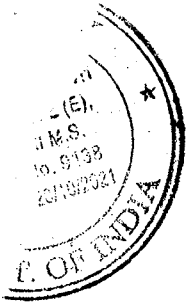


**5. ISSUES RAISED IN REVIEW (WITHOUT PREJUDICE TO ONE ANOTHER):**

- (a) Whether the DOAR, 2016 provides for reduction in contract demand for STOA?*
- (b) Whether the reduction in contract demand was on the basis of request received from the consumer itself and not a mandate asked for by MSEDCL?*
- (c) Whether Revision in contract demand as per Regulation 4.2 of DOAR, 2016 has to be governed as per SOP?*
- (d) Whether availing open access with a generator (Adani) who is already tied up under 25 Years PPA with MSEDCL is correct?*
- (e) Whether cancellation of open access was on account of genuine reasons?*
- (f) Whether the Respondents took any effort for restoration of contract demand after open access was cancelled?*

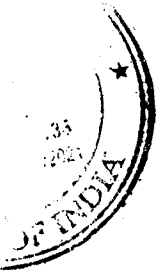


- (g) *Whether MSEDCL can itself restore the contract demand when already the Petitioner was under another open access availing multi party open access at the same time from another consumer?*
- (h) *Whether MSEDCL can reduce/restore a contract demand by itself or only on a request by the consumer?*
- (i) *Whether choice to maintain a specific contract demand is completely of the consumer and whether such choice can be arbitrarily exercised?*
- (j) *Whether the Respondents after the cancellation of open access from Adani on 29.07.2016 immediately applied for restoration of the same or even in the month of August, 2016?*
- (k) *Whether a contract demand once reduced can only be restored on a request from the consumer and whether a contract demand reduced once remains the same in perpetuity till the time a specific request is received from a consumer for restoration of the same.*

**6. GROUND (WITHOUT PREJUDICE TO ONE****ANOTHER)**

- a. The Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously not appreciated that the choice to reduce the contract demand entirely vests with a consumer, hence the choice to restore the same also vests with the consumer.
- b. The Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously not appreciated the critical and vital fact that the Respondents at no point in time after the cancellation of open access on 29.07.2016 which was duly intimated/communicated to the Respondents, applied for restoration of the same either immediately or even in the month of August, 2016. Hence, reliefs for the month of August, 2016 could not have been granted.
- c. The Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously not appreciated that the formalities w.r.t. restoration of Contract Demand was only completed by the Respondents on 30.09.2016. Hence, any reliefs for months prior to 30.09.2016 could not have been

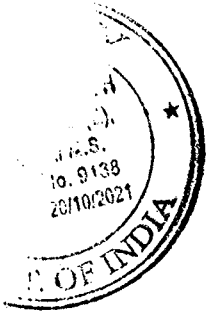
allowed.

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- d. The Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously not appreciated that utilization of contract demand is completely a prerogative and choice of a consumer. Hence any change in the same has to be specifically made by that consumer.
- e. The Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously not appreciated that Regulation 4.2 of the DOAR, 2016 clearly states that matter of revision of contract demand has to be governed in accordance with the SOP.
- f. The Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously not appreciated that the Respondents were guilty of availing STOA from a generator (Adani) which was already tied up in a long term PPA of 25 years with MSEDCL with a specific condition that it cannot sale power to any third party. Hence such cancellation of Open access was justified by MSEDCL.
- g. That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously

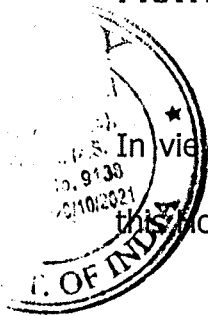
not appreciated that any loss caused to the Respondents for the month of August is on account of the Respondents' own fault for which it has a remedy to sue generator and not MSEDCL.



- h. That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously not appreciated that contract demand once reduced remains the same in perpetuity till the time an application for restoration of the same is not received which in the present case was only received belatedly in the month of September, 2016.
- i. The Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously not appreciated that open access is the sole choice of a consumer which has to be exercised diligently and with caution. The Respondents in the present case are guilty of sleeping over the same which has led to the penalty as per the DOAR, 2016.
- j. The Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously not appreciated that the Respondents were still availing open access under multi party route i. e. thorough other sources. Hence in any event, MSEDCL could not have restored the contract demand on its own.



- k. The Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously not appreciated that MSEDCL being a supplier only accepts the request of consumers and supplies in accordance with such request. Hence reliefs granted for the month of August, 2016 without there being any specific request for the same by the consumers is completely erroneous.
7. The MSEDCL craves leave of this Hon'ble Commission to file additional affidavit, reply/documents etc. in case need arises at a subsequent stage with the prior permission of this Hon'ble Commission.
8. That MSEDCL has not filed any other proceedings arising out of the present matter claiming similar reliefs before any court or forum.
9. That the impugned order was passed on 04.05.2018. Hence there is a delay of 62 days which may kindly be condoned as such delay is only on account of delay in procedural approvals. The delay is neither deliberate nor intentional. MSEDCL reserves its right to file an appropriate application seeking condonation of delay in case need arises with the prior permission of this Hon'ble Commission.

**PRAYER**

In view of the above, it is therefore most respectfully prayed that this Hon'ble Commission may graciously be pleased to:

- (a) Allow the present review petition by reviewing the order dated 04.05.2018 as prayed herein.
- (b) Hold and declare that the Respondents are not entitled to any reliefs especially for the month of August, 2016 as the Respondents never followed the procedure for revision/restoration of contract demand.
- (c) Condone the delay if any in filing the present Review Petition.
- (d) Pass such further orders as this Hon'ble Commission deems fit and proper in the interest of justice and good conscience.

It is prayed accordingly.

Date:

Place: Mumbai

*Kharat*  
MSEDCL



**BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY**

**REGULATORY COMMISSION**

**AT MUMBAI**

**REVIEW CASE NO \_\_\_\_\_ OF 2018**

**IN**

**CASE NO 37 & 38 OF 2017**

**IN THE MATTER OF:**

Review Petition under Section 94 (1) (f) of the Electricity Act, 2003 read with Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 requesting the Hon'ble Commission to review its order dated 04.05.2017 passed in Case No. 37 and 38 of 2017

**AND**

**IN THE MATTER OF:**

Petition of Kores (India) Ltd. for restoration of its Contract Demand for August, 2016 and consequential reliefs from Maharashtra State Electricity Distribution Co. Ltd.

**AND**

**IN THE MATTER OF:**

Petition of Cooper Corporation Pvt. Ltd. for restoration of its Contract Demand for August, 2016 and consequential reliefs from



Maharashtra State Electricity Distribution Co. Ltd.

INDIA AND

**IN THE MATTER OF:**

The Chief Engineer (Commercial),

Maharashtra State Electricity Distribution Co. Ltd

Plot No G-9, Prakashgad, 5th floor, Station Road,

Bandra (East), Mumbai – 400051

E-mail : cecomm@mahadiscom.in

**....Review Petitioner/Applicant**

**Versus**

**1. Kores (India) Ltd**

301/302/202, Ashford Chambers Lady Jamshedji Road,

Mahim (West), Mumbai - 400 016.

E-mail:- advraksha79@gmail.com

**2. Cooper Corporation Pvt. Ltd.**

Nariman House, M 60-1,

Addl. MIDC, Post-Kodoli, Satara - 415 004

E-mail:- advraksha79@gmail.com

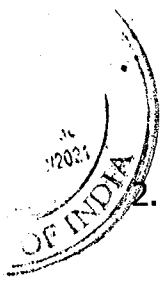
**....Respondents**

**REVIEW PETITION ON BEHALF OF PETITIONER (MSEDCL)**

1. I, Kavita Gharat, aged 40 Years, wife of Kiran Gharat, having my

office at 5th Floor, Prakashgad, Bandra (East), Mumbai-400051

do solemnly affirm and say as follows:



2. I am the Chief Engineer (Commercial) of Maharashtra State Electricity Distribution Co. Ltd., the Review Petitioner in the above matter and am duly authorized as the Respondent to make this affidavit.

3. The statements made in the enclosed submission are based on the information received from the concerned officers of the Company and I believe them to be true.

I solemnly affirm at Mumbai on this \_\_\_\_\_ day of August, 2018 that the contents of this affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

*R. Bhat*  
Deponent

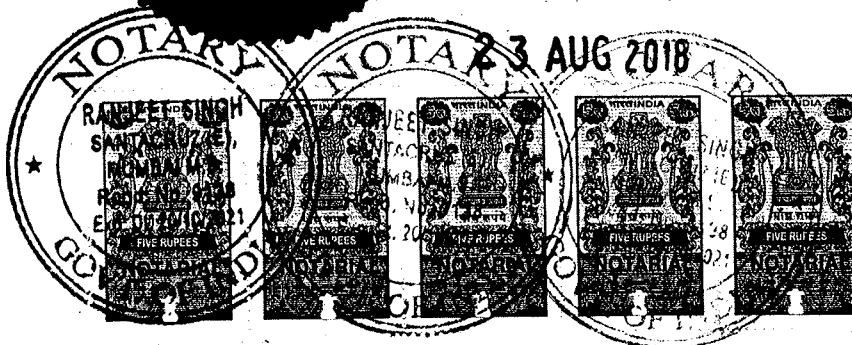
Identified before me



BEFORE ME

*R. Singh*

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





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](mailto:mercindia@merc.gov.in)  
Website: [www.mercindia.org.in](http://www.mercindia.org.in) / [www.merc.gov.in](http://www.merc.gov.in)

**CASE No. 37 of 2017**

**Petition of Kores (India) Ltd. for restoration of its Contract Demand for August, 2016 and consequential reliefs from Maharashtra State Electricity Distribution Co. Ltd.**

**CASE No. 38 of 2017**

**Petition of Cooper Corporation Pvt. Ltd. for restoration of its Contract Demand for August, 2016 and consequential reliefs from Maharashtra State Electricity Distribution Co. Ltd.**

**Coram**

**Shri. Azeez M. Khan, Member  
Shri. Deepak Lad, Member**

1. Kores (India) Ltd  
2. Cooper Corporation Private Limited ... Petitioners

V/s

Maharashtra State Electricity Distribution Co. Ltd ... Respondent

**Appearance**

For the Petitioners: Ms. Raksha Jain (Advocate)

For the Respondent: Shri. Rahul Sinha (Advocate)  
Shri. A. W. Mahajan

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**ORDER**

Date: 4 May, 2018

**Case No. 37 of 2017**

1. Kores (India) Ltd (KIL), 301/302/202, Ashford Chambers, Lady Jamshedji Road, Mahim (W), Mumbai, has filed a Petition on 1 March, 2017 citing Sections 142, 146 and 86 of the Electricity Act (EA), 2003 seeking directions to Maharashtra State Electricity Distribution Co. Ltd. in compliance of the MERC (Distribution Open Access) Regulations, 2016 ('DOA Regulations, 2016').
2. The Prayers of KIL are as follows:
- a. *"The Respondent be directed to revise /restore the original contract demand*
    - i). *For Chakan Foundry Division of 6340 KVA from the period 01.08.2016 to 31.08.2016 for consumer No. 176099030420 located at Gat No. 149, Chakan Talegaon Road, Tal-Khed, Pune 410501 and similarly revise*
    - ii). *For Pefco Foundry Division to restore original contract demand of 2990 KVA from period 01.08.2016 to 31.08.2016 of the Petitioner's other plant having consumer No. 170149001967 located at PEFCO Foundry Division, E-14,15,16 Bhosari Industrial Area, Pune 411026 and similarly revise / restore original contract demand of 2990 KVA from period 01.10.2016 to 31.10.2016 of the Petitioner's PEFCO Foundry Division.*
  - b. *Proceedings under Section 142/146 may be initiated against the Respondent.*
  - c. *Respondent be directed to pay the financial losses incurred by the Petitioner, along with interest..."*
3. KIL's Petition states as follows:
- 3.1 KIL is availing electricity for manufacturing of Castings. It has two manufacturing divisions as below:
- (a) Kores (India) Limited, Chakan Foundry Division, Consumer No. 176099030420 located at Gat No. 149, Chakan, Talegaon Road, Tal. Khed, Pune. It is a partial Open Access (OA) consumer availing Short Term Open Access (STOA) and had entered into an Agreement with a Trading Licensee, Adani Enterprises Ltd. (AEL), for purchasing thermal power of 3150 kVA for the month of August, 2016.

(b) Kores (India) Limited, PEFCO Foundry Division, Consumer No. 170149001967, E-14, 15, 16, Bhosari Industrial Area, Pune. It is also a partial OA consumer under STOA and entered into an Agreement with AEL for purchasing thermal power of 1300 kVA for August, 2016.

- 3.2 KIL had applied to MSEDCL through the online portal seeking STOA for both Plants from Adani Power Maharashtra Ltd. (APML)'s Tiroda Generation Project through the Trader AEL for August, 2016 vide two applications dated 07 July, 2016 for the Chakan Foundry Division and PEFCO Foundry Division. Accordingly, MSEDCL had granted OA for to both for that month on 29.07.2016.
- 3.3 Vide two e-mails dated 30 July, 2016, MSEDCL cancelled the STOA permission for August, 2016 giving the following reasons:

*"M/s KORES (INDIA) LTD. (CHAKAN FOUNDRY DN)*

*You have applied for OA for quantum of 3.15 MW from M/s APML Tiroda Project through trading company M/ Adani Enterprises Ltd. Accordingly, this office vide letter no. 24155 dt. 29.7.16 has granted OA for the same for period 1.8.2016 to 31.8.2016. However it is to inform you that MSEDCL has tied up long term power from M/s APML Tirora project. To fulfill some PPA conditions, it requires to verify rate at which APML contracted power with Adani Enterprises Ltd. Since you have not submitted agreement of APML and trader viz M/s Adani Enterprises Ltd. we cannot verify rate at which APML is supplying power. Thus APML is not fulfilling terms and conditions of PPA and hence not eligible for supply of power to third party. Hence your application for OA for power supply from APML Tiroda through trader Adani Enterprises Ltd. is not acceptable. Thus OA granted vide letter stands withdrawn".*

- 3.4 Through various letters, KIL requested MSEDCL for reduction in Contract Demand of 3150 kVA for the Chakan Foundry Division and 1300 kVA for PEFCO Foundry Division along with the monthly STOA applications, stating that KIL is ready to reduce the Contract Demand for the period of STOA since this is optional as per Regulation 4.2 of the DOA Regulations, 2016 which states as under:

*"4.2. ...Provided that a consumer availing STOA shall not be eligible to revise his Contract Demand with the Distribution Licensee during the tenure of the STOA, but may do so at the time of applying for Open Access."*

- 3.5 KIL is implementing Regulation 4.2 while applying for the monthly STOA, and had submitted its letters for Contract Demand reduction as above with its STOA applications for August, 2016.

3.6

MSEDCL has cancelled the STOA permission and abruptly reduced the Contract Demand of KIL from 6340 kVA to 3190 kVA for Chakan Foundry Division and from 2990 kVA to 1690 kVA for PEFCO Foundry Division and levied heavy Temporary category tariff charges, resulting in financial loss to KIL. Thereafter KIL wrote several times to MSEDCL for correcting the Contract Demand and restoring it.

- 3.7 After the termination of the STOA for August, 2016. i.e. after one month, inspite of intimating MSEDCL to restore / revise the original Contract Demand post termination of the STOA, MSEDCL continued to maintain the Contract Demand at the level of the STOA and has not restore it to the original Contract Demand which it ought to do, thus causing financial loss.
- 3.8 Regulation 4.2 of DOA Regulations, 2016 makes clear about the revision of Contract Demand.
- 3.9 KIL has entered into agreement with MSEDCL for restoring the Contract Demand:
- a. For Chakan Foundry Division of 6340 kVA on 29 September, 2016. MSEDCL has issued the Contract Demand restoration letter no. 5236 dated 29<sup>th</sup> Sep, 2016.
  - b. For PEFCO Foundry Division on 22<sup>nd</sup> September, 2016, MSEDCL has issued the Contract Demand restoration letter no. 55251 dated 30<sup>th</sup> September, 2016.
- 3.10 MSEDCL did not honour its own agreement signed with KIL in September, 2016 and billed both Plants considering reduced Contract Demand for the month of October, 2016, which resulted in financial loss to KIL for the PEFCO Foundry Division.
- 3.11 Once the Contract Demand is modified by MSEDCL for granting STOA to an eligible OA consumer as per the DOA Regulations, 2016, there is also a corresponding duty on MSEDCL to revise / restore the original Contract Demand of the STOA consumer after the termination of the STOA, as per the request made by the STOA consumer.
- 3.12 Regulation 4.2 of the DOA Regulations, 2016 only restricts the revision in Contract Demand only during the tenure of the STOA, and hence MSEDCL ought to revise / restore the original Contract Demand as per the request made by KIL after the termination of the STOA.

4. In its Reply dated 20 May, 2017, MSEDCL stated that:

The issues are primarily concerned with OA billing for August, 2016 and revision of Contract Demand thereof. The two Units of KIL were availing STOA from April, 2016 onwards as per the DOA Regulations 2016. Both the Units were availing STOA for firm as well Renewable Energy (RE) sources.

4.2 KIL has applied for reduction of Contract Demand to the extent of the OA desired vide its application dated 6.4.2016. As per Regulation 4.2 of the DOA Regulations 2016, the mandatory reduction of Contract Demand is not applicable. Instead, a new provision of revision in Contract Demand as per the Supply Code, 2005 and the Standards of Performance (SoP) Regulations is now made applicable. The relevant provision in the SOP Regulations, 2014 reads as below:

*“Reduction in Load*

*4.14 Upon receipt of a request by a consumer for reduction of contract demand / sanctioned load of such consumer, the Distribution Licensee shall, unless otherwise agreed, so reduce the contract demand /sanctioned load of such consumer before the expiry of the second billing cycle after the receipt of such request;”*

4.3 Thus, reduction in Contract Demand as per the Supply Code is carried out upon the request of consumer. Further the Contract Demand can be revised / restored only as per the request of the consumer. The Distribution Licensee cannot change / modify the Contract Demand of the consumer without its application / consent in writing.

4.4 KIL applied for the first time for revision (reduction) in Contract Demand for the month of May, 2016. MSEDCL granted the STOA permissions with revised (reduced) Contract Demand as desired by the consumer.

4.5 For the month of August, 2016, KIL had applied for the following STOA permissions along with applications for reduction in Contract Demand:

<u>Sr. No.</u>	<u>Consumer Name/Consumer No.</u>	<u>Generator Name</u>	<u>Contract Demand</u>	<u>OA Capacity</u>	<u>Revised CD</u>
01	M/S KORES (INDIA) LTD /170149001967	M/s Adani Power Ltd., Tirora	2990	1300	1690
02		Serum Institute of India Ltd. M-39, M - 40		700	1690
03	M/S KORES (INDIA) LTD CHAKAN	M/s Adani Power Ltd., Tirora	6340	3150	3190

04	FOUNDRY DN/176099030420	Serum Institute of India Ltd. M-39, M - 40		1750	3190
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MSEDCL

The Generator, APML, Tiroda has signed a long-term Power Purchase Agreement (PPA) with MSEDCL. As per the terms of the PPA, APML cannot sell power to any third party directly without consent of MSEDCL. It was observed later that no such prior permission was sought by APML. The action of the Supplier APML thus violated the PPA clause regarding third party sale. Thus, the STOA permission to KIL was withdrawn. However, this is a separate issue and is neither the main contention of KIL nor is the relief sought regarding withdrawal of OA.

- 4.7 Even after withdrawal of KIL's OA permissions for sourcing power from APML, KIL was an OA consumer by virtue of sourcing power from RE sources.
- 4.8 The Contract Demand of KIL was revised (reduced) as per its own request. It can only be restored as per the Supply Code and the SoP Regulations. Therefore, for OA billing of August, 2016, MSEDCL has correctly proceeded with the revised Contract Demand (i.e. reduced) as per provisions of the DOA Regulations, 2016.
- 4.9 The formalities regarding restoration of Contract Demand of KIL's Plant at Chakan were completed on 30.09.2016. The last date for the submission of STOA application for October was 10.9.2016. KIL has not submitted the same (revised Contract Demand) along with the STOA application for the month of October, 2016. The effect of restoration of the Contract Demand was passed from the month of November, 2016.
- 4.10 The prayer of KIL for automatic revision (restoration) in Contract Demand is not tenable in light of the DOA Regulations, 2016. Frequently changing the Contract Demand by virtue of auto restoration may create many hazardous conditions such as additional financial burden on consumers and thus billing complexities and disputes, and difficulties in MSEDCL's load forecasting and optimum generation scheduling, planning, etc. It will also lead to practical difficulties in the field where, while sanctioning new connections, the existing sanctioned load of the present consumers has to be checked and accordingly the provision of new / additional load has to be approved. The floating Contract Demand of OA consumers will create confusion in billing, planning, and operational and technical difficulties.
- 4.11 The Corporate Office of MSEDCL also issued a letter to its field offices on 26.07.2016 regarding revision (restoration) of Contract Demand in respect OA consumers. This letter has been annexed as Annexure B with this Reply. In that letter, MSEDCL instructed its field offices that the Contract Demand, once reduced at Head



Office level while granting the OA, shall be governed by provisions of the Supply Code and the SoP Regulations. It further instructed that, if a consumer desires to restore/ enhance the Contract Demand, it should be processed as per the Supply Code such as submission of A1 form, test report, etc. MSEDCL also took pro-active steps to simplify the process of revision of Contract Demand by its letter dated 02.09.2016, so that the OA consumers do not face any hardship.

**CASE No. 38 of 2017**

5. Cooper Corporation Private Limited (CCPL), Nariman House, M 60-1, Addl. MIDC Area, Post Kodoli, Distt. Satara, Maharashtra, has filed a Petition on 1 March, 2017 citing Sections 142, 146 and 86 of the EA, 2003 seeking compliance of the DOA Regulations, 2016 by MSEDCL.

6. The Prayers of CCPL are as follows:

a. *"The Respondent be directed to revise / restore the original contract demand*

i) *For L3 Division of 4974 KVA from the period 01.08.2016 to 31.08.2016 for consumer No. 190569006591 located at Plot NO. L3, Additional MIDC, Satara 415001 and similarly revise.*

ii) *For M 60 Division to restore original contract demand of 4990 KVA from period 01.08.2016 to 31.08.2016 of the Petitioner's other plant having consumer No. 190569021870 located at Plot No. M 60, Additional MIDC, SATARA, 415004.*

b. *Proceedings under Section 142 / 146 may be initiated against the Respondent.*

c. *Respondent be directed to pay the financial losses incurred by the Petitioner, along with interest...."*

7. The Petition states as follows:

7.1 CCPL is availing electricity for manufacturing of Castings and has two manufacturing divisions as below:

(a) CCPL at Plot L3, Addl. MIDC, Satara ('L3 Division') having Consumer No. 190569006591. It is a partial OA consumer availing STOA. CCPL has entered into an agreement with a Trading Licensee, AEL, for purchasing thermal power of 2500 kVA from August, 2016. In accordance with that agreement, it applied to MSEDCL for NOC to buy 2400 kVA power through STOA for that month.

- (b) CCPL at Plot M60 M60), Addl. MIDC, Satara having consumer No. 190569021870 ('M60 Division'). It is also a partial OA consumer availing STOA and had entered into an agreement with AEL for purchasing thermal power of 2500 kVA. Accordingly, it had applied to MSEDCL for NOC to buy 2400 kVA power through STOA for the month of August, 2016.
- 7.2 CCPL had submitted an online application to MSEDCL for STOA for both Plants from APML's Tiroda Generation Project AEL for August, 2016 vide two applications dated 7 July, 2016 for the L3 Division and M60 Division.
- 7.3 While applying for STOA, CCPL had not opted for reduction in Contract Demand for August, 2016 for either of the Divisions.
- 7.4 In response, MSEDCL had granted STOA on 29 July, 2016 for August, 2016.
- 7.5 Vide two e-mails dated 30 July, 2016, MSEDCL cancelled the STOA permission for August 2016 issued on 29.07.2016 giving the following reasons:

*"You have applied for OA for quantum of 2.4 MW from M/s APML Tiroda Project through trading company M/ Adani Enterprises Ltd. Accordingly, this office vide letter no. 24155 dt. 29.7.16 has granted OA for the same for period 1.8.2016 to 31.8.2016. However it is to inform you that MSEDCL has tied up long term power from M/s APML Tiroda project. To fulfill some PPA conditions, it requires to verify rate at which APML contracted power with Adani Enterprises Ltd. Since you have not submitted agreement of APML and trader viz M/s Adani Enterprises Ltd. we cannot verify rate at which APML is supplying power. Thus APML is not fulfilling terms and conditions of PPA and hence not eligible for supply of power to third party. Hence your application for OA for power supply from APML Tiroda through trader Adani Enterprises Ltd. is not acceptable. Thus OA granted vide letter stands withdrawn."*

- 7.6 MSEDCL cancelled the STOA permission and have abruptly, without any application being made by CCPL and without informing it, reduced its Contract Demand of CCPL from 4970 kVA to 2724 kVA for L3 Division and from 4990 kVA to 2490 kVA for M60 Division and levied heavy Temporary tariff category charges, resulting in wrongful financial loss to it.
- 7.7 Regulation 4.2 of the DOA Regulations, 2016 makes the matter of revision of Contract Demand clear.
- 7.8 MSEDCL sent another e-mail in November, 2016, as below:



*"It is to inform that many HT consumers are submitting their request to cancel Open Access from dt. 1.12.2016 (00.00HRS.) and wish to utilize 100% power from MSEDCL. The contract demand of the said consumer will be restored to the original sanctioned contract demand with MSEDCL w.e.f. dt. 1.12.2016 (00.00 HRS) & will be billed as normal HT consumer at circle level. Fresh agreement for the restoration of contract demand shall not be executed. Also those consumers who want to avail 100% MSEDCL supply from immediate effect (mid month) will also be billed as normal HT consumer from date of withdrawal of OA."*

7.9 The above e-mail contravenes the provisions of the Regulations, which makes it mandatory to enter into an agreement. The e-mail shows that MSEDCL is not adhering to the DOA Regulations, 2016 as far as revision of Contract Demand is concerned. It also makes it very clear that MSEDCL wants to use the Contract Demand mechanism to discourage OA, because the e-mail further stated that the Contract Demand of the consumers who wish to procure 100% power from MSEDCL would be restored even from mid-month.

7.10 Regulation 4.2 of the DOA Regulations, 2016 has accorded the right to reduce / revise the Contract Demand to the OA consumer and hence MSEDCL's purported action of taking away the right of CCPL and not revising / restoring the original Contract Demand is not only in contravention of the DOA Regulation, 2016, but is also in the contravention of the spirit of the EA, 2003.

8. In its Reply dated 20 May, 2017, MSEDCL stated that:

8.1 The issues are primarily concerned with OA billing for August, 2016 and revision of Contract Demand thereof. Two Units of CCPL were availing STOA from April, 2016 onwards as per the DOA Regulations, 2016. CCPL's Units were availing STOA from firm as well as RE sources.

8.2 CCPL had applied for reduction of Contract Demand to the extent of OA desired, as per its consent (dated 6.4.2016, at Annexure A). As per Regulation 4.2 of the DOA Regulations, 2016, reduction of Contract Demand is not mandatory. Instead, a new provision of revision in Contract Demand as per the Supply Code and the SoP Regulations is now made applicable. Regulation 4.14 of the Supply Code, which deals with reduction in load, may be referred to.

8.3 Thus, reduction in Contract Demand as per the Supply Code was carried out at the request of CCPL. Further, the Contract Demand can be revised / restored only as per request of consumer. The Distribution Licensee cannot change / modify the Contract Demand of consumer without its application / consent in writing.



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8.4 CCPL applied for the first time for revision (reduction) in Contract Demand for the month of May, 2016. MSEDCL granted the STOA permissions with the revised (reduced) Contract Demand as desired by CCPL.

8.5 For the month of August, 2016, CCPL applied for the following STOA permissions along with application for reduction in Contract Demand:

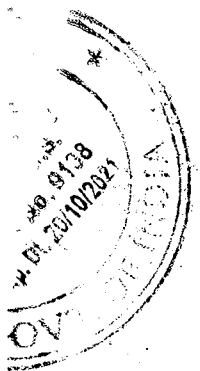
<u>Sr. No.</u>	<u>Consumer Name/Consumer No.</u>	<u>Generator Name</u>	<u>Contract Demand</u>	<u>OA Capacity</u>	<u>Revised CD</u>
01	Cooper Corporation Pvt. Ltd. / 190569006591	M/s Adani Power Ltd., Tiroda	4.974	2.4	2.72
02		M/s MSPL, Vankuswadi, Satara / 4166		1	2.72
03	Cooper Corporation Pvt. Ltd. / 190569021870	M/s Adani Power Ltd., Tiroda	4.99	2.4	2.49
04		M/s Ramgad Minerals & Mining Limited / Patan, Satara / 4189		0.5	2.49

8.6 The Generator APML, Tiroda has signed a long-term PPA with MSEDCL. As per the terms of the PPA, APML cannot sell power to any third party directly without consent of the appropriate authority of MSEDCL. It was observed later that no such prior permission was sought by APML. The action of the Supplier thus violated the PPA clause of third party sale. Thus, the STOA permission granted to CCPL was withdrawn. However, this is a separate issue and is neither the main contention of CCPL nor is relief sought regarding withdrawal of the OA.

8.7 Even after withdrawal of CCPL's OA permission for sourcing thermal power from APML, its two Units were in OA by virtue of sourcing power from RE sources.

8.8 The Contract Demand of CCPL was revised (reduced) as per its own request. It can only be restored as per the Supply Code and the SoP Regulations. Therefore, for the OA billing of August, 2016, MSEDCL has correctly proceeded with the revised Contract Demand (i.e. reduced) as per the provisions of the DOA Regulations, 2016.

8.9 The prayer of CCPL for automatic revision (restoration) in Contract Demand is not tenable in light of DOA Regulations, 2016. Frequently changing the Contract Demand by virtue of auto restoration may create many hazardous conditions such as additional financial burden on consumers and thus billing complexities and disputes, and difficulties in MSEDCL's load forecasting and optimum generation scheduling, planning, etc. It will also lead to practical difficulties in the field, where while



sanctioning new connections, the existing sanctioned load of the present consumers has to be checked and accordingly the provision of new / additional load has to be approved. The floating Contract Demand of OA consumers will create confusion in billing, planning, operational and technical difficulties.

8.10 The Corporate Office of MSEDCL has issued a letter to its field offices dated 26.07.2016 regarding revision (restoration) of Contract Demand in respect OA consumers. MSEDCL also took pro-active steps to simplify the process of revision of Contract Demand by issuing letter dated 02.09.2016 so that the OA consumers do not face any hardship. Further, in November 2016, the Corporate Office of MSEDCL directed its field offices to revise (restore) the Contract Demand of OA consumers as per the provisions.

9. At the hearing held on 25 May, 2017,

9.1 The Petitioners suggested that the Commission hear both Cases together as the issues are similar.

9.2 The Petitioners also stated that:

- a) The Petitioners had submitted online applications to MSEDCL for STOA for the month of August, 2016 and also surrendered the Contract Demand to the extent of the OA applied for.
- b) In both cases, MSEDCL granted STOA permission on 29 July, 2016, but cancelled it the very next day citing the PPA of the Generator (APML) with MSEDCL. Petitioners do not have any issue on this.
- c) When the OA applications were submitted to MSEDCL's Head Office (HO), the Petitioners also tendered applications for surrender of the Contract Demand to the extent of the OA quantum, which was acted upon by MSEDCL. However, as the OA permissions did not come through, it was incumbent upon MSEDCL to restore the Petitioners' original Contract Demand. However, MSEDCL applied a totally different logic of directing the Petitioners to approach the field office instead of restoring it at the HO level only.
- d) The SoP Regulations, 2014 do not apply in these Cases as the Petitioners never submitted the standard format for reduction of Contract Demand nor was the process for its reduction initiated at the field office level. The Petitioners simply

tendered plain applications for surrender of the Contract Demand to the extent of the quantum of OA to the MSEDCL HO only.

- e) The Petitions are filed under Section 142 of the EA, 2003 as MSEDCL has flouted the Commission's DOA Regulations, 2016.

9.3 MSEDCL stated that the revision in Contract Demand is being done as per the SoP Regulations. To a query of the Commission, MSEDCL stated that reduction in Contract Demand is being done at the HO level so as to facilitate the consumers while granting OA permission. However, for restoration of the Contract Demand, the consumer has to approach the concerned field office.

9.4 The Petitioners were given time to file their Rejoinders, if any, within a week.

10. In its Rejoinder in Case No. 37 of 2017 dated 31 May, 2017, KIL stated that:

10.1 A consumer availing STOA is allowed to apply for revising its Contract Demand only at the time of making the application for OA.

10.2 KIL applied for OA along with an application for reduction in Contract Demand, which was granted by MSEDCL. However, the OA permission for both the Units of KIL was cancelled immediately thereafter.

10.3 The application for OA mentions clearly the STOA period as August, 2016 and that, during that STOA period, KIL also requested reduction in the Contract Demand to the extent of the OA for both its Units.

10.4 The application for OA has two essential aspects (i) extent/ capacity of OA and (ii) reduction of Contract Demand for that period only.

(a) While granting the same, MSEDCL gives effect to both the aspects but, when cancelling the application for OA, MSEDCL only cancelled the OA permission but did not restore the Petitioner's original Contract Demand.

(b) Hence, MSEDCL is in violation/ breach/ non-compliance of Regulation 4.2 of the DOA Regulations, 2016

10.5 The reduction in Contract Demand for both the Units of KIL was sought along with the application of OA as per Regulation 4.2 of DOA, Regulations, 2016. Thus, the applicability of the SOP Regulations, 2014 as relied upon by MSEDCL is incorrect and irrelevant. The scope of the DOA Regulations, 2016 and the SoP Regulations, 2014 are completely different, and so also the reduction in Contract demand (Regulation 4.2 of DOA Regulations, 2016) and revision of load (Regulation 4.14 of SoP Regulations, 2014) are two very different provisions of the respective Regulations.

10.6 The Commission has laid down rules and the procedures for OA from time to time. Hence, the grant/ permission/ cancellation/ withdrawal of the OA can be only in accordance with these Regulations and not otherwise.

10.7 Further, even if it is accepted that Regulation 4.14 of the SOP Regulations, 2014 is applicable in the present case, it has also not been complied with in toto. The Regulation is reproduced below:

*“4.14 Reduction in Load:*

*Upon receipt of a request by a consumer for reduction of contract demand / sanctioned load of such consumer, the Distribution Licensee shall, unless otherwise agreed, so reduce the contract demand / sanctioned load of such consumer before the expiry of the second billing cycle after the receipt of such request;*

*Provided that Distribution Licensee and consumer should execute fresh agreement for such revised load before the second billing cycle.”*

10.8 Thus, it is clear from the above Regulation that, if MSEDCL reduces the Contract Demand, it is bound to execute a fresh agreement for such revised Contract Demand for both the Units of KIL which in the present case is conveniently forgone/ omitted. Hence, MSEDCL is also in violation/ breach/ non-compliance of Regulation 4.14 of the SoP Regulations, 2014 relied upon, in addition to Regulation 4.2 of the DOA Regulations, 2016.

10.9 KIL made various applications for STOA for different months of the year 2016, whereas the present case is specifically with regard to the STOA of August, 2016, and for the PEFKO Unit of KIL also for the month of October, 2016.

10.10 The OA application to source power from APML is separate and independent of the application made for OA from the RE sources. The reason for keeping the two separate is that the two applications are very different inasmuch as the application for OA from RE source did not request MSEDCL to reduce its Contract Demand to the extent of the OA sought, as RE is of infirm nature, Hence, clubbing the two applications is of no relevance in the present case.

10.11 MSEDCL on the one hand does not comply with Regulation 4.2 of the DOA Regulations, 2016 under the guise of the SoP Regulations, but when it comes to adhering to the provisions of the SoP Regulations, MSEDCL seeks to protect itself under the provisions of the DOA Regulations, 2016.

11. In its Rejoinder in Case No. 38 of 2017 dated 31 May, 2017, CCPL stated that:

11.1 When availing STOA, the consumer is allowed to apply for revising its Contract Demand only at the time of making the application. The application states the STOA period as from 01.08.2016 to 31.08.2016 and no reduction/ revision in Contract Demand was

sought in that application.

- 11.2 The application for OA has only one essential aspect, i.e. extent/ capacity of OA and (ii) the second aspect of reduction of Contract Demand for that period was never sought by CCPL for either of its Units.
- 11.3 MSEDCL granted the same but, while cancelling/ withdrawing the OA application, it arbitrarily reduced the Contract Demand of CCPL to the extent of OA.
- 11.4 The reduction in Contract Demand for both the Units of CCPL was never sought along with the application for OA. Thus, the applicability of the SoP Regulations, 2014 as relied upon by MSEDCL is completely incorrect.
- 11.5 The grant/ permission/ cancellation/ withdrawal of the OA can be only in accordance with these Regulations and not otherwise. Thus, if CCPL had not sought to reduce its Contract Demand at the time of making the STOA application, MSEDCL cannot presume it and reduce the Contract Demand arbitrarily in contravention of the provisions of Regulation 4.2 of the DOA Regulations, 2016.
- 11.6 Vide e-mail dated 17 November, 2016, MSEDCL stated that, if a consumer wants to cancel its OA and utilize 100% power from MSEDCL, the Contract Demand of such consumers would be restored to its original level without execution of a fresh agreement. However, MSEDCL arbitrarily reduced the Contract Demand without the consent of CCPL and thereby placed its reliance on Regulation 4.14 of the SoP Regulations, 2014.
- 11.7 If MSEDCL reduces the Contract Demand, which in the present case it has arbitrarily done, it is bound to execute a fresh agreement for such revised Contract Demand for both the Units of CCPL.
- 11.8 The application for OA for August, 2016 was withdrawn/ cancelled by MSEDCL only on 30 July, 2016 late evening (i.e. Saturday), and thus CCPL could only make another application in this regard on 1 August, 2016 and not before.
- 11.9 The application for OA from Non-RE sources is separate and independent of the application made for OA from RE sources. In neither of the applications had CCPL asked to reduce its Contract Demand. However, MSEDCL arbitrarily reduced the Contract Demand of CCPL for the OA taken from the Non-RE source.
12. In its additional submission dated 18 October, 2017 in both Cases, MSEDCL stated as follow:
- 12.1 MSEDCL has duly complied with Regulation 4.2 of the DOA Regulations, 2016, which reads as below:

*"4.2 Revision of Contract Demand: The Contract Demand of a Consumer availing LTOA or MTOA shall be governed by the provisions of the Electricity Supply Code and the Regulations of the Commission governing Standards of Performance:*



*Provided that a Consumer availing STOA shall not be eligible to revise his Contract Demand with the Distribution Licensee during the tenure of the STOA, but may do so at the time of applying for Open Access."*

12.2 Regulation 6.8 of the Supply Code Regulations, 2005, reads as follows:

*"6.8 Agreement*

*The Distribution Licensee shall increase or reduce the contract demand / sanctioned load of the consumer upon receipt of an application for the same from the consumer:*

*Provided that where such increase or reduction in contract demand / sanctioned load entails any works, the Distribution Licensee may recover expenses relating thereto in accordance with the principles specified in Regulation 3.3, based on the rates contained in the schedule of charges approved by the Commission under Regulation 18:*

*Provided further that any dispute with regard to the need for and extent of any such works pursuant to an application for increase or reduction in contract demand / sanctioned load shall be determined in accordance with the procedure set out in the Grievance Redressal Regulations."*

12.3 In view of the above Regulations, a Distribution Licensee shall increase or reduce the Contract Demand / sanctioned load of the consumer upon receipt of an application from the consumer.

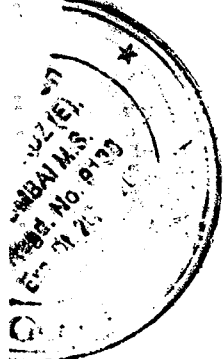
12.4 Thus, the Petitioners did not abide by Regulation 6.8 of the Supply Code.

12.5 Regarding the claim of the Petitioner that it has not filed applications for the reduction in Contract Demands for both of its Units as per Regulation 6.8 of the Supply Code, therefore they are not entitled to any auto reduction in the Contract Demand. Further, with regard to the applicability of the Supply Code, since the question of fact is regarding reduction in Contract Demand, the same comes under the purview of the Consumer Grievance Redressal Forum (CGRF) under the MERC (CGRF and Electricity Ombudsman) Regulations, 2006 ('CGRF Regulations').

12.6 The Commission has laid down precedence with regard to those Regulations. The Commission had upheld MSEDCL's stand regarding the provision of revision in Contract Demand and OA bills issued in its Order dated 3.06.2016 of Case No. 59 of 2015 and M.A. No. 8 of 2015 (Laxmi Organic Industries Ltd. vs MSEDCL):

*"...the question of whether or not there was inordinate delay in enhancing the Contract Demand, the augmentation required and any consequential relief or compensation for such delay and its consequential impact, is within the purview of the Consumer Grievance Redressal Forum (CGRF) under the MERC (CGRF and Electricity Ombudsman) Regulations, 2006 read with the Electricity Supply Code and the Standards of Performance Regulations, and not the Commission."*

12.7 The Commission reiterated the same in Case No 59 of 2016 (Amtek Auto Limited v.



MSEDCL):

*"...be aware of the express provision in the 2nd proviso of Regulation 6.8 of the Supply Code that such disputes are to be taken up by aggrieved consumers under the mechanism provided by the MERC (CGRF and Electricity Ombudsman) Regulations, 2006."*

12.8 MSEDCL through various modes of communication made the due procedure for reduction or restoration of Contract Demand clear in the public domain.

**Commission's Analysis and Ruling**

13. The main issue in both these Cases is that the Contract Demand of the Petitioners, which was reduced to the extent of the OA quantum they had applied for, was not restored immediately after MSEDCL cancelled their STOA permissions for August, 2016. Consequently, the Petitioners had to pay for the energy supplied by MSEDCL at the higher Temporary category tariff and with the applicable Additional Demand Charges to the extent that they exceeded their reduced Contract Demand till it was eventually restored.

14. The Commission's findings and directions in KIL's Case are as follows:

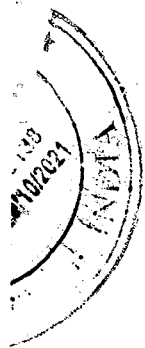
14.1 KIL had applied online on 7 July, 2016 to MSEDCL for STOA for the month of August, 2016. It also wrote to the Chief Engineer (Commercial) on 29 June, 2016 stating that it is surrendering its Contract Demand to the extent of the OA applied for.

14.2 MSEDCL granted the STOA on 29 July, 2016. However, it cancelled it the next day stating that MSEDCL had some issues with regard to the Thermal Generator from whom power was to be sourced through OA. KIL has not raised any issue on this.

14.3 However, when KIL came to know that MSEDCL had not restored its Contract Demand while cancelling the STOA permission and had, therefore, levied the Temporary category tariff, KIL raised the matter with MSEDCL, but without response .

14.4 The DOA Regulations, 2016 provide as follows with regard to revision of Contract Demand in the context of a consumer availing OA:

*"4.2 Revision of Contract Demand*



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*The Contract Demand of a consumer availing LTOA or MTOA shall be governed by the provisions of the Electricity Supply Code and the Regulation of the Commission governing Standards of Performance:*

*Provided that a consumer availing STOA shall not be eligible to revise his Contract Demand with the Distribution Licensee during the tenure of the STOA, but may do so at the time of applying for Open Access.*

14.5 Under the earlier DOA Regulations, 2014, reduction of Contract Demand to the extent of OA and its restoration to the original level upon expiry of the OA period was automatic. However, the DOA Regulations, 2016 provide that a consumer availing STOA cannot revise its Contract Demand during the tenure of the STOA, but may do so at the time of applying for OA. Thus, the choice of reducing its Contract Demand to the extent of the OA granted or retaining it is that of the consumer.

14.6 KIL had applied for reduction in its Contract Demand to the extent of the STOA permission. MSEDCL's contention is that, although it had admittedly cancelled it shortly thereafter, KIL did not apply afresh to restore the Contract Demand.

14.7 The DOA Regulations, 2016 provide for change in Contract Demand sought by LTOA or MTOA consumers in accordance with the procedure specified in the Supply Code and SoP Regulations. The SoP Regulations, 2014 provide as follows:

*"Reduction in Load*

*4.14 Upon receipt of a request by a consumer for reduction of contract demand / sanctioned load of such consumer, the Distribution Licensee shall, unless otherwise agreed, so reduce the contract demand /sanctioned load of such consumer before the expiry of the second billing cycle after the receipt of such request;*

*Provided that the Distribution Licensee and consumer should execute fresh agreement for such revised load before the second billing cycle."*

14.8 While citing this provision for not restoring the Contract Demand since KIL had not applied accordingly to the concerned authority, the Commission notes that MSEDCL itself did not follow the specified procedure for reducing the Contract Demand for August, 2016 in the first place and cancelled the STOA permission the day after it was granted. As such, by its own argument, the reduction of Contract Demand by MSEDCL was itself unfounded. In any case, it was clear from KIL's applications that the Contract Demand

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reduction was sought in conjunction with and predicated upon its application for STOA.

14.9 Thus, with the unilateral cancellation of STOA the day after it was granted, the entire process concerning the OA application and the permission granted stood revoked. The application for surrender of Contract Demand was an integral part of that process and was not independent of it, and cannot be seen in isolation. In fact, had the application for reduction in Contract Demand been entirely independent of the application for OA, it would not have been entertained by the Head Office of MSEDCL in the first place.

14.10 Moreover, Regulation 4.2 of the DOA Regulations, 2016 (quoted earlier) provides that the retention or reduction of Contract Demand shall be governed by the provisions of the Supply Code and the SoP Regulations only in respect of a consumer availing LTOA or MTOA. As regards STOA consumers, the proviso to Regulation 4.2 only provides that the Contract Demand cannot be revised during the STOA period, but can be sought at the time of applying for STOA. Thus, a distinction has been made in this regard between the principles for revision in Contract Demand, in relation to OA, applicable to STOA on the one hand, and to LTOA/MTOA on the other.

14.11 In view of the foregoing, the Commission set aside the reduction of the Contract Demand of KIL for the month of August, 2016. MSEDCL shall pass on the consequential relief to KIL in its energy bill for the ensuing billing cycle, with applicable interest.

15. The Commission's findings and directions on CCPL's Petition are as follows:

15.1 CCPL has stated that it had not applied for reduction in Contract Demand at the time of applying for STOA for August, 2016. The Commission notes that CCPL had earlier applied to CE (Commercial), MSEDCL on 6 April, 2016 for reduction in its Contract Demand for May, 2016 in connection with its application for STOA for that month:

*"...[CCPL] have applied for Open Access from 1-05-16 to 31-5-2016 for 2.5 MW.*

*...We confirm from our side that we will surrender the Contract Demand to the extent of Open Access power from 1-05-16 to 31-5-2016..."*

Accordingly, MSEDCL had granted STOA for May, 2016 with reduced Contract Demand as sought.

15.2 The correspondence or facts of the subsequent months till August, 2016 have not been submitted by either party. MSEDCL has stated that STOA for August, 2016 had also been granted for sourcing power from RE sources, and that permission had not been cancelled. However, no material has been placed on record by MSEDCL to rebut CCPL's contention that it had not applied for reducing its Contract Demand for August, 2016 in the first place for sourcing either the thermal power from AEL or the RE power from other sources.

15.3 It can only be surmised, presuming that CCPL had also sought STOA and reduction in Contract Demand for the months after May, 2016, that either MSEDCL had continued with that reduction in August, 2016, or decided on such reduction for that month on its own. MSEDCL has also not shown that CCPL had applied for reduction in Contract Demand in the months prior to August, 2016 independently of its OA applications, in which case it might have been justified in not restoring it without a specific application for the purpose.

15.4 In these facts and circumstances and the regulatory provisions cited earlier, and for the reasons explained above in respect of CCPL, the Commission sets aside the reduction of the Contract Demand of CCPL for the month of August, 2016. MSEDCL shall pass on the consequential relief to CCPL in its energy bill for the ensuing billing cycle, with applicable interest.

The Petition of Kores (India) Ltd. in Case No. 37 of 2017 and of Cooper Corporation Pvt. Ltd. in Case No. 38 of 2017 stands disposed of accordingly.

Sd/-  
(Deepak Lad)  
Member

Sd/-  
(Azeez M. Khan)  
Member

*Ashwani Kumar Sinha*  
(Ashwani Kumar Sinha)  
Secretary

