

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW  
DELHI**

**APPELLATE JURISDICTION**

**APPEAL NO. OF 2018**

**IN THE MATTER OF:**

*DFR NO - 23/2018*

Maharashtra State Electricity Distribution Company Ltd. ...Appellant

**VERSUS**

Maharashtra Electricity Regulatory Commission & Ors.

...Respondents

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**Through Counsel**

**COUNSEL FOR THE APPELLANT**

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Date:26.02.2018

Place: New Delhi

OPENING SHEET

(TO BE ENCLOSED AT THE TIME OF FILING)

<u>APPEAL/ AFR NO.</u>	<u>DATE OF FILING</u>	<u>Appellants</u>	<u>Respondents</u>	<u>Counsel for Appellant</u>	<u>Full DD Details</u>	<u>Relief sought-briefly &amp; accurately for permanent record purpose with provisions of law involved</u>
DFR NO	03.01.2018	Maharashtra State Electricity Distribution Co. Ltd. 5th Floor, Prakashgad Bandra (East) Mumbai 400 051	<p>1. Maharashtra Electricity Regulatory Commission World Trade Centre No.1, 13th Floor, Cuffe Parade, Colaba Mumbai - 400 001 Through its Secretary,</p> <p>2. M/s Adani Power Maharashtra Ltd. Achalraj, Opp. Mayor Bungalow, Law Garden, Ahmedabad-380006, Gujarat, Through its Director,</p> <p>3. M/s JSW Energy Ltd. Village Nandiwade, Post Jaigad, Tal. &amp; Dist. Ratnagiri-415614 Through its Director,</p> <p>4. M/s Rattan India Power Ltd. Plot No.D2 &amp; D2 (Part), At Additional Industrial Area, Nandganpeth, Amravati-444 901, Through its Director,</p> <p>5. M/s GMR Warora Energy Ltd. 701/704, 7th Floor, Naman Centre, A-wing, BKC, Bandra, Mumbai- 400 051, Through its Director,</p>	Samir Malik / Varun Agarwal Lex Global Legal Consultants 56, New Deluxe Apartments Sector 9, Rohini, New Delhi 110085	DD for Rs. 1,03,000/- dated 29.12.2017 being DD No. 634045 drawn on Bank of Maharashtra and DD for Rs. 10,000/- dated 06.02.2018 being DD No.217927, drawn on Punjab & Sind Bank in favour of the Pay & Accounts Officer, Ministry of Power, New Delhi.	<p>a) Allow the present Appeal and quash/set aside the Impugned Orders dated 16.11.2017</p> <p>b) Allow the prayers as mentioned in the Petition filed before the MERC</p> <p>c) Grant Cost in favour of the Appellant</p> <p>d) Pass any other order that this Hon'ble Tribunal deems fit in the in the facts and circumstances of the case and interests of justice</p>

A

## SYNOPSIS

The instant Appeal is being preferred by Maharashtra State Electricity Distribution Company Ltd. (hereinafter referred to as "MSEDCL" for sake of brevity) under Section 111 of the Electricity Act, 2003 against order and judgment dated 16.11.2017 (hereinafter referred to as "Impugned Order" for sake of brevity) passed by Maharashtra Electricity Regulatory Commission (hereinafter referred to as "MERC" for sake of brevity), in Case No. 24 of 2017 filed by MSEDCL.

By way of the Impugned Order, Ld. MERC has wrongly held that no change has taken place that would affect the basis of the rate underlying the Late Payment Surcharge and therefore the said RBI Guidelines/Circulars, by which RBI has introduced Base Rate system in 2010 and the MCLR system in 2016, are not Change in Law events as per the PPAs.

The Ld. MERC has failed to appreciate that in the present case MSEDCL is an affected party and continuation of the SBAR will cause unjust enrichment to the Generators and injustice to common consumers and MSEDCL by way of the increased rate of interest on LPS as per the SBAR which is higher than the present reference rates as notified by RBI. Any payment made at the said SBAR rates would add on and become 'unjust additional income' for the generators.

The Ld. MERC has wrongly overlooked the fact that the Commission itself has also replaced the SBAR system with the Base Rate system in its fresh MYT Regulations, 2015.

**B**

In view of the foregoing facts and circumstances, the Impugned Order deserves to be set aside and is liable to be quashed by this Hon'ble Tribunal in the interest of justice.

**LIST OF DATES**

<b>DATES</b>	<b>PARTICULARS</b>
2003	RBI introduced the Benchmark Prime Lending Rate (BPLR) system
	MSEDCL had initiated two bidding processes for Case 1 Stage 1 and Case1 Stage 2 separately
14.08.2008	MSEDCL PPA signed with Adani Power Maharashtra Ltd.(APML) for 1320MW power at the rate of Rs. 2.64 per unit with relevant change in law clause.
25.09.2008	MSEDCL PPA signed with Lanco Vidarbha Thermal Power Ltd.(Lanco) for 680MW power at the rate of Rs. 2.72 per unit with relevant change in law clause.
27.11.2009	The Commission approved the PPA with JSW for 300 MW in Case No.39 of 2009

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23.02.2010	MSEDCL PPA signed with JSW Energy (Ratnagiri) Ltd. ("JSW") for 300MW power at the rate of Rs. 2.72 per unit with relevant change in law clause.
17.03.2010	MSEDCL PPA signed with GMR Warora Energy Ltd. ("GMR") under the Case1 Stage 2 bidding process with relevant change in law clause.
31.03.2010, 09.08.2010 and 16.02.2013	MSEDCL PPA signed with Adani Power Maharashtra Ltd.(APML) under the Case1 Stage 2 bidding process with relevant change in law clause.
09.04.2010	RBI issued Guidelines on the Base Rate
22.04.2010 and 05.06.2010	MSEDCL PPA signed with Rattan India Power Ltd. („RPL“) under the Case1 Stage 2 bidding process with relevant change in law clause.
01.07.2010	RBI issued Master Circular stating that the BPLR system introduced in 2003 fell short of its original objective of bringing transparency to lending rates. This was mainly because, under the BPLR system, Banks could lend below the BPLR. For the same reason, it was also difficult to assess the transmission of policy rates of the RBI to the lending rates of Banks. Accordingly, Banks were

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	advised to switch over to the system of Base Rate from 1 July, 2010
28.12.2010	The Commission approved the PPA with GMR for 200 MW, RPL for 1200 MW and APML for 1200 MW in Case No. 22 of 2010
14.05.2011	The Commission approved the PPA with APML for 125 MW in Case No. 56 of 2010
27.12.2012	The Commission approved the PPA with APML for 440 MW in Case No. 53 of 2012
20.02.2013	The Commission approved the PPA with APML 1320 MW and with Lanco for 680 MW in Case No.68 of 2012
2015	In the MYT Regulations, 2015, the Commission has replaced the SBAR system with the Base Rate system
03.03.2016	RBI has issued fresh directions called the RBI (Interest Rate on Advances) Directions, 2016 which provides that all rupee loans sanctioned and credit limits renewed with effect from 1 April,

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	<p>2016 shall be priced with reference to the Marginal Cost of Funds Based Lending Rate (MCLR), which will be the internal benchmark for such purposes. At present the BPLR is 14.05% per annum.</p>
23.09.2016	<p>MSEDCL served a Notice for the Change in Law on the following IPP power suppliers:</p> <ul style="list-style-type: none"><li>a) APML for the PPAs of 1320 MW, 1200 MW and 125 MW</li><li>b) RPL for 750 MW and 450 MW.</li><li>c) GMR for 200 MW</li><li>d) JSW for 300 MW</li><li>e) Coastal Gujarat Power Ltd. (CGPL)</li></ul>
	<p>MSEDCL received replies from CGPL, RPL and JSW denying the change in law</p>
02.12.2016	<p>MSEDCL filed a petition before MERC under Section 86 of the Act read with the Change in Law clauses of the PPAs under Case 1 Stage 1 and Case 2 Stage 2 respectively</p>
14.03.2017	<p>APML filed its reply</p>

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29.03.2017	JSW filed its reply
24.04.2017	RPL filed its reply
28.04.2017	GMR filed its reply
16.11.2017	MERC passed the Impugned Order holding that no change has taken place that would affect the basis of the rate underlying the Late Payment Surcharge and therefore the said RBI Guidelines/Circulars, by which RBI has introduced Base Rate system in 2010 and the MCLR system in 2016, are not Change in Law events as per the PPAs.
	Hence the Present Appeal



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IN THE APPELLATE TRIBUNAL FOR ELECTRICITY, AT NEW DELHI

APPELLATE JURISDICTION

APPEAL NO. \_\_\_\_ OF 2018

[From the Order of the Ld. MERC dated 16.11.2017 passed in Case No. 24 of 2017]

**IN THE MATTER OF:**

Maharashtra State Electricity Distribution Co. Ltd.

... Appellant

Versus

Maharashtra Electricity Regulatory Commission and ors,

...Respondents

**MEMO OF PARTIES**

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

5th Floor, Prakashgad

Bandra (East)

Mumbai 400 051

...Appellant

Versus

1. **Maharashtra Electricity Regulatory Commission**  
World Trade Centre No.1, 13th Floor,  
Cuffe Parade, Colaba  
Mumbai - 400 001  
Through its Secretary,
2. **M/s Adani Power Maharashtra Ltd.**  
Achalraj, Opp. Mayor Bungalow, Law Garden,  
Ahmedabad-380006, Gujarat,  
Through its Director,
3. **M/s JSW Energy Ltd.**  
Village Nandiwade,  
Post Jaigad, Tal. & Dist. Ratnagiri-415614  
Through its Director,
4. **M/s Rattan India Power Ltd.**  
Plot No.D2 & D2 (Part),  
At Additional Industrial Area,  
Nandganpeth, Amravati-444 901,  
Through its Director,

H

5. M/s GMR Warora Energy Ltd.  
701/704, 7<sup>th</sup> Floor,  
Naman Centre, A-wing,  
BKC, Bandra, Mumbai- 400 051,  
Through its Director,

...Respondents

THROUGH

COUNSEL FOR THE APPELLANT

DATE:

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IN THE APPELLATE TRIBUNAL FOR ELECTRICITY, AT NEW DELHI  
APPELLATE JURISDICTION  
APPEAL NO. \_\_\_\_ OF 2018

IN THE MATTER OF:

**Maharashtra State Electricity Distribution Co. Ltd.**  
5th Floor, Prakashgad  
Bandra (East)  
Mumbai 400 051

...Appellant

Versus

1. **Maharashtra Electricity Regulatory Commission**  
World Trade Centre No.1, 13th Floor,  
Cuffe Parade, Colaba  
Mumbai - 400 001  
Through its Secretary,
2. **M/s Adani Power Maharashtra Ltd.**  
Achalraj, Opp. Mayor Bungalow, Law Garden,  
Ahmedabad-380006, Gujarat,  
Through its Director,
3. **M/s JSW Energy Ltd.**  
Village Nandiwade,  
Post Jaigad, Tal. & Dist. Ratnagiri-415614  
Through its Director,
4. **M/s Rattan India Power Ltd.**  
Plot No.D2 & D2 (Part),  
At Additional Industrial Area,  
Nandganpeth, Amravati-444 901,  
Through its Director,
5. **M/s GMR Warora Energy Ltd.**  
701/704, 7<sup>th</sup> Floor,  
Naman Centre, A-wing,  
BKC, Bandra, Mumbai- 400 051,  
Through its Director,

...Respondents

## APPEAL UNDER SECTION 111 OF THE ELECTRICITY ACT, 2003

## MOST RESPECTFULLY SHOWETH:

## 1. Details of the Appeal

- 1.1 The instant Appeal is being preferred by Maharashtra State Electricity Distribution Company Ltd. (hereinafter referred to as "MSEDCL" for sake of brevity) under Section 111 of the Electricity Act, 2003 against order and judgment dated 16.11.2017 (hereinafter referred to as "Impugned Order" for sake of brevity) passed by Respondent No. 1, Maharashtra Electricity Regulatory Commission (hereinafter referred to as "MERC" for sake of brevity), in Case No. 24 of 2017 filed by MSEDCL seeking relief for the Change in Law event arising from the introduction by the Reserve Bank of India (RBI) of the Base Rate system and thereafter the Marginal Cost of Funds-based Lending Rate system in place of the Benchmark Prime Lending Rate in terms of the relevant provisions of its Power Purchase Agreements (PPAs) with various Independent Power Producer (IPP) Generating Companies under Section 63 of the Electricity Act (EA), 2003.
- 1.2 The Ld. MERC by way of the Impugned Order held and observed as under:-
- (i) In terms of the PPA not all changes in legal dispensations by a Governmental Instrumentality such as RBI amount to Change in Law events for the purposes of compensating the affected party.

- (ii) Any changes in the basis of the LPS rates consequent to revisions by the RBI do not affect in any manner the rates at which power was agreed to be sold and purchased under the PPAs and in the consequent financial implications for either Party resulting in a liability to compensate the affected Party.
- (iii) While introducing the Base Rate system in 2010 and the MCLR system in 2016, the RBI has provided for the continuation of the earlier BPLR dispensation for existing loans. Consequently, the SBAR referred to in the LPS provision, which is the SBI PLR for loans with maturity of one year, remains in vogue and its value continues to be declared by SBI from time to time.
- (iv) Therefore no change has taken place that would affect the basis of the rate underlying the Late Payment Surcharge and therefore the said RBI Guidelines are not Change in Law events as per the PPAs.
- (v) The additional liability of LPS on MSEDCL would also be expected to encourage timely payment and deter delay.
- (vi) The PPAs provide for amendments by way of a written agreement. However, none of the Respondents have agreed to the change in the LPS provision sought by MSEDCL.

A copy of the Impugned Order is annexed herewith and marked as **Annexure A-1** to this appeal.

2. **Date on which the order appealed against is communicated and proof thereof, if any.**

The Impugned Order dated 16.11.2017 was communicated to the Appellant on 20.11.2017.

3. **The Address of the Appellant for service is set out as hereunder:**

Maharashtra State Electricity Distribution Co. Ltd,  
5th Floor, Prakashgad  
Bandra (East)  
Mumbai 400 051

**Name and Address of the Counsel**

Samir Malik / Varun Agarwal  
Lex Global Legal Consultants  
56, New Deluxe Apartments  
Sector 9, Rohini, New Delhi 110085  
Mobile: + 91 9871737960, +91 9717866618

4. **The address of the Respondents for service of all notices in the appeal is set out hereunder:**

- i. **Maharashtra Electricity Regulatory Commission**  
World Trade Centre No.1, 13th Floor,  
Cuffe Parade, Colaba  
Mumbai - 400 001  
Through its Secretary,
- ii. **M/s Adani Power Maharashtra Ltd.**  
Achalraj, Opp. Mayor Bungalow, Law Garden,  
Ahmedabad-380006, Gujarat,  
Through its Director,
- iii. **M/s JSW Energy Ltd.**  
Village Nandiwade,  
Post Jaigad, Tal. & Dist. Ratnagiri-415614  
Through its Director,

iv. **M/s Rattan India Power Ltd.**  
Plot No.D2 & D2 (Part),  
At Additional Industrial Area,  
Nandganpeth, Amravati-444 901,  
Through its Director,

v. **M/s GMR Warora Energy Ltd.**  
701/704, 7<sup>th</sup> Floor,  
Naman Centre, A-wing,  
BKC, Bandra, Mumbai- 400 051,  
Through its Director,

## 5. **Jurisdiction of the Appellate Tribunal**

The Appellant declares that the subject matter of the appeal is within jurisdiction of this Hon'ble Tribunal under the provisions of Section 111 of the Electricity Act, 2003.

## 6. **Limitation**

The present appeal under Section 111 of the Electricity Act, 2003 has been filed within the limitation period against the Impugned Order dated 16.11.2017 of the Ld. MERC as the Impugned order was received by the Appellant on 20.11.2017.

## 7. **Facts of the Case**

7.1 As per the Competitive Bidding Guidelines issued by the Ministry of Power (MoP), Government of India for Case 1 bidding, MSEDCL had initiated two bidding processes for Case 1 Stage 1 and Case1 Stage 2 separately. The Commission's approvals were obtained for the Bidding Documents. The bidding processes and the evaluation of bids were carried out as per these provisions

and the PPAs signed accordingly with the successful bidders under the Case1 Stage 1 bidding process as follows:

**Case1 Stage 1 - PPA**

S. No	Date of PPA	Name of the Generating Company	Drawl of power (in MW)	Tariff (Rs/unit)	Name of the relevant Project of the Generating Company
1.	14.08.2008	Adani Power Maharashtra Ltd.(APML)	1320	2.64	Units 2 and 3 of its Tiroda Project
2.	25.09.2008	Lanco Vidarbha Thermal Power Ltd.(Lanco)	680	2.72	Wardha Project.
3.	23.02.2010	JSW Energy (Ratnagiri) Ltd. ("JSW")	300	2.72	Unit 1 of its Ratnagiri Project.

7.2 MSEDCL submitted Petitions for approval of these PPAs under Section 63 of the EA, 2003. Vide its Order dated 27 November, 2009 in Case No.39 of 2009, the Commission approved the PPA with JSW for 300 MW. Vide Order dated 20 February, 2013 in Case No. 68 of 2012, it approved the PPA with APML for 1320 MW and with Lanco for 680 MW, and adopted the tariff.

7.3 APML and JSW have commenced supply. However, the Project of Lanco has not been commissioned so far. Lanco has filed a Petition for termination of its PPA. MSEDCL has also filed a Petition for recovery of liquidated damages from Lanco for non-commencement of supply.



7.4 The relevant Clauses of these PPAs read as follows:

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***“Article 1:Definitions and Interpretation***

***Change in Law*** - shall have the meaning ascribed thereto in Article 13.1.1 of this agreement

***...Indian Governmental instrumentality*** - means the GoI, Government of Maharashtra and any ministry or, department of or, board, agency or other regulatory or quasi-judicial authority controlled by GoI or Government of States where the procurer and project are located and includes the CERC and MERC

***...Late Payment Surcharge*** - shall have the meaning ascribed there to in Article 11.3.4

***Law*** - means, In relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the CERC and the MERC

***...SBAR-*** means the prime lending Rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, any other arrangement that substitutes such prime lending rate as mutually agreed to by the parties.

***Article 11: Billing and Payment***

***...11.3.4*** In the event of delay in payment of a monthly bill by the procurer beyond its due date month billing, a Late Payment Surcharge shall be payable by the procurer to the

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seller at the rate of two (2) percent in excess of applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest) for each day of the delay....

**...Article 13: Change in Law**

**13.1 Definitions**

In this Article 13, the following terms shall have the following meanings

**13.1.1 –Change in Law** means the occurrence of any of the following events after the date, which is seven (7) days prior, to the Bid Deadline:

(i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal or any law or

(ii) a change in interpretation of any law by a competent court of law, tribunal or Indian governmental instrumentality provided such court of law, tribunal or Indian governmental instrumentality is final authority under law for such interpretation but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the seller, or (ii) Change in respect of UI charges or frequency intervals by an Appropriate Commission.

**13.2 Application and principal for computing impact of Change in Law**

While determining the consequence of Change in Law under this Article 13, the parties shall have due regard to the principle that the purpose compensating the party affected by such Change in Law, is to restore through monthly tariff payments to the extent contemplated in this Article 13, the affected party to the same economic position as if such Change in Law has not occurred.

...b) Operation Period-

As a result of Change in Law, the compensation for any increase / decrease in revenues or cost to the Seller shall be determined by the Maharashtra State Electricity Regulatory Commission whose decision shall be final and binding on both the parties, subject to right of appeal provided under applicable law and effective from the date specified in 13.4.1

### **13.3 Notification of Change in Law:**

13.3.1 If the seller is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a Change in Law under this Article, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

13.3.2 Notwithstanding Article 13.3.1, the Seller shall be obliged to serve a notice to the Procurer under this Article 13.3.2 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the procurer contained herein shall be material. Provided that in case the Seller has not provided such notice, the Procurer shall have the right to issue such notice to the seller.

13.3.3 Any notice served pursuant to this Article 13.3.2 shall provide, amongst other things, precise details of:

- a) The Change in Law; and
- b) The effects on the Seller of the matters referred to in Article 13.2.

### **13.4 Tariff adjustment payment on account of Change in Law**

13.4.1 subject to Article 13.2, the adjustment in monthly tariff payment shall be effective from:

(i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law, or

(ii) the date of order/ judgment of the competent court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of law."

- 7.5. MSEDCL signed PPAs with bidders under the Case1 Stage 2 bidding process as follows:

**Case1 Stage 2**

S.No.	Date of PPA	Name of the Generating Company	Drawl of power (in MW)	Tariff (Rs/ unit)	Name of the relevant Project of the Generating Company
1.	17.03.2010	GMR Warora Energy Ltd. („GMR“)	200	2.88	Warora Project
2.	22.04.2010	RattanIndia Power Ltd. („RPL“)	450	3.26	Amravati Project.
	05.06.2010		750		
3.	31.03.2010	Adani Power Maharashtra Ltd.(APML)	1200	3.28	Tiroda Project.
	09.08.2010		125		
	16.02.2013		440		

- 7.6. MSEDCL submitted a Petition for approval of these PPAs under Section 63.

- 7.7. Vide Order dated 28 December, 2010 (Case No. 22 of 2010), the Commission approved the PPA of GMR for 200 MW, RPL for 1200 MW and APML for 1200 MW. The Commission also

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approved the PPA of APML for 125 MW vide Order dated 14 May, 2011 (Case No. 56 of 2010) and for 440 MW vide Order dated 27 December, 2012 (Case No. 53 of 2012).

7.8 The power supply against these PPAs, except 440 MW under the APML PPA, has commenced. The Scheduled Delivery Date (SDD) of the APML 440 MW PPA was 16 February, 2017. However, MSEDCL and APML have a Memorandum of Understanding (MoU) incorporating some terms and conditions for early power supply and have jointly submitted a Petition before the Commission. [That joint Petition has since been withdrawn.]

7.9 The relevant provisions of the above PPAs executed under Case1 Stage 2 bidding process read as follows:

***"Article 1: Definitions and Interpretation***

***Change in Law*** - shall have the meaning ascribed thereto in Article 10.1.1 of this agreement...

***Indian Governmental Instrumentality*** - shall mean the Government of India, Governments of state(s) of Maharashtra, and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurer...

**Late Payment Surcharge** - shall have the meaning Ascribe thereto an Article 8.3.5 of this Agreement.

**Law** - Shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate commission...

**SBAR** - Shall mean the prime lending Rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the parties.

...

### **Article 8: Billing and Payment**

...8.3.5 In the event of delay in payment of a Monthly Bill by the Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by such procurer to the seller at the rate of two (2) percent in excess of applicable SBAR per annum, on the amount of

outstanding payment, calculated on a day to day basis (and compounded with monthly rest) for each date of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.

**...Article 10: Change in Law**

**10.1 Definitions**

In this Article 10, the following terms have the following meanings

**10.1.1 –Change in Law** means the occurrence of any of the following events after the date, which is seven (7) days prior, to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the Seller or any income to the Seller:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in interpretation or application of any law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms of conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any

*new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;*

- *any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) Change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability...*

## **10.2 Application and Principles for computing impact of Change in Law**

*10.2.1 While determining the consequence of Change in Law under this Article 10, the parties shall have due regard to the principle that the purpose compensating the party affected by such Change in Law, is to restore through monthly tariff Payment, to the extent contemplated in this Article 10, the affected party to the same economic position as if such Change in Law has not occurred...*

## **10.3 Relief for Change in Law**

*...10.3.2 During Operating Period*



The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only if the decrease in revenue or increase in expenses of the Seller is in excess of an amount equivalent to 1% of the value of the Letter of Credit in aggregate for the relevant Contract Year.

10.4 Notification of Change in Law:

10.4.1 If the seller is affected by a Change in Law in accordance with Article 10.1 and the Seller wishes to claim a Change in Law under this Article 10, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

10.4.2 Notwithstanding Article 10.4.1, the Seller shall be obliged to serve notice to the Procurer under this Article 10.4.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the procurer contained herein shall be material.

Provided that in case the seller has not provided such notice, the Procurer shall have the right to issue such notice to the Seller.

10.4.3 Any notice served pursuant to this Article 10.4.2 shall provide, amongst other things, precise details of:

a) *The Change in Law; and*

b) *The effects on the Seller.*

**10.5 *Tariff Adjustment Payment on account of Change in Law***

*10.5.1 Subject to Article 10.2, the adjustment in monthly Tariff Payment shall be effective from:*

- (i) the date of adoption, promulgation, amendment, re-enactment, repeal of the Law or Change in Law, or*
- (ii) the date of order/ judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.*

*10.5.2 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 8.8. However, in case any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed tariff."*

**RBI Guidelines/Circulars**

7.10. From 2003, RBI introduced the Benchmark Prime Lending Rate (BPLR) system.

7.11 On 9 April, 2010, RBI issued Guidelines on the Base Rate and Master Circular on 1 July, 2010 stating that the BPLR system

introduced in 2003 fell short of its original objective of bringing transparency to lending rates. This was mainly because, under the BPLR system, Banks could lend below the BPLR. For the same reason, it was also difficult to assess the transmission of policy rates of the RBI to the lending rates of Banks. Accordingly, Banks were advised to switch over to the system of Base Rate from 1 July, 2010. The Base Rate system aimed at enhancing transparency in lending rates of Banks and enabling better assessments of transmission of monetary policy.

7.12. As per RBI Guidelines/ Circular, the Base Rate system replaced the BPLR system from 1 July, 2010 and all categories of loans were to be priced only with reference to the Base Rate except loans to the categories (a) DRI advances (b) Loan to Banks own employee and (c) loan to Banks depositors against their own deposits which could be priced without reference to the Base Rate.

7.13. On 3 March, 2016, RBI has issued fresh directions called the RBI (Interest Rate on Advances) Directions, 2016 which provides that all rupee loans sanctioned and credit limits renewed with effect from 1 April, 2016 shall be priced with reference to the Marginal Cost of Funds Based Lending Rate (MCLR), which will be the internal benchmark for such purposes.

7.14. The State Bank of India (SBI) is publishing Base Rate (Historical Data) with effect from 1 July, 2010 till date on the SBI website.

From April 2016 onwards, SBI is also publishing its MCLR rates.

At present, the applicable Base Rate is 9.30% p.a. and applicable MCLR rate is 9.10% p.a. SBI is also publishing the BPLR (Historical Data). At present the BPLR is 14.05% per annum.

7.15. As per the above Guidelines/ Circulars issued by RBI, the Base Rate system / MCLR system is introduced and is applicable for all new loans from the respective effective dates and for those old loans that come up for renewal. Existing loans based on the BPLR system may run till their maturity. In case existing borrowers want to switch to the new system before expiry of existing contracts, an option may be given to them on mutually agreed terms. Although RBI introduced the Base Rate for all floating rate loan products from 1st July, 2010, it has allowed old loans to continue until their maturity according to the same interest rate methodology at which they were approved. Thus SBI is publishing the BPLR only for the old loans which have not come up for renewal.

7.16. Under the Commission's Multi Year Tariff ((MYT) Regulations, 2011 (Regulations 35.3(b) and 35.4(b)), the rate of interest on working capital (IoWC) shall be equal to the State Bank of India Advance Rate (SBAR) as on the date on which the application for determination of tariff is made. Further, as per Regulation 13.9 of the MYT (Third Amendment) Regulations, 2011, for computation of the Fuel Adjustment Cost (FAC) component of

Z- factor charge, the component 'C' is the carrying cost for any under recovery/ over recovery on account of change in fuel cost of own generation and cost of power purchase, computed at the SBAR prevailing at the beginning of the month.

7.17. As per Regulations 31.1 (f), 31.2 (b) and 31.3 (b) of the MYT Regulations, 2015, the rate of IoWC shall be on a normative basis and equal to the Base Rate as on the date on which the Petition for determination of tariff is filed, plus 150 basis points. This is subject to the proviso that, for the purpose of Truing-up for any year, IoWC shall be allowed at the rate equal to the rated average Base Rate prevailing during the relevant year, plus 150 basis points.

7.18. Further as per the MYT Regulations, 2015, for computation of FAC component of Z- Factor charge, the component C is the carrying cost for any under recovery / over Recovery, computed at the Base Rate prevailing at the beginning of the month, plus 150 basis points. Thus, the Commission has also replaced the SBAR system with the Base Rate system in its fresh MYT Regulations, 2015.

7.19. As per Section 21(2) of the Banking Regulation Act, 1949,

*"Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to -*

*...(e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given."*

Further, as per Section 21 (3), every banking company shall be bound to comply with any directions given to it under this Section.

7.20. The BPLR system was introduced in 2003. Banks have to charge interest on loans in accordance with the directives issued by RBI from time to time. The interest prescribed for delay in payment clause incorporated in the PPAs was based on the prevailing rate at that time and the system enforced as per the directives of RBI. RBI is constituted as per Section 3 of the RBI Act, 1934 for the purpose of carrying on the business of Banking in accordance with the provisions of the Act. Thus, being a Governmental Instrumentality, its orders, notifications and circulars are 'laws' as defined in the PPAs, and it has now issued new Guidelines/ Circulars. As per these Guidelines/ Circulars, the Base Rate system replaced the BPLR system from July, 2010. Thereafter, the Base Rate system has now been replaced with MCLR w.e.f. April 01, 2016. Thus, the BPLR system incorporated in the PPAs has to be replaced by the Base Rate system / MCLR system for their respective application periods. The replacement of BPLR with Base Rate and Base Rate with MCLR by RBI, being a Governmental Instrumentality, is covered under the Change in Law provisions of the PPAs.

7.21. As per the provisions of the PPA quoted above, it is the obligation of the Seller to serve a Notice of Change in Law to the Procurer if it is either affected or benefited by such Change in Law. In case the Seller has not provided such Notice, the Procurer has the right to issue such Notice to the Seller. However, MSEDCL had not received such Notice from any of the IPP power suppliers for the events of Change in Law mentioned in the Petition.

7.22. On 23 September, 2016, MSEDCL served a Notice for the Change in Law on the following IPP power suppliers:

- a) APML for the PPAs of 1320 MW, 1200 MW and 125 MW
- b) RPL for 750 MW and 450 MW.
- c) GMR for 200 MW
- d) JSW for 300 MW
- e) Coastal Gujarat Power Ltd. (CGPL)

7.23. In response to the Notice, JSW, CGPL and RPL have replied as under:

- a) **CGPL:** CGPL has stated that issuance of Master Circular / Directions dated 11 July, 2010 and 3 March, 2016 by RBI does not amount to Change in Law in terms of Article 13 of the PPA, and requested MSEDCL to withdraw the Notice.
- b) **RPL:** RPL has stated that, although RBI had changed BPLR to Base Rate vide its Circular dated 1 July, 2010 w.e.f. that date, it stipulated that Banks may continue to notify the BPLR from

time to time so as to enable existing loans on BPLR to run till their maturity. The RBI Circular dated 3 March, 2016 stated that existing loans and credit limits linked to the Base Rate / BPLR shall continue till repayment or renewal as the case may be provided that the existing borrower shall have the option to move to the MCLR linked loans at mutually acceptable terms. As such, RPL has stated that there is no Change in Law as the SBI PLR exists as on date and it is still being used by Banks for existing loans.

- c) **JSW:** JSW has denied the contention of MSEDCL, stating that there is a complete and independent mechanism agreed under the PPA in case of absence of SBI PLR and no recourse can be had to the Change in Law provision of the PPA in this respect. Further, since the PLR is being published regularly by SBI, the question of application of any other rate for calculating the interest on delayed payments does not arise in the present case. Even in the absence of the SBI PLR, it is for the parties to mutually agree on its substitution with any other arrangement. JSW disagrees that the RBI directives have completely abolished PLR and wholly substituted it with the Base Rate system w.e.f. 1 July, 2010 and MCLR from 3 March, 2016 for all purposes and intent, and there are contracts which are saved and are still governed by the PLR system.

7.24. MSEDCL has not received replies from GMR.



7.25 MSEDCL filed a petition dated 02.12.2016 before MERC under Section 86 of the Act read with the Change in Law clauses of the PPAs under Case 1 Stage 1 and Case 2 Stage 2 respectively. APML filed its reply dated 14.03.2017. JSW filed its filed its reply dated 29.03.2017, RPL filed its reply dated 24.04.2017, GMR filed its reply dated 28.04.2017.

A copy of the Petition filed before MERC along with the annexures thereto is annexed and marked as **Annexure A-2(Colly)** to this appeal.

#### **8(a) Facts in issue**

The facts in issue in the instant appeal are mentioned below:

- A. The BPLR system was introduced in 2003. Banks have to charge interest on loans in accordance with the directives issued by RBI from time to time. The interest prescribed for delay in payment clause incorporated in the PPAs was based on the prevailing rate at that time and the system enforced as per the directives of RBI. RBI is constituted as per Section 3 of the RBI Act, 1934 for the purpose of carrying on the business of Banking in accordance with the provisions of the Act. Thus, being a Governmental Instrumentality, its orders, notifications and circulars are 'laws' as defined in the PPAs, and it has now issued new Guidelines/ Circulars. As per these Guidelines/ Circulars, the Base Rate system replaced the BPLR system from July, 2010. Thereafter, the Base Rate system has now been replaced with MCLR w.e.f. April 01, 2016. Thus, the BPLR system incorporated in the PPAs has to be replaced by the Base Rate system / MCLR system for their respective application periods. The replacement of BPLR with Base Rate and Base Rate

with MCLR by RBI, being a Governmental Instrumentality, is covered under the Change in Law provisions of the PPAs.

- B. As per the provisions of the PPA quoted above, it is the obligation of the Seller to serve a Notice of Change in Law to the Procurer if it is either affected or benefited by such Change in Law. In case the Seller has not provided such Notice, the Procurer has the right to issue such Notice to the Seller. However, MSEDCL had not received such Notice from any of the IPP power suppliers for the events of Change in Law mentioned in the Petition.
- C. On 23 September, 2016, MSEDCL served a Notice for the Change in Law on the following IPP power suppliers:
- a) APMIL for the PPAs of 1320 MW, 1200 MW and 125 MW
  - b) RPL for 750 MW and 450 MW.
  - c) GMR for 200 MW
  - d) JSW for 300 MW
  - e) Coastal Gujarat Power Ltd. (CGPL)
- D. In response to the Notice, JSW, CGPL and RPL have replied as under:
- a) **CGPL:** CGPL has stated that issuance of Master Circular / Directions dated 11 July, 2010 and 3 March, 2016 by RBI does not amount to Change in Law in terms of Article 13 of the PPA, and requested MSEDCL to withdraw the Notice.
  - b) **RPL:** RPL has stated that, although RBI had changed BPLR to Base Rate vide its Circular dated 1 July, 2010 w.e.f. that date, it stipulated that Banks may continue to notify the BPLR from time to time so as to enable existing loans on BPLR to run till their maturity. The RBI

Circular dated 3 March, 2016 stated that existing loans and credit limits linked to the Base Rate / BPLR shall continue till repayment or renewal as the case may be provided that the existing borrower shall have the option to move to the MCLR linked loans at mutually acceptable terms. As such, RPL has stated that there is no Change in Law as the SBI PLR exists as on date and it is still being used by Banks for existing loans.

- c) **JSW:** JSW has denied the contention of MSEDCL, stating that there is a complete and independent mechanism agreed under the PPA in case of absence of SBI PLR and no recourse can be had to the Change in Law provision of the PPA in this respect. Further, since the PLR is being published regularly by SBI, the question of application of any other rate for calculating the interest on delayed payments does not arise in the present case. Even in the absence of the SBI PLR, it is for the parties to mutually agree on its substitution with any other arrangement. JSW disagrees that the RBI directives have completely abolished PLR and wholly substituted it with the Base Rate system w.e.f. 1 July, 2010 and MCLR from 3 March, 2016 for all purposes and intent, and there are contracts which are saved and are still governed by the PLR system.

E. MSEDCL has not received replies from GMR.

F. MSEDCL filed a petition dated 02.12.2016 before MERC under Section 86 of the Act read with the Change in Law clauses of the PPAs under Case 1 Stage 1 and Case 2 Stage 2 respectively. APML filed its reply dated 14.03.2017. JSW filed its filed its reply dated 29.03.2017, RPL filed its reply dated 24.04.2017, GMR filed its reply dated 28.04.2017.

**8(b) Questions of Law**

- 8.1 Whether the Impugned Order is valid?
- 8.2 Whether the Impugned Order is against the principles contained in the Electricity Act and regulations made there under?
- 8.3 Whether Ld. MERC has rightly refused to declare the Guidelines/circulars issued by RBI as Change in Law as provided in respective PPAs?
- 8.4 Whether MERC has erred in rejecting the plea of the Appellant herein to allow to make the late payment surcharge in the event of delay at the rate of 2 percent excess of the applicable base Rate per annum on the amount of outstanding payment calculated on a day to day basis for each day of the delay from 1 July 2010 till 31 March 2016 and thereafter at the rate of 2 percent in excess of the applicable rate under MCLR system?

**9. Grounds Raised with Legal Provisions**

- 9.1 That the Appellant therefore prefers an appeal against the Impugned orders on the following grounds inter-alia which are exclusive and without prejudice to each other:-
  - a) Because the Ld. MERC has erred in holding that no change has taken place that would affect the basis of the rate underlying the LPS and therefore the said RBI Guidelines are not Change in Law events as per the PPAs.
  - b) Because the Ld. MERC failed to appreciate that continuation of the SBAR will cause unjust enrichment to the Generators and injustice to common consumers and MSEDCL, as the generator

will be unjustly benefitted by way of the increased rate of interest on LPS as per the SBAR which is higher than the present reference rates as notified by RBI. Moreover, the said unjust enrichment is nothing but '*additional income*' for the Seller/generator in accordance with definition of Change in Law as provided under the PPA.

- c) Because despite holding that RBI is a Governmental Instrumentality, the Ld. MERC has erred in holding that new Guidelines/ Circulars are not covered by the Change in law event as stipulated in the PPA. In this regard, it is submitted the orders, notifications and circulars of RBI are 'laws' as defined in the PPAs. With the issuance of new Guidelines/ Circulars, the Base Rate system has been replaced by the <sup>Base Rate</sup> BPLR system from July, 2010. And thereafter, the Base Rate system has now been replaced with MCLR w.e.f. April 01, 2016. Thus, the BPLR system incorporated in the PPAs has to be replaced by the Base Rate system / MCLR system for their respective application periods. The replacement of BPLR with Base Rate and Base Rate with MCLR by RBI, being a Governmental Instrumentality, is covered under the Change in Law provisions of the PPAs.
- d) It is submitted that the Ld. MERC has wrongly overlooked the fact that the Commission itself has also replaced the SBAR system with the Base Rate system in its fresh MYT Regulations, 2015. As per Regulations 31.1 (f), 31.2 (b) and 31.3 (b) of the MYT Regulations, 2015, the rate of IoWC shall be on a normative basis and equal to the Base Rate as on the date on which the Petition for determination of tariff is filed, plus 150 basis points.
- e) Because the Ld. MERC failed to appreciate that the PPA with GMR for 200 MW was in fact approved by MERC vide its Order dated 28 December, 2010 (Case No. 22 of 2010) and therefore

the question of GMR being inter-state Generator and consequently MERC not having jurisdiction does not arise.

- f) Because the Ld. MERC failed to acknowledge that in terms of the PPA and the provisions of change in law, the seller cannot be the sole affected party. There may be cases where MSEDCL can be a affected party for the purpose of change in law. The present case falls in the category where MSEDCL is the affected party for the purposes of change in law.
- g) The Ld. MERC has erred in holding that additional liability of LPS would encourage timely payments. In this regard it is noteworthy that MSEDCL is a revenue neutral entity for which all expenses are approved by the Commission in its ARR. MSEDCL itself is keen on ensuring timely payments to all generators. The delay ever so occasioned in making payments to generators is due to several extraneous and unavoidable circumstances which are at times beyond the control of the Appellant herein (For ex: the recent drought in state of Maharashtra due to which the consumers who are farmers were unable to make timely payments). It is in such cases where this additional burden of interest on LPS on account of higher rate of reference rate other than that as specified by RBI in its new guideline/circular is unjustified and unwarranted.

**10. Matters not previously filed or pending with any other Court.**

The Appellant further declares that the Appellant had not previously filed any Writ Petition or suit regarding the matter of the present Appeal before any Court, Tribunal or any other authority.

**11. Explanation of the grounds for relief sought and the legal provision relied upon**

The Grounds for the relief sought have already been explained in para 9 of the instant Appeal.

**12. Details of Interim Application, if any, preferred along with appeal.**

The Appellant has filed an interim application for stay against the Impugned Order.

**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 (if known).**

No. The instant Appeal is the only Appeal preferred by the Appellant.

**14. Details of Index**

(i) ANNEXURE - 1: COPY OF THE IMPUGNED ORDER DATED

(ii) ANNEXURE- 2 (COLLY.): COPY OF THE PETITION FILED BEFORE MERC

**15. Fees for Appeal**

Two Bank Drafts for a sum of 1,03,000/- and Rs.10,000/- respectively issued in favour of the Pay & Accounts Officer, Ministry of Power, in respect of the fees in Appeal, are enclosed.

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16. List of Enclosures:

- 1) Vakalatnama
- 2) DD for Rs. 1,03,000/- dated 29.12.2017 being DD No. 634045 drawn on Bank of Maharashtra and DD for Rs.10,000/- dated 06.02.2018 being DD No.217927, drawn on Punjab & Sind Bank.
- 3) Index containing details of documents to be relied upon

17. Whether the order appealed as communicated in original is filed or not.

The order which are being appealed against are not being filed in original.

18. Whether the Appellant is ready to file written submission/ argument before the first hearing after serving the copy of same on respondent.

As per directions

19. Whether the copy of memorandum of appeal with all enclosures has been forwarded to all respondents, if so, enclose postal receipt/courier receipt in addition to payment of prescribed process fee.

No

20. Any other relevant material or details which the Appellant deems fit

N/A



21. Relief Sought

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In view of the facts mentioned in para 7 above and grounds set out at para 9 read with the points in dispute and questions of law set out in Para 8, the Appellant prays for the following relief(s):

- a) Allow the present Appeal and quash/set aside the Impugned Orders dated 16.11.2017
- b) Allow the prayers as mentioned in the Petition filed before the MERC.
- c) Grant Cost in favour of the Appellant
- d) Pass any other order that this Hon'ble Tribunal deems fit in the in the facts and circumstances of the case and interests of justice

Through

Date: 2-1-2018  
Place: New Delhi

*K. Karat*  
Chief Engineer (Power Purchase)  
M. S. E. D. C. L.

*Agarwal,*  
Samir Malik / Varun Agarwal  
Lex Global Legal Consultants  
56, New Deluxe Apartments  
Sector 9, Rohini, New Delhi 110085  
Mobile: + 91 9871737960, +91 9717866618

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### DECLARATION BY APPELLANT /MSEDCL

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

Verified at Mumbai on this 2 day of January, 2018.

*Agarwal*  
Counsel for Appellant

*Kharat*  
Chief Engineer (Power Purchase Secti  
MSEDCL  
Prakashgad, 5th Floor,  
Prof. Anant Kanekar Marg,  
Bandra (East) Mumbai - 400 055  
Appellant

### Verification

I Kavita Gharat aged about 40 years, working as Chief Engineer (Power Purchase) in the office of the Maharashtra State Electricity Distribution Company Limited (MSEDCL), having its office at Prakashgad, 5<sup>th</sup> Floor, Bandra East, Mumbai do hereby verify that the contents of the paras 1 to 2 are true to my personal knowledge/derived from official record) and para 3 to 4 are believed to be true on legal advice and that I have not suppressed any material facts.

Date: 2-1-2018

Place: Mumbai

*Kharat*  
Chief Engineer (Power Purchase Section)  
MSEDCL  
Prakashgad, 5th Floor,  
Prof. Anant Kanekar Marg,  
Bandra (East) Mumbai - 400 051.  
Signature of the Appellant or  
authorized officer

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW  
DELHI

APPEAL NO. \_\_\_\_\_ OF 2018

IN

**IN THE MATTER OF:**

Appeal against Order dated 16.11.2017 passed by the Maharashtra  
Electricity Regulatory Commission in Case No. 24 of 2017.

**AND IN THE MATTER OF:**

Maharashtra Electricity Distribution Co. Ltd.

...Appellant

*Versus*

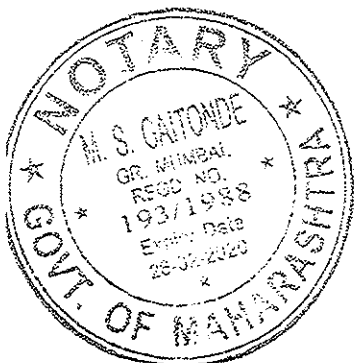
Maharashtra Electricity Regulatory Commission & Anr.

...Respondents

**AFFIDAVIT IN SUPPORT OF APPEAL**

I, Kavita Gharat, aged 40 years, working as Chief Engineer (Power  
Purchase) of the Maharashtra State Electricity Distribution Company  
limited (MSEDCL), having its office at Prakashgad, 5<sup>th</sup> Floor, Bandra  
East, Mumbai, do hereby solemnly affirm and declare as under:

1. That I am the authorized person of Appellant, MSEDCL. I have  
perused the records of the case and as such I am conversant  
with the facts and circumstances of the case and thus,  
competent to swear the present affidavit on behalf of the  
Appellant, MSEDCL.
2. That I have read and understood the contents of the  
accompanying Appeal on behalf of the MSEDCL which has been  
drafted by our counsel under our instructions and supervision.

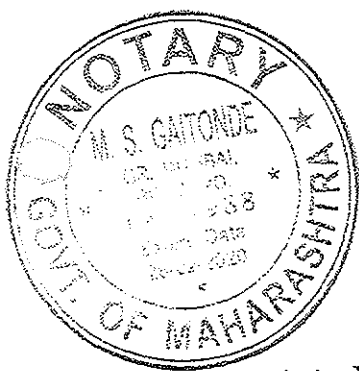


It is respectfully submitted that the appeal deserves to be admitted on the basis of submission and averments made in the accompanying Appeal.

- 3. That the facts stated above are true to my knowledge. No part of the above affidavit is false and nothing material has been concealed there from.

*K. Harat*

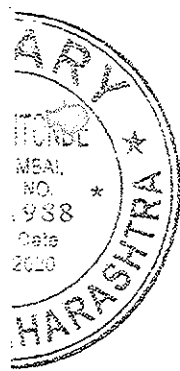
Chief Engineer (Power Purchase Secti  
MSEDCL  
Prakashgad, 5th Floor,  
Prof. Anant Kanekar Marg,  
Bandra (East), Mumbai - 400 05  
Deponent



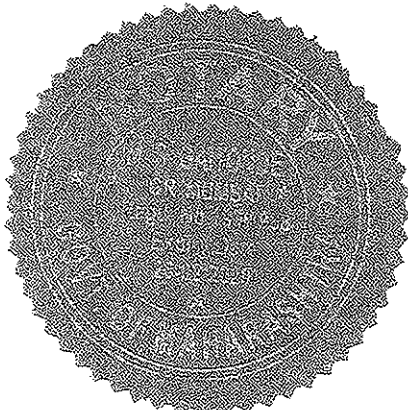
**Verification:**

I, the above named deponent do hereby verify that the facts stated in the above affidavit are true to my personal knowledge. No part of the same is false and nothing material has been concealed there from.

Verified at Mumbai on this 2<sup>nd</sup> day of January, 2018.



Identified By Me  
*Fulay*



**P. K. DUBEY**  
B.A.L.L.B.  
ADVOCATE HIGH COURT  
Lawyer's Chamber, Kanekar Bldg.,  
2nd Floor, Kanekar Court,  
Bandra (E), Mumbai - 400 051.

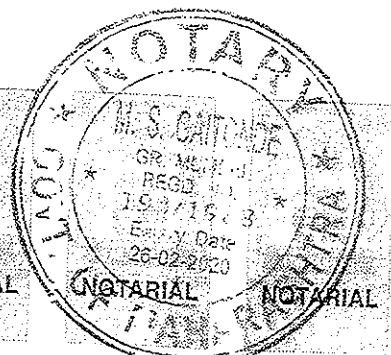
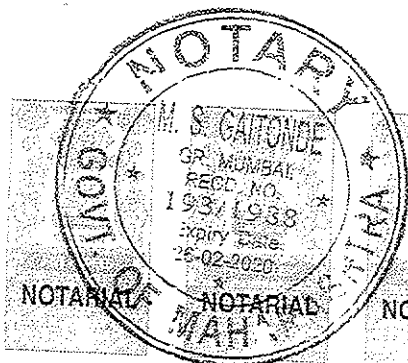
*K. Harat*

Chief Engineer (Power Purchase Section)  
MSEDCL  
Prakashgad, 5th Floor  
Prof. Anant Kanekar Marg  
Bandra (East), Mumbai - 400 051.  
Deponent

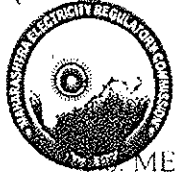
**BEFORE ME**

*M. S. Gaitonde* 21/1/2018

**M. S. GAITONDE**  
B.L.L.M  
NOTARY  
GREATER MUMBAI  
GOVT OF MAHARASHTRA  
INDIA



<b>NOTED</b>	<b>REGISTER</b>
Sr. No. 004	2-1-2018



R-62146/17 /DT: 20.11.2017

**महाराष्ट्र विद्युत नियामक आयोग**  
**Maharashtra Electricity Regulatory Commission**

MERC/Case No. 24 of 2017/ 04722

17 November, 2017

**ORDER**

A-1  
35

Subject: Petition of Maharashtra State Electricity Distribution Co. Ltd. regarding Change in Law events relating to Late Payment Surcharge provisions of PPAs under S. 63 of Electricity Act, 2003  
 - Case No. 24 of 2017

Appended is a copy of Order dated 16.11.2017, in the above matter.

(R. S. Sonawane)  
 Dy. Director (Legal)

Encl. Copy of Order (Total Pages - 31)

✓ The Chief Engineer (Power Purchase)  
 Maharashtra State Electricity Distribution Co. Ltd.,  
 Prakashgad, 5<sup>th</sup> floor, Plot G-9,  
 Station Road, Bandra (East), Mumbai - 400051  
 E-mail: - [cepp@mahadiscom.in](mailto:cepp@mahadiscom.in)

Petitioner

M/s. Adani Power Maharashtra Limited  
 Achalraj, Opp Mayor Bungalow,  
 Law Garden,  
 Ahmedabad - 380 006 Gujarat.  
 E-mail: - [ajit.barodia@adani.in](mailto:ajit.barodia@adani.in)

Respondent No - 1

M/s. JSW Energy Limited,  
 Village - Nandiwade,  
 Post - Jaigad,  
 Tal. & Dist. Ratnagiri - 415 614  
 Emails: - [cam.mumbai@cyrilshroff.com](mailto:cam.mumbai@cyrilshroff.com) / [contact@jsw.in](mailto:contact@jsw.in)  
[rushar.borse@jsw.in](mailto:rushar.borse@jsw.in) / [chandraprakash.tated@jsw.in](mailto:chandraprakash.tated@jsw.in) /  
[abhay.yagnik@jsw.in](mailto:abhay.yagnik@jsw.in) / [suraj.guru@jsw.in](mailto:suraj.guru@jsw.in)

Respondent No - 2

*True Copy*  
*Skulkarni*  
 Manager (F & A PPI)  
 Respondent No - 3

M/s RattanIndia Ltd.  
 Plot No D2 & D2 (part)  
 At Additional Industrial Area,  
 Nandganpeth, Respondents  
 Amravati-444 901.  
 E-mail : [nilesh.thakur@rattanindia.com](mailto:nilesh.thakur@rattanindia.com)

*SM/PP*  
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M.S.E.D.C.L.	
CE PP	
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JE (PP)	
SE	
E.E.	

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) and Double quote (") in subject and address fields. After all the work is done, log out of the system to avoid network congestion. After every of

- Inward Letters --
- Inward Register
- Forward Register
- Office Notes --
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- Search --
- Report
- Abstract
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- Other --
- Set Departmental
- Inward/Outward No.
- Receive All Letters
- Change Password
- Update Profile
- About
- Version Information
- Visitor No. : 356199

Based On Conditions

Date Between

From 16-Feb-2018 To 16-Feb-2018

Subject Contains

Address Contains

Inward number

Outward number

**History of R-2017062146/2017**

**Subject** Petition of Maharashtra State Electricity Distribution Co. Ltd regarding Change in Law events relating to Late Payment Surcharge Provisions of PPAs under S.63 of Electricity Act-2003 Case No. 24 of 2017

**From Address** Maharashtra Electricity Regulatory Commission

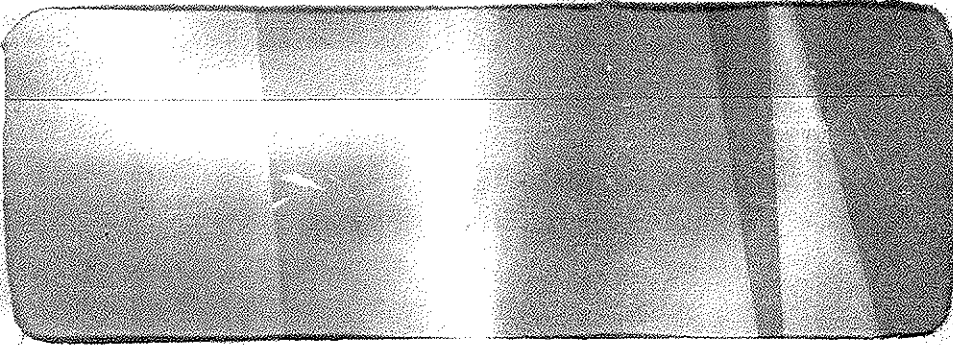
Received On	Assigned On	Forwarded By	Forwarded On	Forwarded To	Remarks	Inward No.	Outward No.	File Name	Document Status
20-Nov-2017 01:04:43 PM	----	REGS	20-Nov-2017 01:04:43 PM	CE-PP	Encl- Approx 15 Pages	---	REG/OUT /201117 /57844	/CE(PP)0002.pdf	forwarded
20-Nov-2017 01:04:43 PM	06-Dec-2017 10:31:13 AM	CE-PP	06-Dec-2017 10:31:32 AM	GM-FAPP	---	---	---	---	forwarded
06-Dec-2017 10:31:33 AM	---	GM-FAPP	---	Not Yet Forwarded	---	---	---	---	---

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## Maharashtra Electricity Regulatory Commission

13th Floor, Centre No. 1, World Trade Centre, Cuffe Parade, Colaba, Mumbai - 400 005.

Tel.: 022-2216 3964 / 65 / 69, Fax : 022-2216 3976

E-mail : mercindia@merc.gov.in, Website : www.merc.gov.in

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
 World Trade Centre, Centre No.1, 13<sup>th</sup> Floor, Cuffe Parade, Mumbai 400005.  
 Tel. 022 22163964/65/69 Fax 22163976  
 Email: [mercindia@merc.gov.in](mailto:mercindia@merc.gov.in)  
 Website: [www.merc.gov.in/www.mercindia.org.in](http://www.merc.gov.in/www.mercindia.org.in)

CASE No. 24 of 2017

In the matter of  
 Petition of Maharashtra State Electricity Distribution Co. Ltd. regarding Change in  
 Law events relating to Late Payment Surcharge provisions of PPAs under S. 63  
 of Electricity Act, 2003

Coram

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

Maharashtra State Electricity Distribution Co. Ltd. ....Petitioner

Vs.

Adani Power Maharashtra Ltd. ....Respondent No. 1  
 JSW Energy Ltd. ....Respondent No. 2  
 RattanIndia Power Ltd. ....Respondent No. 3  
 GMR Warora Energy Ltd. ....Respondent No. 4

Appearance

For Petitioner:	Adv. Kiran Gandhi
For Respondent 1:	Shri. M.R.Krishna Rao
For Respondent 2:	Adv. Aman Anand
For Respondent 3:	Adv. Vishrov Mukerjee
For Respondent 4:	Shri. Alok Shankar

ORDER

Date: 16 November, 2017

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) has filed a Petition on 2 February, 2017 seeking relief for the Change in Law event arising from the introduction, by the Reserve Bank of India (RBI), of the Base Rate system and thereafter the Marginal Cost of



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 Electricity  
 Regulatory Commission  
 16.11.2017



Funds-based Lending Rate system in place of the Benchmark Prime Lending Rate in terms of the relevant provisions of its Power Purchase Agreements (PPAs) with various Independent Power Producer (IPP) Generating Companies under Section 63 of the Electricity Act (EA), 2003.

2. The prayers of MSEDCL in the Petition are as under:-

a) *"To admit the Petition;*

b) *To declare and accept the Guidelines/Circulars issued by RBI as Change in Law as provided in respective PPAs.*

c) *To allow the Petitioner to make the late payment surcharge in the event of delay in payment at the rate of two (2) percent excess of the applicable Base Rate per annum on the amount of outstanding payment calculated on a day to day basis for each day of the delay against the PPAs mentioned in aforesaid para 2.2 and 2.3 from 1 July 2010 till March 31, 2016 and thereafter at the rate of two(2) percent in excess of the applicable rate under MCLR system..."*

3. The Petition states as follows:

3.1. As per the Competitive Bidding Guidelines issued by the Ministry of Power (MoP), Government of India for Case 1 bidding, MSEDCL had initiated two bidding processes for Case 1 Stage 1 and Case 1 Stage 2 separately. The Commission's approvals were obtained for the Bidding Documents. The bidding processes and the evaluation of bids were carried out as per these provisions and the PPAs signed accordingly.

3.2. MSEDCL has signed PPAs with the successful bidders under the Case 1 Stage 1 bidding process as follows:

- i.) PPA dated 14/08/2008 with Adani Power Maharashtra Ltd.(APML) for 1320 MW at the levelised tariff of Rs. 2.64 per unit from Units 2 and 3 of its Tiroda Project.
- ii.) PPA dated 25/09/2008 with Lanco Vidarbha Thermal Power Ltd. (formerly Lanco Mahanadi Power Pvt. Ltd.) ('Lanco') for 680 MW at the levelised tariff of Rs. 2.72 per unit from its Wardha Project.
- iii.) PPA dated 23/02/2010 with JSW Energy (Ratnagiri) Ltd. ('JSW') for 300 MW at the levelised tariff of Rs. 2.71 per unit from Unit 1 of its Ratnagiri Project.

3.3. MSEDCL submitted Petitions for approval of these PPAs under Section 63 of the EA, 2003. Vide its Order dated 27 November, 2009 in Case No.39 of 2009, the Commission approved the PPA with JSW for 300 MW. Vide Order dated 20 February, 2013 in Case



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Maharastra Electricity  
Commission, Mumbai

No. 68 of 2012, it approved the PPA with APML for 1320 MW and with Lanco for 680 MW, and adopted the tariff.

3.4. APML and JSW have commenced supply. However, the Project of Lanco has not been commissioned so far. Lanco has filed a Petition for termination of its PPA. MSEDCL has also filed a Petition for recovery of liquidated damages from Lanco for non-commencement of supply.

3.5. The relevant Clauses of these PPAs read as follows:

*"Article 1: Definitions and Interpretation*

*Change in Law - shall have the meaning ascribed thereto in Article 13.1.1 of this agreement*

*...Indian Governmental instrumentality - means the GoI, Government of Maharashtra and any ministry or, department of or, board, agency or other regulatory or quasi-judicial authority controlled by GoI or Government of States where the procurer and project are located and includes the CERC and MERC*

*...Late Payment Surcharge - shall have the meaning ascribed there to in Article 11.3.4*

*Law - means, In relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the CERC and the MERC*

*...SBAR- means the prime lending Rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, any other arrangement that substitutes such prime lending rate as mutually agreed to by the parties.*

*Article 11: Billing and Payment*

*...11.3.4 In the event of delay in payment of a monthly bill by the procurer beyond its due date month billing, a Late Payment Surcharge shall be payable by the procurer to the seller at the rate of two (2) percent in excess of applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest) for each day of the delay....*

*...Article 13: Change in Law*

*13.1 Definitions*



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In this Article 13, the following terms shall have the following meanings

13.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior, to the Bid Deadline:

(i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal or any law or

(ii) a change in interpretation of any law by a competent court of law, tribunal or Indian governmental instrumentality provided such court of law, tribunal or Indian governmental instrumentality is final authority under law for such interpretation but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the seller, or (ii) Change in respect of UI charges or frequency intervals by an Appropriate Commission.

13.2 Application and principal for computing impact of Change in Law

While determining the consequence of Change in Law under this Article 13, the parties shall have due regard to the principle that the purpose compensating the party affected by such Change in Law, is to restore through monthly tariff payments to the extent contemplated in this Article 13, the affected party to the same economic position as if such Change in Law has not occurred.

...b) Operation Period-

As a result of Change in Law, the compensation for any increase / decrease in revenues or cost to the Seller shall be determined by the Maharashtra State Electricity Regulatory Commission whose decision shall be final and binding on both the parties, subject to right of appeal provided under applicable law and effective from the date specified in 13.4.1

13.3 Notification of Change in Law:

13.3.1 If the seller is affected by a Change in Law in accordance with Article 13.2 and wishes to claim a Change in Law under this Article, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

13.3.2 Notwithstanding Article 13.3.1, the Seller shall be obliged to serve a notice to the Procurer under this Article 13.3.2 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the procurer contained herein shall be material. Provided that in case the Seller has not provided such notice, the Procurer shall have the right to issue such notice to the seller.



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13.3.3 Any notice served pursuant to this Article 13.3.2 shall provide, amongst other things, precise details of:

- a) The Change in Law; and
- b) The effects on the Seller of the matters referred to in Article 13.2.

13.4 Tariff adjustment payment on account of Change in Law

13.4.1 subject to Article 13.2, the adjustment in monthly tariff payment shall be effective from:

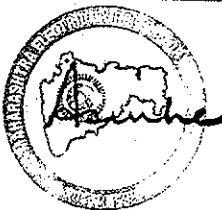
- (i) the date of adoption, promulgation, amendment, re-enactment or repeal of the Law or Change in Law, or
- (ii) the date of order/ judgment of the competent court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of law."

3.6. MSEDCL has signed PPAs with bidders under the Case1 Stage 2 bidding process as follows:

- i.) PPA dated 17/03/2010 with GMR Warora Energy Ltd. ('GMR') (formerly EMCO Energy Ltd.) for 200 MW at the levelised tariff of Rs. 2.88 per unit from its Warora Project.
- ii.) PPA dated 22/04/2010 for 450 MW and PPA dated 05/06/2010 for 750 MW with RattanIndia Power Ltd. ('RPL') (formerly Indiabulls Power Ltd.), both at the levelised tariff of Rs. 3.26 per unit from its Amravati Project.
- iii.) PPA dated 31/03/2010 for 1200 MW, PPA dated 09/08/2010 for 125 MW and PPA dated 16/02/2013 for 440 MW with APML, all at the levelised tariff of Rs. 3.28 per unit from its Tiroda Project.

3.7. MSEDCL had submitted a Petition for approval of these PPAs under Section 63. Vide Order dated 28 December, 2010 (Case No. 22 of 2010), the Commission approved the PPA of GMR for 200 MW, RPL for 1200 MW and APML for 1200 MW. The Commission also approved the PPA of APML for 125 MW vide Order dated 14 May, 2011 (Case No. 56 of 2010) and for 440 MW vide Order dated 27 December, 2012 (Case No. 53 of 2012).

3.8. The power supply against these PPAs, except 440 MW under the APML PPA, has commenced. The Scheduled Delivery Date (SDD) of the APML 440 MW PPA is 16 February, 2017. However, MSEDCL and APML have a Memorandum of Understanding (MoU) incorporating some terms and conditions for early power supply



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and have jointly submitted a Petition before the Commission. [That joint Petition has since been withdrawn.]

3.9. The relevant provisions of the above PPAs read as follows:

*"Article 1: Definitions and Interpretation*

*Change in Law - shall have the meaning ascribed thereto in Article 10.1.1 of this agreement...*

*Indian Governmental Instrumentality – shall mean the Government of India, Governments of state(s) of Maharashtra, and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurer...*

*Late Payment Surcharge - shall have the meaning Ascribe thereto an Article 8.3.5 of this Agreement.*

*Law - Shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate commission...*

*SBAR - Shall mean the prime lending Rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the parties.*

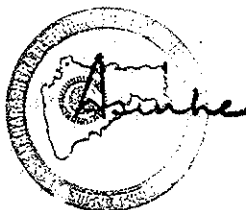
*...Article 8: Billing and Payment*

*...8.3.5 In the event of delay in payment of a Monthly Bill by the Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by such procurer to the seller at the rate of two (2) percent in excess of applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest) for each date of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.*

*...Article 10: Change in Law*

*10.1 Definitions*

*In this Article 10, the following terms have the following meanings*



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10.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior, to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the Seller or any income to the Seller:

- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in interpretation or application of any law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms of conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;
- any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) Change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability...

10.2 Application and Principles for computing impact of Change in Law

10.2.1 While determining the consequence of Change in Law under this Article 10, the parties shall have due regard to the principle that the purpose compensating the party affected by such Change in Law, is to restore through monthly tariff Payment, to the extent contemplated in this Article 10, the affected party to the same economic position as if such Change in Law has not occurred...

10.3 Relief for Change in Law

...10.3.2 During Operating Period

The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only if the decrease in revenue or increase in expenses of the Seller is in excess of an amount equivalent to 1% of the value of the Letter of Credit in aggregate for the relevant Contract Year.

10.4 Notification of Change in Law:

10.4.1 If the seller is affected by a Change in Law in accordance with Article 10.1 and the Seller wishes to claim a Change in Law under this Article 10, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.



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10.4.2 Notwithstanding Article 10.4.1, the Seller shall be obliged to serve notice to the Procurer under this Article 10.4.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the procurer contained herein shall be material.

Provided that in case the seller has not provided such notice, the Procurer shall have the right to issue such notice to the Seller.

10.4.3 Any notice served pursuant to this Article 10.4.2 shall provide , amongst other things, precise details of :

- a) The Change in Law; and
- b) The effects on the Seller.

10.5 Tariff Adjustment Payment on account of Change in Law

10.5.1 Subject to Article 10.2, the adjustment in monthly Tariff Payment shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment, repeal of the Law or Change in Law, or
- (ii) the date of order/ judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

10.5.2 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 8.8. However, in case any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed tariff."

RBI Guidelines/Circulars

- 3.10. The RBI introduced the Benchmark Prime Lending Rate (BPLR) system from 2003. On 9 April, 2010, RBI issued Guidelines on the Base Rate and Master Circular on 1 July, 2010. RBI stated that the BPLR system introduced in 2003 fell short of its original objective of bringing transparency to lending rates. This was mainly because, under the BPLR system, Banks could lend below the BPLR. For the same reason, it was also difficult to assess the transmission of policy rates of the RBI to the lending rates of Banks. Accordingly, Banks were advised to switch over to the system of Base Rate from 1 July, 2010. The Base Rate system aimed at enhancing transparency in lending rates of Banks and enabling better assessments of transmission of monetary policy.
- 3.11. As per these Guidelines/ Circular, the Base Rate system replaced the BPLR system from 1 July, 2010 and all categories of loans were to be priced only with reference to the Base Rate. However the loans to the categories (a) DRI advances (b) Loan to



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Banks' own employee and (c) loan to Banks' depositors against their own deposits could be priced without reference to the Base Rate.

- 3.12. The RBI has issued fresh directions called the RBI (Interest Rate on Advances) Directions, 2016 vide Master Direction dated 3 March, 2016. The directions state that all rupee loans sanctioned and credit limits renewed with effect from 1 April, 2016 shall be priced with reference to the Marginal Cost of Funds Based Lending Rate (MCLR), which will be the internal benchmark for such purposes.
- 3.13. The State Bank of India (SBI) is publishing Base Rate (Historical Data) with effect from 1 July, 2010 till date on the SBI website. From April 2016 onwards, SBI is also publishing its MCLR rates. At present, the applicable Base Rate is 9.30% p.a. and applicable MCLR rate is 9.10% p.a. SBI is also publishing the BPLR (Historical Data). At present the BPLR is 14.05% per annum.
- 3.14. As per the above Guidelines/ Circulars issued by RBI, the Base Rate system / MCLR system is introduced and is applicable for all new loans from the respective effective dates and for those old loans that come up for renewal. Existing loans based on the BPLR system may run till their maturity. In case existing borrowers want to switch to the new system before expiry of existing contracts, an option may be given to them on mutually agreed terms. Although RBI introduced the Base Rate for all floating rate loan products from 1<sup>st</sup> July, 2010, it has allowed old loans to continue until their maturity according to the same interest rate methodology at which they were approved. Thus SBI is publishing the BPLR only for the old loans which have not come up for renewal.
- 3.15. Under the Commission's Multi Year Tariff ((MYT) Regulations, 2011 (Regulations 35.3(b) and 35.4(b)), the rate of interest on working capital (IoWC) shall be equal to the State Bank of India Advance Rate (SBAR) as on the date on which the application for determination of tariff is made. Further, as per Regulation 13.9 of the MYT (Third Amendment) Regulations, 2011, for computation of the Fuel Adjustment Cost (FAC) component of Z- factor charge, the component 'C' is the carrying cost for any under recovery/ over recovery on account of change in fuel cost of own generation and cost of power purchase, computed at the SBAR prevailing at the beginning of the month.
- 3.16. As per Regulations 31.1 (f), 31.2 (b) and 31.3 (b) of the MYT Regulations, 2015, the rate of IoWC shall be on a normative basis and equal to the Base Rate as on the date on which the Petition for determination of tariff is filed, plus 150 basis points. This is subject to the proviso that, for the purpose of Truing-up for any year, IoWC shall be allowed at the rate equal to the rated average Base Rate prevailing during the relevant year, plus 150 basis points.



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3.17. Further as per the MYT Regulations, 2015, for computation of FAC component of Z-Factor charge, the component C is the carrying cost for any under recovery / over Recovery, computed at the Base Rate prevailing at the beginning of the month, plus 150 basis points. Thus, the Commission has also replaced the SBAR system with the Base Rate system in its fresh MYT Regulations, 2015.

3.18. As per Section 21(2) of the Banking Regulation Act, 1949,

*"Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to -*

*... (e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given."*

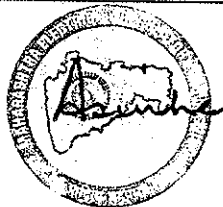
Further, as per Section 21 (3), every banking company shall be bound to comply with any directions given to it under this Section.

3.19. The BPLR system was introduced in 2003. Banks have to charge interest on loans in accordance with the directives issued by RBI from time to time. The interest prescribed or delay in payment clause incorporated in the PPAs was based on the prevailing rate at that time and the system enforced as per the directives of RBI. RBI is constituted as per Section 3 of the RBI Act, 1934 for the purpose of carrying on the business of Banking in accordance with the provisions of the Act. Thus, being a Governmental Instrumentality, its orders, notifications and circulars are 'laws' as defined in the PPAs, and it has now issued new Guidelines/ Circulars. As per these Guidelines/ Circulars, the Base Rate system replaced the BPLR system from July, 2010. Thereafter, the Base Rate system has now been replaced with MCLR w.e.f. April 01, 2016. Thus, the BPLR system incorporated in the PPAs has to be replaced by the Base Rate system / MCLR system for their respective application periods. The replacement of BPLR with Base Rate and Base Rate with MCLR by RBI, being a Governmental Instrumentality, is covered under the Change in Law provisions of the PPAs.

3.20. Notice of Change in Law:

As per the provisions of the PPA quoted above, it is the obligation of the Seller to serve a Notice of Change in Law to the Procurer if it is either affected or benefited by such Change in Law. In case the Seller has not provided such Notice, the Procurer has the right to issue such Notice to the Seller.

3.21. MSEDCL has not received such Notice from any of the IPP power suppliers for the events of Change in Law mentioned in the Petition. Hence, MSEDCL has served a



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 Regulatory Commission, Mumbai  
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Notice for the Change in Law on the following IPP power suppliers on 23 September, 2016:

- a) APML for the PPAs of 1320 MW, 1200 MW and 125 MW
- b) RPL for 750 MW and 450 MW.
- c) GMR for 200 MW
- d) JSW for 300 MW
- e) Coastal Gujarat Power Ltd. (CGPL)

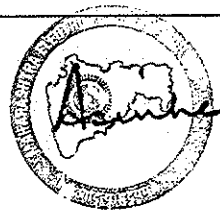
3.22. Replies to the Notice of Change in Law

In response to the Notice, JSW, CGPL and RPL have replied as under:

- a) CGPL: CGPL has stated that issuance of Master Circular / Directions dated 11 July, 2010 and 3 March, 2016 by RBI does not amount to Change in Law in terms of Article 13 of the PPA, and requested MSEDCL to withdraw the Notice.
- b) RPL: RPL has stated that, although RBI had changed BPLR to Base Rate vide its Circular dated 1 July, 2010 w.e.f. that date, it stipulated that Banks may continue to notify the BPLR from time to time so as to enable existing loans on BPLR to run till their maturity. The RBI Circular dated 3 March, 2016 stated that existing loans and credit limits linked to the Base Rate / BPLR shall continue till repayment or renewal as the case may be provided that the existing borrower shall have the option to move to the MCLR linked loans at mutually acceptable terms. As such, RPL has stated that there is no Change in Law as the SBI PLR exists as on date and it is still being used by Banks for existing loans.
- c) JSW: JSW has denied the contention of MSEDCL, stating that there is a complete and independent mechanism agreed under the PPA in case of absence of SBI PLR and no recourse can be had to the Change in Law provision of the PPA in this respect. Further, since the PLR is being published regularly by SBI, the question of application of any other rate for calculating the interest on delayed payments does not arise in the present case. Even in the absence of the SBI PLR, it is for the parties to mutually agree on its substitution with any other arrangement. JSW disagrees that the RBI directives have completely abolished PLR and wholly substituted it with the Base Rate system w.e.f. 1 July, 2010 and MCLR from 3 March, 2016 for all purposes and intent, and there are contracts which are saved and are still governed by the PLR system.

3.23. MSEDCL has not received replies from APML and GMR.

3.24. In MSEDCL's view, the reasons given by the parties in support of their contentions are not consistent with the true intentions of the RBI notifications and are also



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contrary to the Regulations of the Commission referred to earlier. Hence, their contentions are not acceptable to MSEDCL.

- 3.25. If the SBAR system is not replaced by the Base Rate system and the MCLR system as prescribed by RBI, it will cause unjust enrichment of the Generators and injustice to the common consumers and MSEDCL.
- 3.26. In the circumstances, the present Petition is filed under Section 86 of EA, 2003 read with Article 13 (Change in Law) of the PPAs under Case 1 Stage 1 and Article 10 (Change in Law) of the PPAs under Case 1 Stage 2.

4. In its Reply dated 14 March, 2017, APML has stated as follows:

- 4.1. MSEDCL has requested the determination of LPS at the rate of 2% above the applicable Base Rate per annum on the outstanding payment calculated on a day to day basis for each day of the delay against the PPAs, from 1<sup>st</sup> July, 2010 till 31<sup>st</sup> March, 2016; and from 1<sup>st</sup> April, 2016 at 2 %above the applicable rate under MCLR system.
- 4.2. The claim of MSEDCL that issuance of RBI Guidelines is a Change in Law is incorrect since the PPAs provide for payment of LPS at the SBAR defined as

*“the prime lending Rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, any other arrangement that substitutes such prime lending rate as mutually agreed to by the parties.”*

Since the SBI PLR is still continuing, the issuance of RBI Guidelines is not a Change in Law in terms of the PPA.

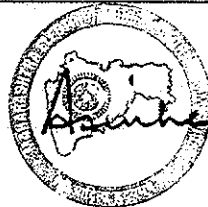
4.3. APML's issue-wise response to the Petition is as follows:

I. RBI Guidelines are Change in Law events as per the PPAs, and SBI PLR is required to be replaced by Base Rate/MCLR System for determination of the rate of Late Payment Surcharge

- a) MSEDCL's claim of the revisions in the RBI Guidelines being Change in Law events is based on an incorrect understanding of the PPA provisions. Articles 11.3.4 and 11.3.5 of the 2008 PPA as well as Articles 8.3.5 and 8.3.6 of the 2010 and 2013 PPAs provide that Late Payment Surcharge (LPS) shall be applicable at the State Bank Advance Rate (SBAR) in case of delay in payment:

2008 PPA:

*“Article 11.3.4:*



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*In the event of delay in payment of a Monthly Bill by the Procurer beyond its Due Date month billing, a Late Payment Surcharge shall be payable by the Procurer to the Seller at the rate of two (2) percent in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with Monthly rest), for each day of the delay."*

2010/2013 PPAs

*"Article 8.3.5:*

*In the event of delay in payment of a Monthly Bill by the Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate of two percent (2%) in excess of tile applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill."*

- b) Thus, the PPAs stipulate that the LPS for delay in payment by the Procurer shall be 2% above the applicable SBAR per annum on the outstanding payment. 'SBAR' has been defined as the SBI PLR applicable for loans with one year maturity as fixed from time to time:

2008 PPA

*"Article 1: Definitions and Interpretation*

*...SBAR- means the prime lending Rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, any other arrangement that substitutes such prime lending rate as mutually agreed to by the parties."*

2010/2013 PPAs

*"Article 1: Definitions and Interpretation*

*...SBAR- Shall mean the prime lending Rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the parties."*

- c) It is clear from the above definitions that only in the absence of SBI PLR can the SBAR be determined through any other arrangement that substitutes such PLR as mutually agreed to by the Parties. However, SBI has been notifying the PLR from time to time and it is in existence even today. Therefore, as per the provisions of the PPAs, the need for any other arrangement does not arise. In this context, it may be mentioned that SBI has reduced the PLR to 14% w.e.f. 1<sup>st</sup> January, 2017 as against 14.05% applicable till December, 2016.

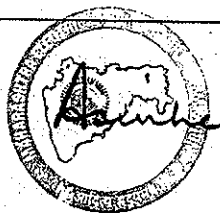


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- d) In the light of the above, the Petition filed by MSEDCL is not maintainable on this ground alone. The RBI Circulars relied upon by MSEDCL do not in any manner indicate that the SBI PLR is abolished or would be absent for the future period. The RBI Circular clearly indicates that SBI PLR will be in existence and shall be applicable for the existing loans. MSEDCL is not entitled to invoke the provisions of Change in Law in this regard.
- e) The provisions of the PPAs have been designed to ensure that any delay in timely payments does not take place. However, if such delay occurs, the PPAs provide for appropriate recourse in terms of LPS so as to penalise and discourage delayed payments and ensure appropriate compensation to the Seller. The LPS acts as a reimbursement to compensate the Seller towards any additional working capital interest incurred due to delay in payment by the Procurer. As a result, the payment towards LPS becomes applicable only on default of MSEDCL in meeting timelines relating to payment.
- f) Further, it does not result in any additional expenditure/income to APML. LPS cannot be considered as additional revenue since it is only reimbursement of the additional working capital interest incurred by the Respondent consequent to delay in payment by MSEDCL. MSEDCL's intention of delaying payments is evident from its non-adherence to the payment security mechanism under the PPAs. For safeguarding the Seller from any such additional cost on account of possible delay by the Procurer, the PPAs provide for a payment security mechanism in form of an irrevocable and revolving monthly Letter of Credit (LC) and creation of Escrow. However, the payment security mechanism in accordance with the PPAs is not being ensured by MSEDCL. Thus, MSEDCL has not only been delaying payments of Monthly/Supplementary Bills but also has not complied with the PPA provisions relating to payment security mechanism.
- II. Continuation of the SBAR will cause unjust enrichment of the Generators and injustice to common consumers and MSEDCL:

MSEDCL's claim is totally baseless and is an attempt to hide MSEDCL's fault in making timely payments. As stated above, the payment of LPS arises only when there is delay in payment by MSEDCL and such payment of LPS does not in any manner result in unjust enrichment of the Generators as it is only a compensation for time value of the money and covers the additional working capital interest incurred by the Generators due to default by the Procurer.

- III. MSEDCL did not receive any reply from APML to the Notice for Change in Law issued on 23<sup>rd</sup> September, 2016.

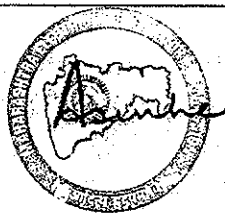


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In fact, APML had denied the claim of MSEDCL vide letter dated 16 December, 2016. It had also annexed a letter of SBI Capital Markets Ltd. regarding the applicability of SBI PLR to its existing loans, which also states that the SBI PLR is still in operation.

- 5. In its Reply dated 29 March, 2017, JSW has stated as follows:
  - 5.1. To substantiate its claim under the Change in Law provisions of the PPAs approved under Section 63 of the EA, 2003, MSEDCL has incorrectly relied upon various Tariff Regulations dealing with IoWC and calculation of carrying costs, etc. which are made under section 62 by the Commission. The payment of interest on delayed principal payments between MSEDCL and the JSW is governed by the terms of the PPA and not the MYT Tariff Regulations, 2015.
  - 5.2. In effect, MSEDCL is calling upon the Commission to permit it to carry out a unilateral amendment to the provisions of the PPA, which revision can only be carried out with the mutual consent of the Parties. The Petition deserves to be dismissed as MSEDCL wants the Commission to re-write the terms of the approved PPA which, as per settled law, cannot be permitted.
  - 5.3. MSEDCL has time and again certified the interest amount due and payable to JSW at various dates. MSEDCL in accordance with Article 11.3.1 of the PPA, has already appropriated the admitted amount of interest, and sent its statement of the principal outstanding. MSEDCL cannot at this stage urge a retrospective amendment to the PPA, setting at naught its earlier admissions based on which interest has already been appropriated.
  - 5.4. Without prejudice to the above, the claim of MSEDCL, to the extent that it relates to the period prior to 2 December, 2013, is barred by limitation. MSEDCL's claim pertains to a cause of action which, as per the Petition, arose on 9 April, 2010, being the date of the RBI Circular introducing the Base Rate regulations. Determination of a dispute of this nature is an exercise of judicial function of the Commission and does not fall within its administrative or regulatory functions. In this regard, the Supreme Court in the case of AP Power Coordination Committee v. Lanco Kondapalli [AIR 2016 SC 1925] has observed that

*"...we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation...We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under Clause (f) of subsection (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory."*



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In view of the above, given that the reliefs sought under the Petition pertain to a monetary claim which would not be recoverable before an ordinary Court or Arbitration due to the bar of limitation, they should not be allowed in the present case as per the principle set out by the Supreme Court. The Regulations in respect of Base Rate were well within the public domain and accessible by MSEDCL, and yet MSEDCL did not raise any objection on this issue for over 6 years and made payments at the LPS contractually agreed in the PPA.

5.5. Article 11.3.4 of the PPA provides that:

*"In the event of delay in payment of the Monthly Bill by the Procurer beyond its Due Date monthly billing, a Late Payment Surcharge shall be payable by the Procurer to the Seller at the rate of Two (2) percent in excess of applicable SBAR per annum, on amount outstanding payment, calculated on day to day basis (and compounded with Monthly rest), for each day of delay."*

5.6. Further, Article 1 of the PPA defines SBAR as under:

*"SBAR means the prime lending rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In absence of such rate, any other arrangement that substitutes such prime lending rate as mutually agreed by the Parties."*

- 5.7. It is clear from these provisions that the PPA provides for a contractually agreed mechanism for determination of rate of LPS without reference to any RBI Circulars or Guidelines, including in an event where the agreed benchmark for calculation of LPS is not available. Since the rate of LPS was never determinable on the basis of any Circular/Guidelines issued by the RBI, the RBI Guidelines/regulations do not apply to the PPA, including for the purpose of determination of LPS, and a change in these Guidelines/regulations cannot, therefore, lead to a Change in Law under the PPA. Therefore, the purported claim of MSEDCL as to occurrence of a Change in Law due to issuance of the Base Rate Regulations and MCLR Regulations by the RBI is of no relevance and the question of Change in Law does not arise.
- 5.8. It is also apparent from the Guidelines/Circulars issued by RBI that there are contracts which are saved and continue to be governed by the PLR system, including existing loans based on the BPLR system which have been permitted under the Guidelines and Circulars to run till their maturity.
- 5.9. In reply to the Notice dated 23 September, 2016 purportedly issued under Article 13 of the PPA by MSEDCL, JSW, vide its letter dated 3 October, 2016 has communicated the agreed contractual position under the PPA as regards determination of LPS. It further informed MSEDCL that its purported exercise of the right under Article 13.2 is not in accordance with the terms of the PPA and asked MSEDCL to



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withdraw its Notice.

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5.10. The terms and conditions of the PPA relating to Change in Law read as follows:

*"Article 13.1.1 Change in Law means the occurrence of any of the following events after the date, which is seven (7) days prior to the bid deadline:*

*(i) the enactment, bringing into effect, adoption, promulgation, amendment modification, or repeal of any law or (ii) a change in interpretation of any law by a Competent Court of law, tribunal or Indian Instrumentality is final authority under law for such interpretation....."*

Article 13.2 deals with Application and Principles for computing the impact of Change in Law:

*"While determining the consequence of Change in Law under this Article 13, the Parties shall have due regard to the principles that purpose of compensating the Party affected by such Change in Law, is to restore through the Monthly Tariff payments to the extent contemplated in this Article 13, the affected Party to the same economic position as if such Change in Law not occurred."*

Article 13.2 (b) of the PPA states that:

*"As a result of Change in Law, the compensation for any increase/decrease in revenue or cost to the Seller shall be determined by the Maharashtra State Electricity Regulatory Commission whose decision shall be final and binding on both the Parties, subject to right to appeal provided under the applicable Law and effective date specified in 13.4.1,*

*Provided that the above mentioned compensation shall be payable only if and for increase/decrease in revenue or cost to the Seller is in excess of an amount equivalent 1% of the Letter of Credit in aggregate for a Contract Year."*

5.11. Without prejudice to the earlier submissions, it is also submitted that, assuming argue do that issuance of RBI Guidelines is a Change in Law under the PPA, while determining the consequences of Change in Law under Article 13 of the PPA, the principle to be applied is to restore the Parties affected to the same economic position as if such Change in Law has not occurred. The case of MSEDCL is that the LPS should be determinable on the basis of the Base Rate and MCLR for the relevant periods in the event of delay in payment under the PPA, and that LPS should be payable at 2% percent above the applicable rate under the Base Rate system or the MCLR system from the respective dates of issue of the Base Rate Regulations and MCLR Regulations. If the Commission accedes to such request, JSW would be the affected Party due to decrease in its receivables under the PPA to the extent of reduction in the rate of LPS caused by the RBI Guidelines, and therefore, JSW would be entitled to compensation as the party adversely affected by Change in Law of an



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amount required to restore it to the same economic position as though such Change in Law had not occurred.

- 6. In its Reply dated 24 April, 2017, RPL has stated that:
  - 6.1. On 23 September, 2016, MSEDCL issued a Notice under Section 10 of the PPAs alleging that issuance of the Base Rate regulations and MCLR Regulations by RBI constitute Change in Law events in terms of the PPAs. On 19 October, 2016, RPL rejected MSEDCL's claim for Change in Law.

I. Limitation

- 6.2. MSEDCL's cause of action allegedly arose on 09 April, 2010, when the RBI issued Guidelines qua the Base Rate system. MSEDCL has filed the present Petition after considerable delay and it is barred on account of delay and laches. The RBI Circulars/ Guidelines qua Base Rate have been in existence since 2010 and were well within the knowledge of MSEDCL. Despite that, MSEDCL continued to make payments of LPS under the PPAs and acknowledged the outstanding dues payable to RPL, without any demur.
- 6.3. The reliefs sought by MSEDCL cannot be allowed by the Commission, since these would be otherwise barred by limitation prescribed for an ordinary suit before a civil court. In this regard, the Judgment dated 16.10.2015 of the Supreme Court in AP Power Coordination Committee vs. Lanco Kondapalli Power Limited reads as follows:

*"30. ....Since no separate limitation has been prescribed for exercise of power under Section 86(1)(f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time-barred claims, there is no conflict between the provisions of the Electricity Act and the Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation, on account of the provisions in Section 175 of the Electricity Act or even otherwise, the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view."*



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31. ....it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) also appears to be for speedy resolution so that a vital developmental factor — electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the civil court. Evidently, in the absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court. But in an appropriate case, a specified period may be excluded on account of the principle underlying the salutary provisions like Section 5 or Section 14 of the Limitation Act. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory."

II. Change in PLR to Base Rate and MCLR is not a Change in Law event

6.4. Article 10 of the PPA may be referred to, in particular Articles 10.1.1, 10.2.1 and 10.3.2 [which have been reproduced at para. 3(10) earlier in this Order].

6.5. In terms of Article 10.1.1, in order for an event to qualify as a Change in Law, the following conditions have to be met:

(a) It has to be an event which is covered under the bullet points of Article 10.1.1 of the PPAs;

(b) It has to be an event which has occurred after the Cut-off Date, which is 31.07.2009 (i.e., seven days prior to the Bid Deadline – 07.08.2009); and

(c) It has to be an event which results in any additional recurring/non-recurring expenditure or income.

6.6. In terms of Article 8.3.5 of the PPA, SBAR is to be considered if MSEDCL delays payment of monthly bills. This is in the nature of interest/ disincentive to ensure that there is no default/ delay in payment of Monthly Invoices. Evidently, LPS is neither income nor expenditure. Therefore, it does not fulfil the conditions and does not amount to a Change in Law Event under the PPAs, as contended by MSEDCL.

6.7. Without prejudice to the above, MSEDCL's claim of Change in Law due to introduction of the Base Rate system and MCLR Regulations is incorrect. In this regard, Article 8.3.5 of the PPAs dealing with LPS is noteworthy:-

"8.3.5 In the event of delay in payment of a monthly Bill by the Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate of two percent (2%) in excess of the



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*applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill."*

- 6.8. In terms of Article 8.3.5, the methodology for determining the quantum of LPS (i.e., 2% above the applicable SBAR p.a.) payable by MSEDCL has been agreed to under the PPA without reference to any specific Circular and/or Guidelines issued by RBI in that regard. Further, the PPA also provides for a situation in which the SBAR rate is not available. Therefore, notwithstanding the shift from BPLR to Base Rate to MCLR, the parties continue to be bound by the provisions of the PPA. Even otherwise, the parties have agreed and recorded that they shall mutually agree on an arrangement in the event the SBAR rate is not available, thereby consciously excluding intrusion by the Commission qua the rate to be applied while calculating LPS.
- 6.9. Considering that the methodology for determining the quantum of LPS was never linked to any particular Circular and/or Guideline of RBI, the purported claim of MSEDCL that the issue of the Base Rate regulations and thereafter the MCLR Regulations by RBI constitutes Change in Law under the PPAs is erroneous. MSEDCL is seeking to reduce its financial implications arising out of the PPA provisions relating to non-performance of its obligations to pay Monthly Invoices in a timely manner. Article 8.3.5 is aimed at ensuring timely payment, and therefore, MSEDCL's contentions are devoid of merit.

III. MSEDCL is seeking amendment of the PPAs, which is impermissible

- 6.10. MSEDCL has filed this Petition under the garb of seeking relief for Change in Law under the PPAs. However, it is seeking to amend the terms of the PPAs unilaterally, which is not permissible.
- 6.11. As per the definition of "SBAR" reproduced below, it is evident that, in the absence of SBAR rate/ BPLR system, the Parties shall mutually agree to substitute SBAR (PLR) with any other arrangement:

*"SBAR" shall mean the prime lending rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties."*

- 6.12. It is, therefore, clear that SBAR cannot be unilaterally amended/ replaced by MSEDCL and/ or through the Commission under the garb of seeking relief of alleged Change in Law. Article 15.3 specifically provides that the PPA may only be amended or supplemented by a written agreement between the Parties and after obtaining the



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approval of the Commission, where necessary. In the light of the above, the present Petition deserves to be dismissed.

- 6.13. RBI continues to publish the BPLR. Evidently, the SBI's BPLR exists as on date and it is still being used by the Banks/ lenders for existing loans. Therefore, the BPLR rate is available for the computation of LPS.

IV. Retrospective adjustment of LPS is impermissible

- 6.14. Under the garb of Change in Law MSEDCL is with mala fide intent seeking re-computation of LPS already levied upon it (for the period between July to March, 2010) by RPL in terms of the provisions of the PPAs. MSEDCL has not disputed any Monthly Bills and/or Supplementary Bills as per the procedure prescribed under the PPAs. As such, they have become final and conclusive. Re-computation of already fructified amounts, legally due and payable by MSEDCL to RPL in terms of the PPAs, is not permissible in law. Even otherwise, a part of MSEDCL's claim is barred on account of delay and laches.
- 6.15. MSEDCL has consistently failed to pay the Monthly and Supplementary Bills to RPL in a timely manner, in terms of the PPAs. Accordingly, RPL has raised Supplementary Bills (on a monthly basis) upon MSEDCL claiming LPS, which remains unpaid. Therefore, MSEDCL now cannot be permitted to resile from its past admissions and seek retrospective amendment to the PPAs under the garb of claiming Change in Law.
- 6.16. RPL has filed a Petition (Case No.138 of 2015) seeking directions to MSEDCL to pay Rs.558.11 crore (which has now increased to Rs. 856.54 crore) towards the outstanding amounts for supply of power. The Petition is pending before the Commission. In the light of the above, MSEDCL at this stage cannot be permitted to wriggle out of its past admissions qua the outstanding amounts, including LPS legally payable to RPL in terms of the PPAs.
7. In its Reply dated 28 April, 2017, GMR has stated as follows:
- 7.1. MSEDCL had admittedly executed separate and distinct PPAs with each the Respondents individually, including GMR. It has been expressly admitted that each of these PPAs, including the GMR PPA, are distinct, separate and independent of the other PPAs executed by MSEDCL. Even though the event leading to the filing of the present Petition against various Respondents is the same, each PPA gives rise to a separate cause of action. There is no basis under any law and/ or regulations which entitles MSEDCL to club various causes of action against unrelated Respondents and raise them in one common Petition. Therefore, the Petition is bad for misjoinder of parties and is liable to be dismissed on this ground alone.



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- 7.2. MSEDCL has sought that the LPS payable in terms of the GMR PPA should be computed at 2% above the applicable Base Rate. Article 8.3.5 provides that the LPS shall be computed at 2% above the PLR applicable to loans with one year maturity as fixed by SBI from time to time.
- 7.3. MSEDCL has not prayed for any relief as provided under the GMR PPA for an event of Change in Law. MSEDCL has cited the provisions of the PPA relating to "Change in Law" and has sought amendment of the terms of the PPA relating to the LPS which has been approved by the Commission.
- 7.4. The provisions of the PPA dealing with 'Change in Law' do not contemplate amendment of the terms and conditions of a PPA in the event of a Change in Law. MSEDCL cannot on its accord seek amendment of the terms of the GMR PPA. In any event, amendment/ modification to the terms and conditions of a PPA cannot be granted as a relief under the provisions relating to Change in Law.
- 7.5. MSEDCL is obligated to seek amendment to the provisions of the PPA only in accordance with the agreed procedure for amendment of its terms.
- 7.6. The power generated from GMR's Power Plant is being supplied to the States of Maharashtra and Tamil Nadu and the Union Territory of Dadra and Nagar Haveli pursuant to the following PPAs:
- 200MW of power on long term basis under PPA dated 17.03.2010 with MSEDCL
  - 200 MW on long term basis in terms of PPA dated 21.03.2013 with the Electricity Department of the Union Territory of Dadra and Nagar Haveli; and
  - 150 MW on long term basis to Tamil Nadu Generation and Distribution Corporation Limited through GMR Energy Trading Ltd. in terms of a back to back arrangement.
- 7.7. Thus, the Power Plant of GMR has a scheme for the sale of power to more than one State. As such, in accordance with Section 79 (1) (b) of the EA, 2003, the Appropriate Commission for the adjudication of the issues raised by MSEDCL in this Petition is the Central Electricity Regulatory Commission (CERC) and not the State Commission. Section 79 (1) (b) of the EA, 2003 reads as follows:

*"Functions of Central Commission – (1) the Central Commission shall discharge the following functions, namely:*

*(b) To regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State:*



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... (f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

- 7.8. Pursuant to the judgement of the Supreme Court in Energy Watchdog vs. CERC in C.A No 5399 of 2016 passed on 11 April, 2017, it is no longer *res integra* that in the event a Generating Company enters into supply of power in more than one State, the Appropriate Commission for adjudication of disputes between the contracting parties would be the CERC under Section 79 (1) (b) of the Act:

*"22. ...The State Commission's jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act."*

- 7.9. The present Petition having been filed before the State Commission is, therefore, not maintainable and liable to be dismissed on this ground alone.
- 7.10. Articles 10.1, 10.2.1, 10.3.1 to 10.3.3, 10.5.1 and 10.5.2 relating to Change in Law and the reliefs available to the affected party are of particular reference [and may be referred to at para. 3(10) earlier in this Order]. From these provisions, it is evident that
- (i) a "Change in Law" should result in a recurring/ non-recurring increase in expense or decrease in revenue to the Generating Company; or should beneficially affect it;
  - (ii) the relief available to offset the impact of Change in Law is by way of compensation so that the affected party is brought to the same economic condition as if such Change in Law had not occurred;
  - (iii) With regard to its PPA, GMR is entitled to claim compensation subject to fulfilment of the minimum financial impact condition of 1% of the value of the LC; and
  - (iv) the payment of the impact on the monthly tariff for the supply of power to MSEDCL will be through Supplementary Bills for past bills and the invoice to be raised in future shall be for the changed tariff.
- 7.11. In the alleged Change in Law, i.e. the RBI Guidelines relating to switch over from the PLR system to the Base Rate system, there is neither any benefit nor any decrease in revenue nor any increase in expense to GMR. Therefore, the Change in Law provision is not attracted. The RBI Guidelines are relevant only for purposes of calculation of the rate of interest payable in the event of delay by MSEDCL to make payment of tariff for the off-take of power. The reliance placed upon the Change in Law provisions of the PPA is therefore, misplaced and untenable.



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7.12 Notwithstanding the fact that a switch-over has been made from BPLR to Base Rate System, SBI continues to notify the BPLR. Accordingly, the entire Petition is nothing but an attempt to renegotiate a binding PPA executed between the parties and approved by the Commission.

8. The proceedings at the hearing held on 2 May, 2017 are summarised as follows:

8.1 MSEDCL stated that

1) The Petition has been filed for recognition of RBI Notifications regarding change in banking rates as a Change in Law with regard to the PPAs. The RBI introduced the BPLR system from 2003. By subsequent Circular/Guidelines of RBI, the Base Rate system replaced the BPLR system from 1 July, 2010 and all categories of loans were to be priced only with reference to the Base Rate. SBAR and Change in Law are both defined in the Stage 1 and Stage 2 Competitive Bidding PPAs. The issue of change in the basis of rates is relevant to the rate applicable to delayed payments, i.e. LPS, under the PPAs.

2) RBI has issued directions on 3 March, 2016 stating that all rupee loans sanctioned and credit limits renewed with effect from 1 April, 2016 shall be priced with reference to the MCLR, which will be the internal benchmark for such purposes.

3) SBI is publishing Base Rate (Historical Data) from July, 2010 till date on its Corporate website. From April, 2016 onwards, SBI is also publishing MCLR rates besides the BPLR (Historical Data).

4) The Base Rate Guidelines and MCLR Guidelines are applicable for new loans and for those old loans that come up for renewal. The BPLR rate will continue for these old loans till their maturity. The provisions/directions of the Circulars apply to every scheduled commercial bank.

5) Regulations 35.3 (b) and 35.4 (b) of the MYT Regulations, 2011 are regarding the rate of IoWC which shall be equal to the SBAR as on the date on which the Application for determination of tariff is made. Further, as per Regulation 13.9 of the MYT (Third Amendment) Regulations, 2011, for computation of FAC component of Z-factor charge, the component 'C' is considered as the carrying cost for any under recovery/ over recovery on account of change in fuel cost of own generation and cost of power purchase, computed at the SBAR prevailing at the beginning of the month.

6) Now, as per Regulations 31.1 (f), 31.2 (b) and 31.3 (b) of the MYT Regulations, 2015, the rate of IoWC shall be on a normative basis and equal to the Base Rate as on the date on which the Petition for determination of tariff is filed, plus 150 basis points.



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Dy. Director (Legal)  
Maharashtra Electricity  
Regulatory Commission, Mumbai

Thus, in the MYT Regulations, 2015, the Commission has adopted the Base Rate system.

8.2 APML stated that

1) BPLR is still in existence and SBI is publishing it regularly. Vide letter dated 14 March, 2017, APML has informed MSEDCL regarding the change in SBAR from 14.50% to 14.00% w.e.f January, 2017, and further from 14.00% to 13.80% w.e.f April, 2017. Only if BPLR does not exist is it required to come to the Commission with a mutually agreed rate.

2) The MYT Regulations are applicable only for the Tariff determined under Section 62 of the EA, 2003, whereas the PPA is signed under Section 63. Therefore, the Regulations are not relevant in this case. MSEDCL cannot pick and choose the Regulations from out of the MYT Regulations, which are for Section 62 PPAs.

8.3 JSW made the following submissions:

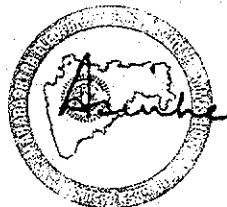
1) The MYT Regulations stipulate the LPS in terms of an absolute percentage figure as per Regulation 36.1, i.e., 1.25% per month, and the particular benchmark is specified. Also, under Regulation 36.3 of the MYT Regulations, 2015, LPS and Interest on Delayed Payment earned by the Generating Company or the Licensee shall not be considered under its Non-Tariff Income. MSEDCL has not sought amendment in or reopening of the PPAs, and hence the Petition may not be admitted.

2) MSEDCL has filed the Petition against 5 individual Generators who have independent and separate PPAs with it. As such, the Petition is not maintainable in its present form and suffers from the vice of misjoinder of Parties (both Stage 1 and Stage 2 Competitive Bidding PPAs having been included) and causes of actions.

3) MSEDCL has not sought amendment or modification of the PPA, and the effect of the Change in Law would be extraneous to the PPA. The definition of SBAR in the PPA states that, in the absence of SBAR, it shall be the rate mutually agreed by the Parties. However, MSEDCL has never approached it for such discussion and, while entering into the PPA, both parties agreed on the SBI PLR.

4) MSEDCL has admitted that the benchmark rates are still being published. As per Art 13.2 of the PPA, as a result of Change in Law, MSEDCL has to provide the details of any decrease in revenue or increase in expenses which shall be payable if it is in excess of 1% of the LC value in aggregate for the relevant Contract Year.

8.4 RPL stated that only events under Article 10.1.1 constitute Change in Law and the payments received due to Change in Law cannot be treated as income or expenditure for the Company arising out of the business. The fact is that MSEDCL is not even



*Ch. 1. 2018*  
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 Dy. Director (Legal)  
 Maharashtra Electricity



paying for the power purchased. MSEDCL has been accepting the bills till date as per the PPA, and is now claiming Change in Law. That is now barred by limitation. Payment of LPS is not part of the normal course of transactions under the PPA, but in the nature of penal charges which arise only if the payments have not been made for the invoices by the due date. Hence, the rate applicable as interest for this event of default cannot be treated as Change in Law under the PPA. Under Art 8.3.5, LPS is payable at a rate of 2% above the applicable SBAR per annum.

8.5 GMR stated as follows:

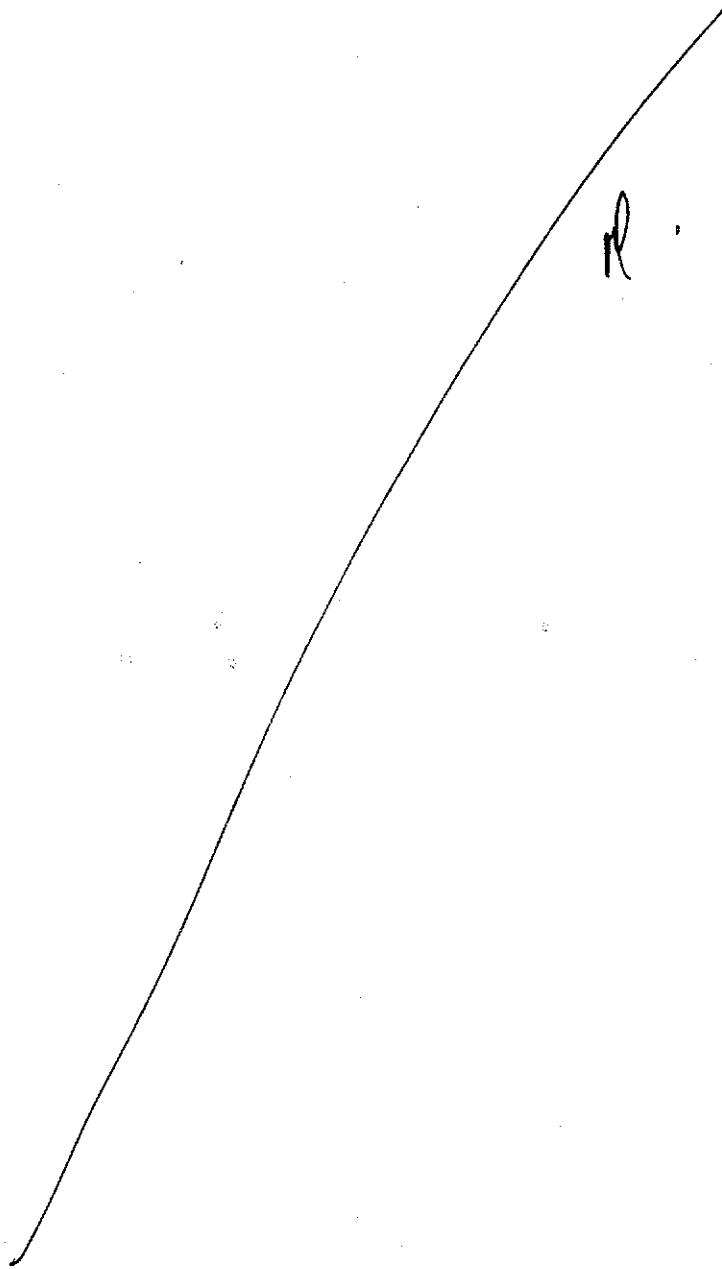
- 1) GMR is an Inter- State Generator, and the jurisdiction of the CERC has already been decided in such issues in various Judgments, and the Commission may reject the Petition on the basis of maintainability.
- 2) MSEDCL has not included CGPL in this Petition, being an inter-State Generator, whereas GMR has been made a party. MSEDCL has not approached CERC for its claim of Change in Law for CGPL.
- 3) Article 10.2 of the PPA deals with the applicability and principles for computing the impact of Change in Law, and can be invoked only to compensate the affected party and restore it to the same economic position as if such Change in Law had not occurred. Moreover, the RBI Circulars are from 2010 but have not been raised by MSEDCL till now.
- 4) The PPA has been executed as per the Standard Bidding Documents issued by the MoP and cannot be amended or modified subsequently through a Change in Law Petition. Under Article 10.3.2 of the PPA, the compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only if it is in excess of 1% of the value of the LC in aggregate for the relevant Contract Year.

**Commission's Analysis and Rulings**

9. **It is not disputed that the RBI is an Indian Governmental Instrumentality as defined in the PPAs; and that, consequent to the RBI Notifications set out in these proceedings, certain changes have been effected by RBI resulting in changes in the underlying basis of certain SBI benchmark rates relevant to the LPS, at least for new loans. However, the issue is whether or not these changes constitute Change in Law events for the purpose of compensating the affected party so as to restore it to the same economic position as before such Change in Law under the terms of the PPAs. In effect, MSEDCL is seeking that, for any LPS that has been paid by MSEDCL or has become due since the dates of those rate changes, the amount of difference between the SBAR as defined in the PPAs and those (lower) rates would have to be refunded by the Sellers to MSEDCL or cease to be due.**



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 Maharashtra Electricity  
 Regulatory Commission, Mumbai



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10. The provisions of the two different sets of PPAs have been quoted earlier in this Order. The most relevant provisions are set out again below, and the portions of most significance underlined for emphasis:

- 1) One set of PPAs provides for LPS for delayed payments as follows (and is similar to the provision in the other PPAs):

*In the event of delay in payment of a Monthly Bill by the Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.*

- 2) The 'SBAR' on which the LPS is based is defined as follows in one set of PPAs:

*"SBAR" means the prime lending rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties.*

The definition of SBAR in the other set of PPAs is almost identical.

- 3) The relevant provisions of Article 10 of the Case 1 Stage 2 PPAs relating to the impact of Change in Law, the Notice to be given by the affected Party and the details to be provided read as follows:

*"Article 10: Change in Law*

*10.1 Definitions*

*In this Article 10, the following terms have the following meanings*

*10.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior, to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the Seller or any income to the Seller....*

*10.2 Application and Principles for computing impact of Change in Law*

*10.2.1 While determining the consequence of Change in Law under this Article 10, the Parties shall have due regard to the principle that the purpose compensating the party affected by such Change in Law, is to restore through monthly Tariff Payment, to the extent contemplated in this Article*



10. the affected party to the same economic position as if such Change in Law has not occurred...

**10.3 Relief for Change in Law**

**...10.3.2 During Operating Period**

The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only if the decrease in revenue or increase in expenses of the Seller is in excess of an amount equivalent to 1% of the value of the Letter of Credit in aggregate for the relevant Contract Year.

**10.4 Notification of Change in Law:**

...10.4.2...Provided that in case the Seller has not provided such notice, the Procurer shall have the right to issue such notice to the Seller.

10.4.3 Any notice served pursuant to this Article 10.4.2 shall provide, amongst other things, precise details of:

a) The Change in Law; and

b) The effects on the Seller.

**10.5 Tariff Adjustment Payment on account of Change in Law**

10.5.1 Subject to Article 10.2, the adjustment in monthly Tariff Payment shall be effective from:

(i) the date of adoption, promulgation, amendment, re-enactment, repeal of the Law or Change in Law,...

10.5.2 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 8.8. However, in case of any change in Tariff by reason of Change in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed tariff."

Article 13 of the other set of PPAs has substantively similar provisions, though the Case 1 Stage 2 PPAs quoted above are more elaborate in some respects.

11. Thus, the PPAs provide for LPS at a rate which is 2% above the SBAR. The SBAR is defined as the SBI PLR for one-year loans. MSEDCL has stated that, as against the BPLR system in vogue from 2003 on which the SBAR was based, the RBI first introduced the Base Rate system from July, 2010, and thereafter replaced it with the MCLR system from April, 2016. MSEDCL contends that

a) these revisions constitute Change in Law events in terms of the PPAs; and that



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By Director (Legal)  
Maharashtra Electricity  
Transmission Corporation Ltd.

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b) the LPS be chargeable accordingly at 2% above the Base Rate from July, 2010 and 2% above the MCLR from April, 2016 onwards, instead of the current PPA provision.

The consequence would also be that, for any LPS that has been paid by MSEDCL since that date, if the LPS based on the SBAR is higher than that based on the subsequent revisions in reference rates by RBI, the amount of difference would have to be refunded by the Sellers to MSEDCL. Any LPS unpaid would also be governed by the rates based on the RBI revisions.

12. It is evident from the PPA provisions quoted above that not all changes in legal dispensations by a Governmental Instrumentality such as RBI amount to Change in Law events for the purposes of compensating the affected party in terms of the PPAs. For this purpose,

a) The Change in Law must result in additional recurring/ non-recurring expenditure by the Seller or any income to the Seller;

b) The compensation is for restoring, through monthly tariff payments, the affected party to the same economic position as if such Change in Law had not occurred

c) Any change in the Tariff by reason of Change in Law is to be reflected in the Monthly Bills raised by the Seller.

However, the LPS provision is attracted only when payments are not made by MSEDCL against the Monthly Bills of the Seller within the time stipulated in the PPAs. Any changes in the basis of the LPS rates consequent to revisions by the RBI do not affect in any manner the rates at which power was agreed to be sold and purchased under the PPAs and in the consequent financial implications for either Party resulting in a liability to compensate the affected Party. The LPS is essentially compensatory in character (as pointed out by the Supreme Court in several Judgments), in terms of the effect on the Seller on account of delay by MSEDCL (as the Procurer in this case) in making due payments. The additional liability of LPS on MSEDCL would also be expected to encourage timely payment and deter delay. Thus, the LPS is also entirely avoidable. The issue would not arise at all if MSEDCL pays its dues in time.

13. Moreover, while introducing the Base Rate system in 2010 and the MCLR system in 2016, the RBI has provided for the continuation of the earlier BPLR dispensation for existing loans. Consequently, the SBAR referred to in the LPS provision, which is the SBI PLR for loans with maturity of one year, remains in vogue and its value continues to be declared by SBI from time to time. Thus, in effect, no change has taken place that would affect the basis of the rate



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Maharashtra Electricity  
Regulatory Commission, Mumbai

underlying the LPS.

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14. In view of the foregoing, the question of the RBI revisions amounting to Change in Law events in terms of the PPAs, or of any compensation on account of such purported Change in Law events in this regard, does not arise.
15. The PPAs provide that notices of Change in Law events are to be issued along with their precise effect by the Seller, failing which MSEDCL may do so. While the changes cited by MSEDCL were effected by RBI from July, 2010 and April, 2016 and notified in advance, MSEDCL issued Notices of Change in Law to the Respondents only in September, 2016, i.e. more than 6 years after RBI introduced the Base Rate system in place of the BPLR system. The Respondents have contended that the claim is barred by limitation. The Commission notes that the PPAs require that such claims be raised

*“as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.”*

MSEDCL could not have been unaware of the revision effected by the RBI at that time, nor has it explained this inordinate delay in raising its claim.

16. The Commission also notes that the PPAs with APML were signed in August, 2010 and February, 2013, after the RBI had introduced the Base Rate system. Nevertheless, MSEDCL chose to enter into these PPAs with the LPS provisions based on the SBI PLR.
17. In the guise of Change in Law events, MSEDCL is in effect seeking that the LPS provision for delayed payments in the PPAs be modified or read as based on the one-year SBI PLR from July, 2010, and on the one-year SBI MCLR from April, 2016 (which is lower than the SBAR referred to in the PPAs). In this context, the Commission notes that, since the SBI continues to notify the SBAR which determines the LPS rate, recourse cannot be had to the provision in the PPAs that

*“In the absence of such rate, SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties;...”*

Moreover, the Case 1 Stage 2 PPAs provide that

*“15.3 This Agreement may only be amended or supplemented by a written agreement between the Parties and after obtaining the approval of the Appropriate Commission, where necessary.”*

Article 18.1 of the other PPAs has a similar provision. However, none of the Respondents have agreed to the change in the LPS provision sought by MSEDCL.



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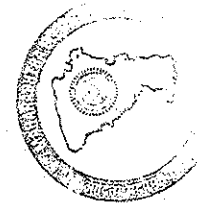
18. The Commission also notes that the Respondent GMR is in fact inter-State Generators.


The Petition of Maharashtra State Electricity Distribution Co. Ltd. in Case No. 24 of 2017 stands disposed of accordingly.

Sd/-  
(Deepak Lad)  
Member

Sd/-  
(Azeez M. Khan)  
Member

  
(Ashwani Kumar Sinha)  
Secretary



  
R. S. SONAWANE  
Dy. Director (Legal)  
Maharashtra Electricity  
Regulatory Commission, Mumbai

**ANNEXURE**

**A-2 COLLY,**

**(67)**

BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY REGULATORY  
COMMISSION, MUMBAI

Filing No.: \_\_\_\_\_

Case No.: \_\_\_\_\_

IN THE MATTER OF

Petition under section 86 of Electricity Act 2003 read with Article 13 (Change in Law) of PPAs under Case 1 stage 1 and Article 10 (Change in Law) of PPAs under case 1 stage 2.

IN THE MATTER OF

Regulation 94 of MERC (Conduct o Business) Regulation, 2004.

AND

IN THE MATTER OF

Maharashtra State Electricity Distribution Company Ltd.....The Petitioner

Vs

- 1) M/s Adani Power Maharashtra Ltd.  
Achalraj, Opp Mayor Bungalow, Law Garden,  
Ahmedabad-380006 Gujarat.
- 2) M/s JSW Energy Ltd.  
Village-Nandiwade,  
Post-Jaigad, Tal. & Dist. Ratnagiri - 415614
- 3) M/s RattanIndia Ltd.  
Plot No D2 & D2 (part)  
At Additional Industrial Area,  
Nandganpeth,  
Amravati-444 901.
- 4) M/s GMR Warora Energy Ltd. (Formerly Known Emco Energy Ltd.)  
701/704, 7th Floor,  
Naman Centre, A-wing,  
BKC, Bandra, Mumbai-400051
- 5) M/s Coastal Gujarat Power Ltd.  
Ultra Mega Power Project,  
Tunda Vandh Road Tunda Village,  
Mundra Kutch-370435

Respondents



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The Petitioner above named most respectfully submits as under;

**1. Background**

1.1. Maharashtra State Electricity Distribution Co. Ltd. (hereinafter to be referred to as "MSEDCL" or "the Petitioner") has been incorporated under Indian Companies Act, 1956 pursuant to decision of Government of Maharashtra to reorganize erstwhile Maharashtra State Electricity Board (herein after referred to as "MSEB"). The Petitioner submits that the said reorganization of the MSEB has been done by Government of Maharashtra pursuant to "Part XIII – Reorganization of Board" read with section 131 of The Electricity Act 2003. MSEDCL is a Company constituted under the provisions of Government of Maharashtra, General Resolution No. PLA-1003/C.R.8588/Energy-5 dated 25th January 2005 and The Petitioner has been incorporated on 31.5.2005 with the Registrar of Companies, Maharashtra, Mumbai and has obtained Certificate of Commencement of Business on 15th Sep 2005. The Petitioner is a Distribution Licensee under the provisions of the Electricity Act, 2003 (EA, 2003) having license to supply electricity in the State of Maharashtra except some parts of city of Mumbai.

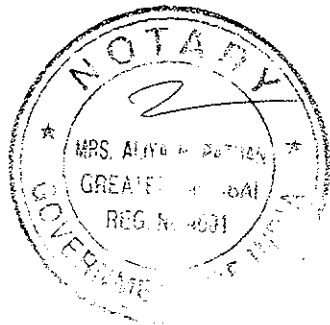
**2. Bidding Process (Case 1)**

2.1. As per the guidelines issued by Ministry of Power, Government of India for case 1 bidding document, MSEDCL has initiated two bidding process as case 1 stage 1 and case1 stage 2 separately. The approvals of Hon'ble Commission for these bidding documents were obtained. The bidding process and the evaluation of bid were carried out as per the provisions and accordingly MSEDCL has signed the PPAs.

**2.2. Case 1 Stage 1**

2.2.1 The Petitioner has signed PPAs with following bidders under case1 stage 1 bidding process. The details are as under

- i.) PPA dated 14/08/2008 with M/s. Adani Power Maharashtra Ltd. for 1320 MW at the levelised tariff of rupees 2.64 per unit from unit 2 and 3 Tiroda project.



- ii.) PPA dated 25/09/2008 with M/s. Lanco Vidarbha Ltd. (Formerly known as Lanco Mahanadi power Pvt. Ltd.) for 680 MW at the levelised tariff of rupees 2.72 per unit from Wardha project.
- iii.) PPA dated 23/02/2010 with M/s. JSW Energy (Ratnagiri) Ltd. for 300 MW at the levelised tariff of rupees 2.71 per unit from unit 1 Ratnagiri project.

2.2.2 The Petitioner has submitted a petition for approval of aforesaid PPAs under section 63 of Electricity Act. Hon'ble Commission vide order dated 27.11.2009 in case no.39 of 2009 has approved the PPA with M/s. JSW Energy (Ratnagiri) Ltd. for 300 MW and vide order dated 20.02.2013 in case no.68 of 2012 has approved the PPA with M/s. Adani Power Maharashtra Ltd. for 1320 MW and M/s. Lanco Mahanadi Power Pvt. Ltd. for 680 MW and adopted the tariff.

2.2.3 The Petitioner submits that, M/s Adani Power Maharashtra Ltd. and M/s. JSW Energy (Ratnagiri) Ltd. has commenced the supply. However, the project of M/s Lanco Vidarbha Ltd. (Formerly known as Lanco Mahanadi Power Pvt. Ltd.) has not commissioned so far and hence not commenced the supply.

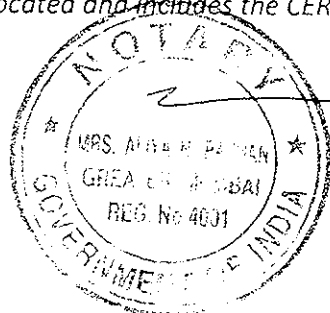
2.2.4 M/s. Lanco Vidarbha Ltd. has filed petition before Hon'ble Commission for termination of the PPA. The Petitioner has also filed the petition before Hon'ble Commission for recovery of liquidated damages from M/s. Lanco Vidarbha Ltd. for non commencement of supply.

2.2.5 The relevant clause of above PPA are as under

**Article 1: Definitions and Interpretation**

*Change in Law - shall have the meaning ascribed thereto in Article 13.1.1 of this agreement*

*Indian Governmental instrumentality – means the Gol, Government of Maharashtra and any ministry or, department of or, board, agency or other regulatory or quasi-judicial authority controlled by Gol or Government of States where the procurer and project are located and includes the CERC and MERC*



*Late Payment Surcharge* – shall have the meaning ascribed there to in Article 11.3.4

*Law* - means, In relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include all rules, regulations, decisions and orders of the CERC and the MERC

*SBAR*- means the prime lending Rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, any other arrangement that substitutes such prime lending rate as mutually agreed to by the parties.

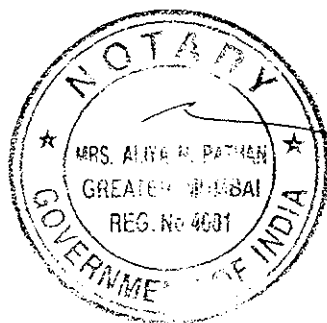
**Article 11: Billing and Payment**

11.3.4 In the event of delay in payment of a monthly bill by the procurer beyond its due date month billing, a Late Payment Surcharge shall be payable by the procurer to the seller at the rate of two (2) percent in excess of applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest) for each date of the delay.

**Article 13: Change in Law**

**13.1 Definitions**

In this Article 13, the following terms have the following meanings



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13.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior, to the Bid Deadline:

- (i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal of any law or
- (ii) a change in interpretation of any law by a competent court of law, tribunal or Indian governmental instrumentality provided such court of law, tribunal or Indian governmental instrumentality is final authority under law for such interpretation

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the seller, or (ii) Change in respect of UI charges or frequency intervals by an Appropriate Commission.

### 13.2 Application and principal for computing impact of change in Law

While determining the consequence of Change in Law under this Article 13, the parties shall have due regard to the principle that the purpose compensating the party affected by such change in law, is to restore through monthly tariff payments to the extent contemplated in this Article 13, the affected party to the same economic position as if such Change in law has not occurred.

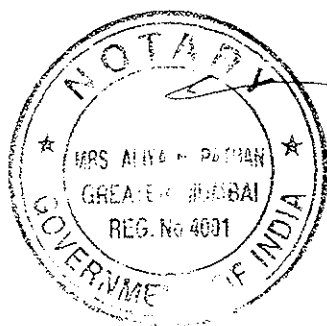
a)-----

b) Operation Period-

As a result of change in Law, the compensation for any increase / decrease in revenue or cost to the seller shall be determined by the Maharashtra State Electricity Regulatory Commission whose decision shall be final and binding on both the parties, subject to right of appeal provided under applicable law and effective from the date specified in 13.4.1

### 13.3 Notification of change in Law:

13.3.1 If the seller is affected by a Change in Law in accordance with Article 13.2 and the Seller wishes to claim a Change in Law under this Article, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.



13.3.2 Notwithstanding Article 13.3.1, the seller shall be obliged to serve notice to the Procurer under this Article 13.3.2 if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the procurer contained herein shall be material. Provided that in case the seller has not provided such notice, the Procurer shall have the right to issue such notice to the seller.

13.3.3 Any notice served pursuant to this Article 13.3.2 shall provide, amongst other things, precise details of:

- a) The Change in Law; and
- b) The effects on the Seller of the matters referred to in Article 13.2

**13.4 Tariff adjustment payment on account of Change in Law**

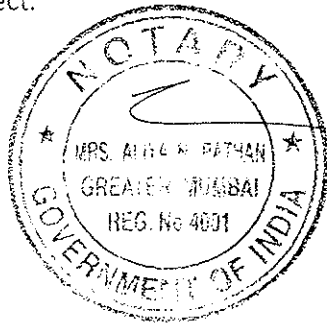
13.4.1 subject to Article 13.2, the adjustment in monthly tariff payment shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment, repeal of the Law or change in law, or
- (ii) the date of order/ judgment of the competent court or tribunal or Indian Governmental Instrumentality, if the change in law is on account of a change in interpretation of law.

**2.3. Case 1 Stage 2**

2.3.1 The Petitioner has signed PPAs with following bidders under case1 stage 2 bidding process. The details are as under

- i.) PPA dated 17/03/2010 with M/s. EMCO Energy Ltd. for 200 MW at the levelised tariff of Rupees 2.88 per unit from Warora project.
- ii.) PPA dated 22/04/2010 for 450 MW and PPA dated 05/06/2010 for 750 MW signed with M/s Rattan India Power Ltd. (Formerly- Indiabull Power Ltd.) both at the levelised tariff of Rupees 3.26 per unit from Amravati project.
- iii.) PPA dated 31/03/2010 for 1200 MW, PPA dated 09/08/2010 for 125 MW and PPA dated 16/02/2013 for 440 MW signed with M/s Adani Power Maharashtra Ltd. all at the levelised tariff of Rupees 3.28 per unit from Tiroda project.



2.3.2 The Petitioner had submitted a petition for approval of aforesaid PPAs under section 63 of Electricity Act. Hon'ble Commission vide order dated 28/12/2010 (Case No. 22 of 2010) has approved the PPA of M/s. EMCO energy Ltd. for 200 MW, M/s. Rattan India Power Ltd. (Indiabull Power Ltd.) for 1200 Mw and M/s. Adani Power Ltd. for 1200 MW respectively. Further Hon'ble Commission has approved the PPA of M/s. Adani Power Maharashtra Ltd. for 125 MW vide order dated 14/05/2011 (Case No. 56 of 2010) and for 440 MW vide order dated 27/12/2012 (Case No. 53 of 2011). The Petitioner submits that, the power supply against the aforesaid PPAs except 440 MW Adani PPA has commenced. The scheduled delivery date of Adani 440 MW PPA is 16/02/2017, however Petitioner and M/s. Adani Power Maharashtra Ltd. has signed the MoU incorporating some terms and conditions for early power supply and jointly submitted the petition before this Hon'ble Commission.

2.3.3 The relevant clause of above PPAs are as under

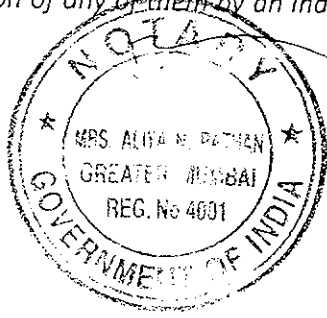
*Article 1: Definitions and Interpretation*

*Change in Law - shall have the meaning ascribed thereto in Article 10.1.1 of this agreement.*

*Indian Governmental Instrumentality – shall mean the Government of India, Governments of state(s) of Maharashtra, and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India but excluding the Seller and the Procurer*

*Late Payment Surcharge - shall have the meaning Ascribe thereto an Article 8.3.5 of this Agreement*

*Law - Shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having*



force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate commission

**SBAR** - Shall mean the prime lending Rate per annum applicable for loans with one (1) year maturity as fixed from time to time by the State Bank of India. In the absence of such rate, SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the parties.

**Article 8: Billing and Payment**

8.3.5 In the event of delay in payment of a monthly bill by the procurer beyond its due date, a Late Payment Surcharge shall be payable by such procurer to the seller at the rate of two (2) percent in excess of applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest) for each date of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.

**Article 10: Change in Law**

**10.1 Definitions**

In this Article 10, the following terms have the following meanings

10.1.1 "Change in Law" means the occurrence of any of the following events after the date, which is seven (7) days prior, to the Bid Deadline resulting into any additional recurring/ non-recurring expenditure by the Seller or any income to the Seller:



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- the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- a change in interpretation or application of any law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- the imposition of requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- a change in the terms of conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;
- any change in tax or introduction of any tax made applicable for supply of power by the Seller as per the terms of this Agreement

but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or (ii) Change in respect of UI Charges or frequency intervals by an Appropriate Commission or (iii) any change on account of regulatory measures by the Appropriate Commission including calculation of Availability.

**10.2 Application and Principles for computing impact of Change in Law**

10.2.1 While determining the consequence of Change in Law under this Article 10, the parties shall have due regard to the principle that the purpose compensating the party affected by such Change in Law, is to restore through monthly tariff Payment, to the extent contemplated in this Article 10, the affected party to the same economic position as if such Change in Law has not occurred.

**10.3 Relief for Change in Law**





**10.3.2 During Operating Period**

The compensation for any decrease in revenue or increase in expenses to the Seller shall be payable only if the decrease in revenue or increase in expenses of the Seller is in excess of an amount equivalent to 1% of the value of the Letter of Credit in aggregate for the relevant Contract Year.

**10.4 Notification of change in Law:**

10.4.1 If the seller is affected by a Change in Law in accordance with Article 10.1 and the Seller wishes to claim a Change in Law under this Article 10, it shall give notice to the Procurer of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law.

10.4.2 Notwithstanding Article 10.4.1, the Seller shall be obliged to serve notice to the Procurer under this Article 10.4.2, even if it is beneficially affected by a Change in Law. Without prejudice to the factor of materiality or other provisions contained in this Agreement, the obligation to inform the procurer contained herein shall be material.

Provided that in case the seller has not provided such notice, the Procurer shall have the right to issue such notice to the Seller.

10.4.3 Any notice served pursuant to this Article 10.4.2 shall provide , amongst other things, precise details of :

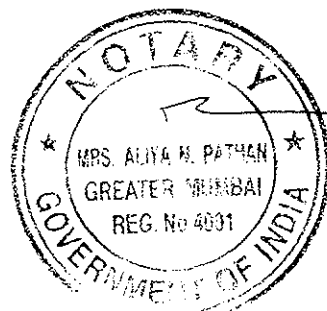
- a) The Change in Law; and
- b) The effects on the Seller.

**10.5 Tariff Adjustment Payment on account of Change in Law**

10.5.1 Subject to Article 10.2, the adjustment in monthly Tariff Payment shall be effective from:

- (i) the date of adoption, promulgation, amendment, re-enactment, repeal of the Law or Change in Law, or
- (ii) the date of order/ judgment of the Competent Court or tribunal or Indian Governmental Instrumentality, if the Change in Law is on account of a change in interpretation of Law.

10.5.2 The payment for Change in Law shall be through Supplementary Bill as mentioned in Article 8.8. However, in case any change in Tariff by reason of Change



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*in Law, as determined in accordance with this Agreement, the Monthly Invoice to be raised by the Seller after such change in Tariff shall appropriately reflect the changed tariff.*

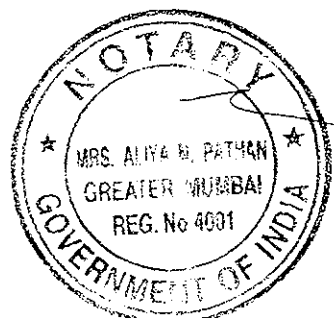
#### 2.4. RBI guidelines/Circulars

The Reserve Bank of India has introduced BPLR system from 2003.

Reserve Bank of India on dated 09/04/2010 vide ref no. RBI/2009-10/390-DBOD, No. DIR.BC88/13.03.00/2009-10 has issued the guidelines on the Base Rate. Subsequently, Reserve bank of India has issued the Master Circular No. RBI/2010-11/72-DBOD, No. DIR.BC.9/13.03.00/2010-11 dated 01/07/2010 for the same. Reserve bank of India has stated that, *the BPLR system introduced in 2003, fall short of its original objective of bringing transparency to lending rates. This was mainly because under the BPLR system, Banks could lend below BPLR. For the same reason, it was also difficult to access the transmission of policy rates of the Reserve bank to lending rates of bank. Accordingly, based on the recommendations of the Working Group on Benchmark Prime Lending Rate which submitted its report in October 2009, Banks have been advised to switch over to the system of Base Rate with effect from July 1, 2010. The Base Rate system is aimed at enhancing transparency in lending rates of banks and enabling better assessments of transmission of monetary policy.*

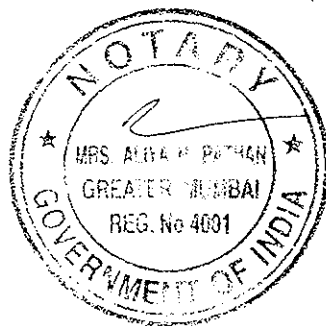
As per these guideline/ circular, the Base Rate system will replace the BPLR system with effect from July 01, 2010 and all categories of loans should be priced only with reference to the **Base Rate**, however the loans to the categories (a) DRI advances (b) Loan to banks own employee (c) loan to banks depositor against their own deposits could be priced without reference to the **Base Rate**. The copy of the guideline/ circular is marked as Annexure 'A' and Annexure 'B'.

3. Further, the Reserve Bank of India has issued fresh directions which are called as Reserve Bank of India (Interest Rate on Advances) Directions, 2016 vide Master Direction DBR. Dir.No.85/13.03.00/2015-16 dtd.03/03/2016. In the said directions, it has been stated that all rupee loans sanctioned and credit limits renewed with effect from April 01, 2016 shall be priced with reference to the Marginal Cost of Funds Based Lending Rate (MCLR) which will be the internal benchmark for such purposes.



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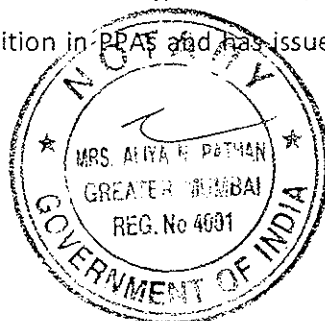
4. It is submitted that, SBI is publishing Base Rate (Historical Data) with effect from 01.07.2010 till date on SBI corporate website which is enclosed herewith as Annexure 'C'. From April 2016 onwards, SBI is also publishing MCLR rates on its corporate website which is enclosed as Annexure 'D'. At present the applicable Base rate is 9.30% p.a. and applicable MCLR rate is 9.10% p.a. SBI has also publishing the Benchmark Prime Lending Rate (Historical Data) on SBI Corporate website which is enclosed as annexure 'E'. At present the BPLR rate is 14.05% per annum.
5. The Petitioner respectfully submits that, as per the above guidelines/ circulars issued by RBI, the Base Rate system / MCLR system is introduced and applicable for all new loans with respective effective dates and for those old loans that come up for renewal. Existing loans based on the BPLR system may run till their maturity. In case existing borrowers want to switch to the new system, before expiry of existing contract, an option may be given to them on mutually agreed terms. It is further submitted that although RBI has introduced Base Rate for all floating rate loan product with effect from 1<sup>st</sup> July, 2010, yet RBI has allowed to continue old loans until its maturity, according to the same interest rate methodology at which they were approved. Thus SBI is publishing BPLR rate only for the old loans which are not come up for renewal.
6. It is respectfully submitted that under MYT Regulations, 2011 para No. 35.3(b) and 35.4(b) rate of interest on working capital shall be equal to the State Bank Advance Rate (SBAR) of State Bank of India as on the date on which the application for determination of tariff is made. Further as per Regulation 13.9 of MERC MYT (Third Amendment) Regulations, 2011 for computation of FAC component of Z- factor charge, the component 'C' is consider as carrying cost for any under recovery/ over recovery on account of change in fuel cost of own generation and cost of power purchase, computed at the State Bank of India Advance Rate prevailing at the beginning of the month.
7. It is respectfully submitted that as per the MYT regulation 2015 Para No. 31.1 (f), Para No. 31.2 (b) and Para No. 31.3 (b) Rate of interest on working capital shall be on normative basis and shall be equal to the *Base Rate* as on the date on which the petition for determination of tariff is filed, plus 150 basis points.



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- Provided that for the purpose of Truing-up for any year, interest on working capital shall be allowed at the rate equal to the rated average **Base Rate** prevailing during the concern year, plus 150 basis points.
8. Further as per MERC MYT Regulation 2015, for Computation of FAC component of Z-Factor charge, the component C is considered as caring cost for any under recovery / over Recovery, computed at the **Base Rate** prevailing at the beginning of the month, plus 150 basis points.
9. Thus, it is respectfully submitted that *Hon'ble Commission has also replaced SBAR system with Base Rate system* while framing fresh MYT Regulations, 2015.
10. It is submitted that, as per sub-section (2) of Section 21 of the Banking Regulation Act, 1949, 'Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to –
- (a)
- (e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.
- Further, as per sub-section (3) of the said section, every banking company shall be bound to comply with any directions given to it under this section.
11. The Petitioner humbly submits that, BPLR system is introduced in 2003. Bank should charge interest on loans in accordance with the directives issued by Reserve Bank of India from time to time. *The interest prescribed or delay in payment clause incorporated in PPA was based on the prevailing rate at that time and the system enforced as per the directives of Reserve Bank of India.* Now RBI which is constituted as per the provisions of section 3 of the Reserve Bank of India Act, 1934 for the purpose of carrying on the business of Banking in accordance with the provisions of the Act and it being a Governmental Instrumentality, its orders, notifications, circulars are laws within the meaning of definition in PPA and has issued the new guideline/ circular. As per these

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Guidelines/ circulars the Base Rate system has replaced the BPLR system with effect from 01/7/2010. Further, the Base Rate system is replaced with MCLR w.e.f. April 01, 2016. Thus, the BPLR system incorporated in PPA has to be replaced by Base Rate system / MCLR system for its respective application period. The replacement of BPLR system with Base Rate system and Base Rate System with MCLR system by Reserve Bank of India, it being a Governmental Instrumentality, is covered under the change in law as per PPA's provisions.

**12. Notice for Change in Law:** As per the provisions of PPA mentioned herein before, it is the obligation of the Seller to serve a notice of Change in Law to the Procurer, either it is affected or benefitted by a change in law. In case the Seller has not provided such notice, the Procurer shall have the right to issue such notice to the Seller.

The Petitioner submits that, it has not received such notice from any of the IPP power supplier for the event of Change in Law mentioned in the present petition. As such Petitioner has served a Notice for the said Change in Law in exercise of it's right under the terms of PPA. The said Notice of Change in Law has been served upon the following IPP power suppliers on 23.09.2016:

1. M/s Adani Power Maharashtra Ltd. for the PPA's of 1320 MW, 1200 MW & 125 MW.
2. M/s RatanIndia Ltd. for 750 MW & 450MW.
3. M/s GMR (Warora) (erstwhile EMCO) Power Ltd.
4. M/s JSW Energy Ltd.
5. M/s Coastal Gujrat Power Ltd.

**13. Replies to the notice of Change in Law:**

In response to said notice M/s. JSW Energy Ltd., M/s. CGPL and M/s. RattanIndia Power Ltd. have replied as under:

**M/s. CGPL :**

M/s. CGPL has submitted that issuance of Master Circular / Directions dated 11.07.2010 and 03.03.2016 by RBI does not amounts to Change in Law, in terms of Article 13 of the PPA and requested to withdraw the notice issued by MSEDCL.

**M/s. RatttanIndia Power Ltd. :**

M/s. RattanIndia Power Ltd. has submitted that though RBI changed BPLR to Base Rate vide its circular dtd 01.07.2010 w.e.f. 01.07.2010, however, it is further notified that



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- Banks may continue to notify the BPLR from time to time so as to enable existing loans on BPLR to run till their maturity.

It has further pointed out that in the Circular dtd. 03.03.2016 of RBI it is stated that existing loans and credit limits linked to the Base Rate / BPLR shall continue till repayment or renewal as the case may be provided that the existing borrower shall have the option to move to the MCLR linked loans at mutually acceptable terms. As such it has denied the contention of MSEDCL stating that there is no change in law as SBI PLR exists as on date and it is still being used by banks for existing loans.

**M/s. JSW Energy Ltd.:**

M/s. JSW Energy Ltd. has also denied the contention of Petitioner stating that there is a complete and independent mechanism agreed for under the PPA, in case of absence of SBI PLR and no recourse whatsoever can be had to the Change in Law to the provision of the PPA in this respect. Further, since the PLR is being published regularly by SBI, the question of application of any other rate for calculating the interest on delayed payments does not arise in the present case. It has been further pointed out that even in the absence of the SBI PLR it is for the parties to mutually agree on the substitution on the same with any other arrangement. M/s. JSW disagree that the RBI directives have completely abolished PLR and wholly substituted the same with Base Rate system w.e.f. 01.07.2010 and MCLR from 03.03.2016 for all purposes and intent and there are contracts which are saved and are still governed by PLR system. As such it has requested to withdraw the notice served by MSEDCL.

However the replies from M/s. APML and M/s. GMR Warora (Emco) Ltd. have not been received by the Petitioner.

14. The Petitioner would like to submit that, the reasons given by the parties in support of their contentions are not consistent with the true intensions of RBI notifications and also is contrary to the Regulations of this Hon'ble Commission referred to in foregoing paras and hence their contentions are not acceptable to the Petitioner.
15. It is respectfully submitted that, if SBAR system is not replaced by Base Rate system and MCLR system as prescribed by RBI it will cause unjust enrichment of the Generators and injustice to the common consumer and Petitioner.

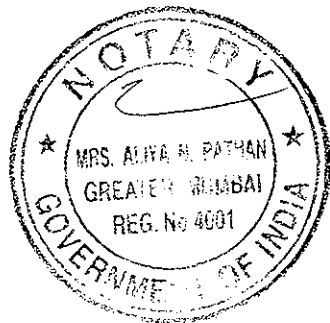


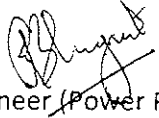
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-16. In the circumstances, the present Petition is filed under section 86 of Electricity Act 2003 read with Article 13 (Change in Law) of PPAs under Case 1 stage 1 and Article 10 (Change in Law) of PPAs under case 1 stage 2.

**16. Prayers**

- a) To admit the Petition;
- b) To declare and accept the Guidelines/Circulars issued by RBI as Change in Law as provided in respective PPAs.
- c) To allow the Petitioner to make the late payment surcharge in the event of delay in payment at the rate of two (2) percent excess of the applicable Base Rate per annum on the amount of outstanding payment calculated on a day to day basis for each day of the delay against the PPAs mentioned in aforesaid para 2.2 and 2.3 from 1 July 2010 till March 31, 2016 and thereafter at the rate of two (2) percent in excess of the applicable rate under MCLR system.
- d) To grant such relief and pass such order/ orders as Hon'ble Commission may deem fit considering facts and circumstances of the case and in the interest of common consumers.
- e) Condone any error/omission and to give opportunity to rectify the same.



  
Chief Engineer (Power Purchase)

MSEDCL



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भारतीय रिज़र्व बैंक  
RESERVE BANK OF INDIA  
www.rbi.org.in

RBI/2010-11/72  
DBOD.No.Dir.BC.9 /13.03.00/2010-11

July 1, 2010  
Ashadha 10, 1932(Saka)

All Scheduled Commercial Banks  
(excluding RRBs)

Dear Sir / Madam

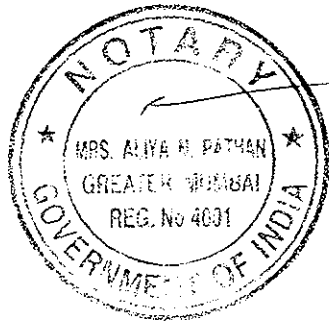
**Master Circular - Interest Rates on Advances**

Please refer to the Master Circular DBOD.No.Dir.BC.10/13.03.00/2009-10 dated July 1, 2009 consolidating instructions / guidelines issued to banks till June 30, 2009 on matters relating to Interest Rates on Advances. The Master Circular has been suitably updated by incorporating instructions issued up to June 30, 2010 and has also been placed on the RBI website (<http://www.rbi.org.in>). A copy of the Master Circular is enclosed.

Yours faithfully

(A.K.Khound)  
Chief General Manager

Encl: as above



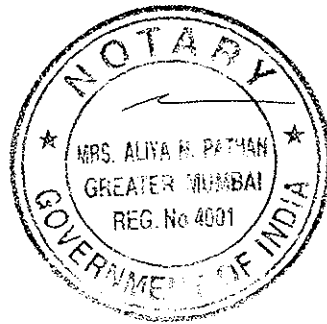
बैंकिंग परिचालन और विकास विभाग, केन्द्रीय कार्यालय, सेन्टर 1, कफ परेड, कुलाबा, मुम्बई 400005  
DEPARTMENT OF BANKING OPERATIONS & DEVELOPMENT CENTRE -1, WORLD TRADE CENTRE,  
CUFFE PARADE, COLABA, MUMBAI- 400005  
FAX NO. 0091-22-22183785 Tel. No.022-22189131-39 (9 Lines)  
E-mail address [cmicdbodco@rbi.org.in](mailto:cmicdbodco@rbi.org.in)



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**MASTER CIRCULAR ON INTEREST RATES ON ADVANCES**

**A. Purpose**

To consolidate the directives on interest rates on advances issued by Reserve Bank of India from time to time.

**B. Classification**

A statutory directive issued by the Reserve Bank in exercise of the powers conferred by the Banking Regulation Act, 1949.

**C. Previous instructions**

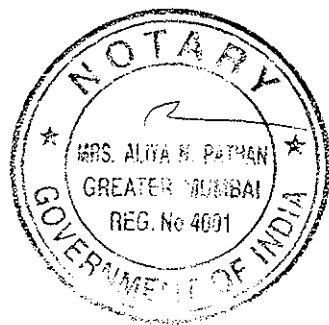
This Master Circular consolidates and updates the instructions on the above subject contained in the circulars listed in Annex 5.

**D. Application**

To all scheduled commercial banks, excluding Regional Rural Banks.

**Structure**

1. Introduction
2. Guidelines
  - 2.1 General
  - 2.2 Base Rate
  - 2.3 Applicability of Base Rate
  - 2.4 Floating rate of interest on loans
  - 2.5 Levying of penal rates of interest
  - 2.6 Enabling clause in loan agreement
  - 2.7 Withdrawals against uncleared effects
  - 2.8 Loans under consortium arrangement
  - 2.9 Charging of interest at monthly rests
  - 2.10. Zero percent interest finance schemes for consumer durables
  - 2.11. Excessive interest charged by banks



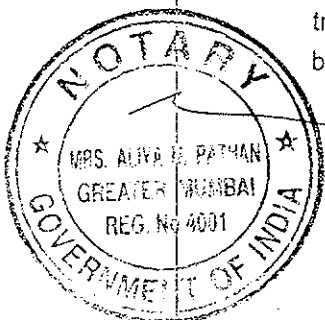
1. Introduction

1.1. Reserve Bank of India began prescribing the minimum rate of interest on advances granted by Scheduled Commercial Banks with effect from October 1, 1960. Effective March 2, 1968, in place of minimum lending rate, the maximum lending rate to be charged by banks was introduced, which was rescinded with effect from January 21, 1970, when the prescription of minimum lending rate was reintroduced. The ceiling rate on advances to be charged by banks was again introduced effective March 15, 1976, and banks were also advised, for the first time, to charge interest on advances at periodic intervals, that is, at quarterly rests. In the following period, various sector-specific, programme-specific and purpose-specific interest rates were introduced.

1.2. Given the prevailing structure of lending rates of Scheduled Commercial Banks, as it had evolved over time, characterised by an excessive proliferation of rates, in September, 1990, a new structure of lending rates linking interest rates to the size of loan was prescribed which significantly reduced the multiplicity and complexity of interest rates. In the case of the Differential Rate of Interest Scheme under which credit was provided at a rate of 4.0 per cent per annum, and Export Credit, which was subject to an entirely different regime of lending rates supplemented by interest rate subsidies, the existing lending rate structure was continued.

1.3. An objective of financial sector reform has been to ensure that the financial repression inherent in administered interest rates is removed. Accordingly, in the context of granting greater functional autonomy to banks, effective October 18, 1994, it was decided to free the lending rates of scheduled commercial banks for credit limits of over Rs. 2 lakh; for loans up to Rs. 2 lakh, it was decided that it was necessary to continue to protect these borrowers by prescribing the lending rates and accordingly it was prescribed that for loans up to and inclusive of Rs.2 lakh, the lending rates of banks should not exceed the BPLR of the respective banks. For credit limits of over Rs.2 lakh, the prescription of minimum lending rate was abolished and banks were given the freedom to fix the lending rates for such credit limits subject to BPLR and spread guidelines. Banks were required to obtain the approval of their respective Boards for the Benchmark Prime Lending Rate (BPLR), which would be the reference rate for credit limits of over Rs.2 lakh. Each bank's BPLR has to be declared and be made uniformly applicable at all branches.

1.4 The BPLR system, introduced in 2003, fell short of its original objective of bringing transparency to lending rates. This was mainly because under the BPLR system, banks could lend below BPLR. For the same reason, it was also difficult to assess



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the transmission of policy rates of the Reserve Bank to lending rates of banks. Accordingly, based on the recommendations of the Working Group on Benchmark Prime Lending Rate which submitted its report in October 2009, banks have been advised to switch over to the system of Base Rate with effect from July 1, 2010. The Base Rate system is aimed at enhancing transparency in lending rates of banks and enabling better assessment of transmission of monetary policy.

## 2. Guidelines

### 2.1. General

- 2.1.1. Banks should charge interest on loans / advances / cash credits / overdrafts or any other financial accommodation granted / provided / renewed by them or discount usance bills in accordance with the directives on interest rates on advances issued by Reserve Bank of India from time to time.
- 2.1.2. The interest at the specified rates should be charged at monthly rests (subject to the conditions laid down in paragraph 2.9) and rounded off to the nearest rupee.
- 2.1.3. The schedule of rates of interest as per the current directive in force is given in Annex 1.

### 2.2 Base Rate

- 2.2.1 The Base Rate system, as detailed below and in Annex 1 will replace the BPLR system with effect from July 1, 2010. For loans sanctioned up to June 30, 2010, BPLR will be applicable, as given in Annex 3 and 4. However, for those loans sanctioned up to June 30, 2010 which come up for renewal from July 1, 2010 onwards, Base Rate would be applicable. Base Rate shall include all those elements of the lending rates that are common across all categories of borrowers. Banks may choose any benchmark to arrive at the Base Rate for a specific tenor that may be disclosed transparently. An illustration for computing the Base Rate is set out in Annex 2. Banks are free to use any other methodology, as considered appropriate, provided it is consistent and is made available for supervisory review/scrutiny, as and when required.
- 2.2.2 Banks may determine their actual lending rates on loans and advances with reference to the Base Rate and by including such other customer specific charges as considered appropriate.
- 2.2.3 In order to give banks some time to stabilize the system of Base Rate calculation, banks are permitted to change the benchmark and methodology any time during the initial six month period, i.e. end-December 2010.
- 2.2.4 The actual lending rates charged should be transparent and consistent and be made available for supervisory review/scrutiny, as and when required.



2.2.5 There can be only one Base Rate for each bank. Banks have the freedom to choose any benchmark to arrive at a single Base Rate which should be disclosed transparently.

2.2.6 Even after introduction of the Base Rate system, banks would have the freedom to offer all categories of loans on fixed or floating rates. Where loans are offered on fixed rate basis, notwithstanding the quarterly review of the Base Rate, the rate of interest on fixed rate loans will continue to remain the same subject to the condition that such fixed rate should not be below the Base Rate.

### 2.3 Applicability of Base Rate

2.3.1 With effect from July 1, 2010, all categories of loans should be priced only with reference to the Base Rate.

2.3.1.1 However, the following categories of loans could be priced without reference to the Base Rate: (a) DRI advances (b) loans to banks' own employees (c) loans to banks' depositors against their own deposits.

2.3.1.2 In those cases where subvention is available to borrowers, it is clarified as under:

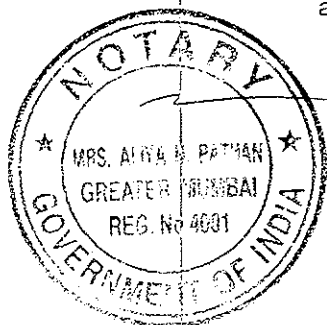
#### (i) Interest Rate Subvention on Crop Loans

a) In case of crop loans up to Rupees three lakh, for which subvention is available, banks should charge farmers the interest rates as stipulated by the Government. If the yield to the bank (after including subvention) is lower than the Base Rate, such lending will not be construed to be violative of the Base Rate guidelines.

b) As regards the rebate provided for prompt repayment, since it does not change the yield to the banks [mentioned at (a) above] on such loans, it would not be a factor in reckoning compliance with the Base Rate guidelines.

#### (ii) Interest Rate Subvention on Export Credit

It has already been clarified, vide our circular DBOD.Dir.(Exp).BC.No.102/04.02.001/2009-10 dated May 6, 2010 that interest rates applicable for all tenors of rupee export credit advances will be at or above the Base Rate. In cases where subvention is available in terms of our Circular DBOD.Dir.(Exp.).BC.No.94/04.02.001/2009-10 dated April 23, 2010, banks will have to reduce the interest rate chargeable to exporters as per Base Rate system by the amount of subvention available. If, as a consequence, the interest rate charged to



exporters goes below the Base Rate, such lending will not be construed to be violative of the Base Rate guidelines.

**2.3.1.3 Restructured Loans**

In case of Restructured loans if some of the WCTL, FITL, etc. need to be granted below the Base Rate for the purposes of viability and there are recompense etc. clauses, such lending will not be construed to be violative of the Base Rate guidelines.

2.3.2 The Base Rate could also serve as the reference benchmark rate for floating rate loan products, apart from external market benchmark rates. The floating interest rate based on external benchmarks should, however, be equal to or above the Base Rate at the time of sanction or renewal.

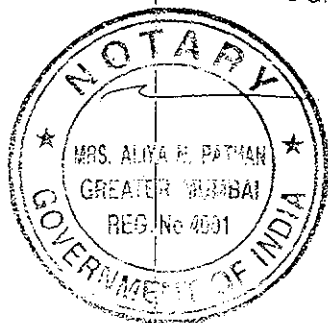
2.3.3 Changes in the Base Rate shall be applicable in respect of all existing loans linked to the Base Rate, in a transparent and non-discriminatory manner.

2.3.4 Since the Base Rate will be the minimum rate for all loans, banks are not permitted to resort to any lending below the Base Rate. Accordingly, the current stipulation of BPLR as the ceiling rate for loans up to Rs. 2 lakh stands withdrawn. It is expected that the above deregulation of lending rate will increase the credit flow to small borrowers at reasonable rate and direct bank finance will provide effective competition to other forms of high cost credit.

2.3.5 Banks are required to review the Base Rate at least once in a quarter with the approval of the Board or the Asset Liability Management Committees (ALCOs) as per the bank's practice. Since transparency in the pricing of lending products has been a key objective, banks are required to exhibit the information on their Base Rate at all branches and also on their websites. Changes in the Base Rate should also be conveyed to the general public from time to time through appropriate channels. Banks are required to provide information on the actual minimum and maximum lending rates to the Reserve Bank on a quarterly basis, as hitherto.

2.3.6 The Base Rate system would be applicable for all new loans and for those old loans that come up for renewal. Existing loans based on the BPLR system may run till their maturity. In case existing borrowers want to switch to the new system, before expiry of the existing contracts, an option may be given to them, on mutually agreed terms. Banks, however, should not charge any fee for such switch-over.

2.3.7 Interest rates under the BPLR system are applicable to all existing loans sanctioned up to June 30, 2010. However, wherever loans sanctioned up to June 30, 2010 come up for renewal from July 1, 2010, the Base Rate system would be applicable. The guidelines on Benchmark Prime Lending Rate (BPLR) and Spreads and its determination for existing loans sanctioned up to June 30, 2010 are given in Annex 3 and Annex 4.



**Guidelines on Benchmark Prime Lending Rate (BPLR) applicable to loans sanctioned upto June 30, 2010 ( Paragraph 2.2.1)**

With effect from October 18, 1994, RBI has deregulated the interest rates on advances above Rs.2 lakh and the rates of interest on such advances are determined by the banks themselves subject to BPLR and Spread guidelines. For credit limits up to Rs.2 lakh, banks should charge interest not exceeding their BPLR. Keeping in view the international practice and to provide operational flexibility to commercial banks in deciding their lending rates, banks can offer loans at below BPLR to exporters or other creditworthy borrowers, including public enterprises, on the basis of a transparent and objective policy approved by their respective Boards. Banks will continue to declare the maximum spread of interest rates over BPLR.

Given the prevailing credit market in India and the need to continue with concessionality for small borrowers, the practice of treating BPLR as the ceiling for loans up to Rs. 2 lakh will continue.

Banks are free to determine the rates of interest without reference to BPLR and regardless of the size in respect of loans for purchase of consumer durables, loans to individuals against shares and debentures / bonds, other non-priority sector personal loans, etc. as per details given below.

BPLR will be made uniformly applicable at all branches of a bank.

**Determination of Benchmark Prime Lending Rate (BPLR)**

In order to enhance transparency in banks' pricing of their loan products as also to ensure that the BPLR truly reflects the actual costs, banks should be guided by the following considerations while determining their Benchmark PLR:

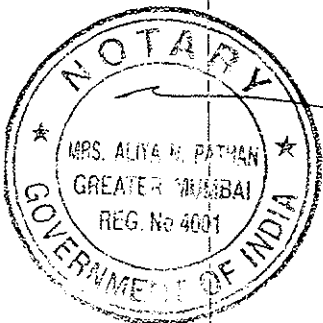
Banks should take into account their (i) actual cost of funds, (ii) operating expenses and (iii) a minimum margin to cover regulatory requirement of provisioning / capital charge and profit margin, while arriving at the benchmark PLR. Banks should announce a Benchmark PLR with the approval of their Boards.

The Benchmark PLR will be the ceiling rate for credit limit up to Rs.2 lakh.

All other lending rates can be determined with reference to the Benchmark PLR arrived at as above by taking into account term premia and / or risk premia.

Detailed guidelines on operational aspects of Benchmark PLR have been issued by IBA on November 25, 2003.

In the interest of customer protection and to have greater degree of transparency in regard to actual interest rates charged to borrowers, banks should continue to provide information on maximum and minimum interest rates charged together with the Benchmark PLR.



### Freedom to fix Lending Rates

Banks are free to determine the rates of interest without reference to BPLR and regardless of the size in respect of the following loans:

- i. Loans for purchase of consumer durables;
- ii. Loans to individuals against shares and debentures / bonds;
- iii. Other non-priority sector personal loans including credit card dues;
- iv. Advances / overdrafts against domestic / NRE / FCNR (B) deposits with the bank, provided that the deposit/s stands / stand either in the name(s) of the borrower himself / borrowers themselves, or in the names of the borrower jointly with another person;
- v. Finance granted to intermediary agencies including housing finance intermediary agencies (list as given below) for on-lending to ultimate beneficiaries and agencies providing input support;
- vi. Discounting of Bills;
- vii. Loans / Advances / Cash Credit / Overdrafts against commodities subject to Selective Credit Control;
- viii. To a co-operative bank or to any other banking institution;
- ix. To its own employees;
- x. Loans covered by refinance schemes of term lending institutions.

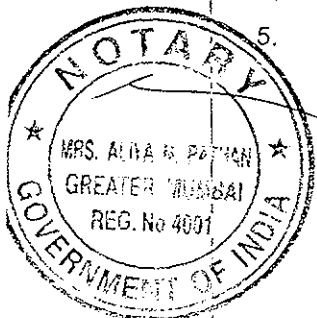
### **An Illustrative list of Intermediary Agencies**

1. State sponsored organisations for on-lending to weaker sections. Weaker sections include –
  - i) Small and marginal farmers with landholdings of 5 acres and less, and landless labourers, tenant farmers and share-croppers;
  - ii) Artisans, village and cottage industries where individual credit requirements do not exceed Rs. 50,000/-;
  - iii) Beneficiaries of Swarnjayanti Gram Swarozgar Yojana (SGSY);
  - iv) Scheduled Castes and Scheduled Tribes;
  - v) Beneficiaries of Differential Rate of Interest (DRI) scheme;
  - vi) Beneficiaries under Swarna Jayanti Shahari Rozgar Yojana (SJSRY);
  - vii) Beneficiaries under scheme of Liberation and Rehabilitation of Scavengers (SLRS);
  - viii) Advances to Self-Help Groups (SHGs);
  - ix) Loans to distressed poor to repay their debt to informal sector, against appropriate collateral or group security;

Loans granted under (i) to (viii) above to persons from minority communities as may be notified by Government of India from time to time.

In states, where one of the minority communities notified is, in fact, in majority, item (ix) will cover only the other notified minorities. These States/Union Territories are Jammu and Kashmir, Punjab, Sikkim, Mizoram, Nagaland and Lakshadweep.

2. Distributors of agricultural inputs / implements.
3. State Financial Corporations (SFCs) / State Industrial Development Corporations (SIDCs) to the extent they provide credit to weaker sections.
4. National Small Industries Corporation (NSIC).
5. Khadi and Village Industries Commission (KVIC).







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RBI/DBR/2015-16/20

Master Direction DBR.Dir.No.85/13.03.00/2015-16

March 03, 2016

(Updated as on March 29, 2016)

**Master Direction - Reserve Bank of India (Interest Rate on Advances)  
Directions, 2016**

In exercise of the powers conferred by Sections 21 and 35 A of the Banking Regulation Act, 1949, the Reserve Bank of India being satisfied that it is necessary and expedient in the public interest so to do, hereby, issues the Directions hereinafter specified.

**CHAPTER – I  
PRELIMINARY**

**1. Short Title and Commencement.**

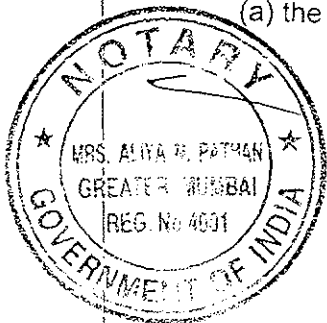
- (a) These Directions shall be called the Reserve Bank of India (Interest Rate on Advances) Directions, 2016.
- (b) These directions shall come into effect on the day it is placed on the official website of the Reserve Bank of India.

**2. Applicability**

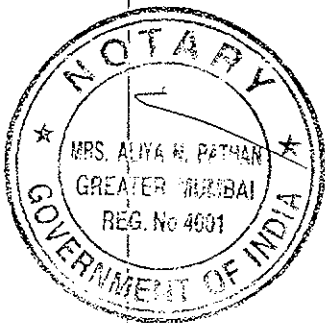
The provisions of these Directions shall apply to every Scheduled commercial bank (excluding RRBs), licensed to operate in India by Reserve Bank of India. These directions shall not be applicable to operations of foreign branches of Indian banks.

**3. Definitions**

- (a) In these Directions, unless the context otherwise requires, the terms herein shall bear the meanings assigned to them below —
- (i) Advance against own deposit means advance granted against Rupee/FCNR(B) term deposit and deposit stands in the name of:
- (a) the borrower, either singly or jointly



- (b) one of the partners of a partnership firm and advance is made to the said firm.
  - (c) the proprietor of a proprietary concern and advance is made to such concern.
  - (d) a ward whose guardian is competent to borrow on behalf of the ward and where the advance is made to the guardian of the ward in such capacity.
- (ii) Benchmark Prime Lending Rate (BPLR) means internal benchmark rate used to determine the interest rates on advances/loans sanctioned upto June 30, 2010.
- (iii) Benchmark rate means the reference rate used to determine the interest rates on loans.
- (iv) External benchmark rate means the reference rate published by an independent benchmark administrator.
- (v) Fixed rate loan means a loan on which the interest rate is fixed for the entire tenor of the loan.
- (vi) Floating rate loans means a loan on which interest rate does not remain fixed during the tenor of the loan.
- (vii) Internal benchmark rate means a reference rate determined internally by the bank.
- (viii) Rests refers to periodicity of charging interest to borrowers.
- (ix) Term loan means a loan which is repayable after a specified term period.
- (b) All other expressions unless defined herein shall have the same meaning as have been assigned to them under the Banking Regulation Act or the Reserve Bank of India Act, or any statutory modification or re-enactment thereto or as used in commercial parlance, as the case may be.



CHAPTER – II  
GENERAL GUIDELINES

4. Interest Rate framework

(a) Scheduled commercial banks shall charge interest on advances on the terms and conditions specified in these directions.

(i) There shall be a comprehensive policy on interest rates on advances duly approved by the Board of Directors or any committee of the Board to which powers have been delegated.

(ii) All categories of advances, except those mentioned in section 13, shall be priced with reference to the benchmark indicated in chapter III.

(iii) Banks shall have the freedom to offer all categories of advances on fixed or floating interest rates.

(iv) Banks shall determine their actual lending rates on floating rate advances in all cases by adding the components of spread to the internal benchmark rate. Accordingly, there shall be no lending below the Base Rate or MCLR of a particular maturity, as the case may be, for all loans linked to that benchmark.

(v) The reference benchmark rate used for pricing the loans shall form part of the terms of the loan contract.

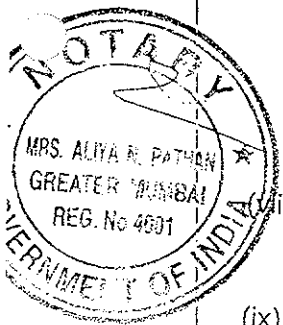
(vi) Interest rates on fixed rate loans shall be as per directions contained in Section 13(d)(v).

(vii) Interest shall be charged on all advances at monthly rests.

- Provided that interest on agricultural advances and advance to farmers shall be charged as per the instructions contained in circulars RPCD. No. CPFS. BC. 60 /PS. 165-85 dated June 06, 1985 and RPCD. No. PLFS. BC. 129 /05.02.27/97-98 dated June 29, 1998.

(viii) Interest chargeable on rupee advances shall be rounded off to the nearest rupee.

(ix) Interest charged on small value loans, particularly, personal loans and such other loans of similar nature shall be justifiable having regard to the total cost



incurred by the bank in extending the loan and the extent of return that could be reasonably expected from the transaction.

(x) In case of takeover of bank branches in rural and semi urban centres from one commercial bank to another commercial bank, transfer of borrowal accounts of the existing branch to the branch of acquiring bank shall be on mutually agreed terms of contract.

Provided that the existing borrowers shall not be put into any disadvantage and the option of continuing with the existing bank or the acquiring bank.

(b) The directions contained in section 4(a) above shall also be applicable to Rupee advances granted against FCNR(B) deposits to a third party or out of resources mobilized under the FCNR(B) scheme.

**5. Penal Interest**

Banks shall formulate a Board approved policy for charging penal interest on advances which shall be fair and transparent. The rate of penal interest shall be decided after taking into account incentive to service the debt and due regard to genuine difficulties of customers.

Provided that no penal interest shall be charged on advances mentioned in the circular RPCD.Plan.BC.15/04.09.01/2001-02 dated August 17, 2001, as amended from time to time.

**CHAPTER - III  
BENCHMARK**

**6. Internal Benchmark**

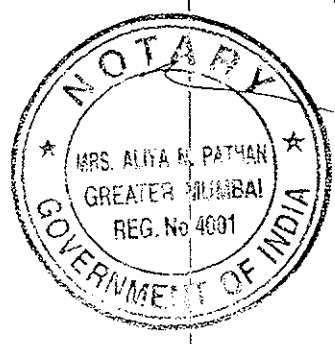
**(a) Base Rate**

(i) All rupee loans sanctioned and credit limits renewed after July 1, 2010 shall be priced with reference to the Base Rate which will be the internal benchmark for such purposes

(ii) Base Rate shall include all those elements of the lending rates that are common across all categories of borrowers.

(iii) There can be only one Base Rate for each bank.

(iv) Banks shall have the freedom to calculate cost of funds either on the basis of average cost of funds or on marginal cost of funds or any other methodology in vogue, which is reasonable and transparent, subject to it being consistent



and made available for supervisory review/scrutiny as and when required. **Provided** that where the card rate for deposits of one or more tenor is the basis, the deposits in the chosen tenor/s shall have the largest share in the deposit base of the bank.

(v) Banks shall review the Base Rate at least once in a quarter with the approval of the Board or the Asset Liability Management Committees (ALCOs) as per the bank's practice.

(vi) Banks shall not review the Base Rate methodology for atleast a period of three years from date of its finalization.

**Provided** that this shall not apply to banks that have commenced their banking operations in India after September 2, 2013. Such banks shall be permitted to revise their Base Rate methodology once within a year from the date of commencement of their business operations in India.

**(b) Marginal Cost of Funds based Lending Rate (MCLR)**

(i) All rupee loans sanctioned and credit limits renewed w.e.f. April 1, 2016 shall be priced with reference to the Marginal Cost of Funds based Lending Rate (MCLR) which will be the internal benchmark for such purposes.

(ii) The MCLR shall comprise of:

- a. Marginal cost of funds;
- b. Negative carry on account of CRR;
- c. Operating costs;
- d. Tenor premium.

**(iii) Marginal Cost of funds**

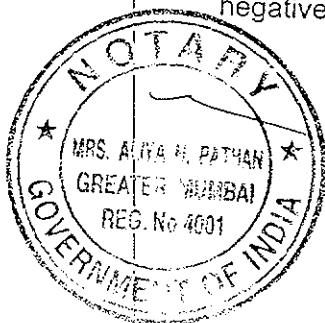
The marginal cost of funds shall comprise of Marginal cost of borrowings and return on networth. The detailed methodology for computing marginal cost of funds is given in the Annex.

**(iv) Negative Carry on CRR**

Negative carry on the mandatory CRR which arises due to return on CRR balances being nil, will be calculated as under:

$$\text{Required CRR} \times (\text{marginal cost}) / (1 - \text{CRR})$$

The marginal cost of funds arrived at (iii) above shall be used for arriving at negative carry on CRR.



(v) Operating Costs

All operating costs associated with providing the loan product including cost of raising funds shall be included under this head. It shall be ensured that the costs of providing those services which are separately recovered by way of service charges do not form part of this component.

(vi) Tenor premium

These costs arise from loan commitments with longer tenor. The change in tenor premium should not be borrower specific or loan class specific. In other words, the tenor premium will be uniform for all types of loans for a given residual tenor.

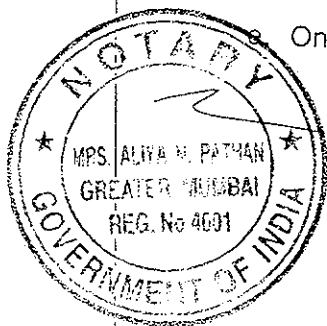
(vii) The tenor of the MCLR calculated as per the **Annex** shall correspond to the following:

- a. the tenor of the funds in the single largest maturity bucket, provided it is more than 30 percent of the entire funds (other than equity) reckoned for determining the MCLR, or
- b. the weighted average tenor of two or more maturity buckets that together account for more than 30 percent, if no single maturity bucket accounts for more than 30 percent of the funds. The maturity bucket shall be arrived at by calculating the cumulative weightage based on the descending order of the maturity time buckets.

(viii) Since MCLR will be a tenor linked benchmark, banks shall arrive at the MCLR of various maturities by incorporating the corresponding tenor premium/ discount to the sum of Marginal cost of funds, Negative carry on account of CRR and Operating costs.

Accordingly, banks shall publish the internal benchmark for the following maturities:

- a. overnight MCLR,
- b. one-month MCLR,
- c. three-month MCLR,
- d. six month MCLR,
- e. One year MCLR.



In addition to the above, banks shall have the option of publishing MCLR of any other longer maturity.

(ix) Review of MCLR

(a) Banks shall review and publish their Marginal Cost of Funds based Lending Rate (MCLR) of different maturities every month on a pre-announced date with the approval of the Board or any other committee to which powers have been delegated.

(b) Banks which do not have adequate systems to carry out the review of MCLR on a monthly basis, shall review their rates once a quarter on a pre-announced date for the first one year i.e. upto March 31, 2017.

**Provided** that, such banks shall adopt the monthly review of MCLR as mentioned in section 6(b)(ix)(a) above.

7. **External Benchmark**

Banks shall have the freedom to determine the interest rates on the advances linked to market determined external benchmarks.

**CHAPTER – IV  
INTEREST RATES ON ADVANCES**

8. **Spread**

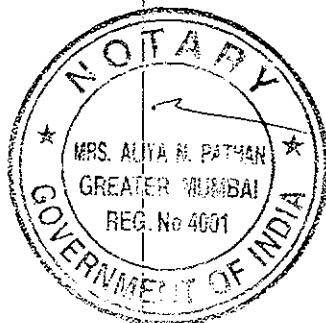
(a) Banks shall have a Board approved policy delineating the components of spread charged to a customer. The policy shall include principles:

- (i) To determine the quantum of each component of spread.
- (ii) To determine the range of spread for a given category of borrower / type of loan.
- (iii) To delegate powers in respect of loan pricing.

(b) Spread under Base rate system

In addition to the conditions laid down in section 8(a) of these Directions, banks shall adhere to the following conditions:

- (i) The credit risk premium charged to an existing borrower shall not be increased except on account of deterioration in the credit risk profile of the customer or change in tenor premium.



**Provided** that the stipulation contained in sub-section 8(b)(i) above shall not be applicable to loans under consortium / multiple banking arrangements.

- (ii) The change in tenor premium on loans sanctioned under Base rate system shall not be borrower specific or loan class specific. In other words, the change in tenor premium shall be uniform for all types of loans for a given residual tenor.

**Provided** that the spread guidelines mentioned above shall not apply to loans granted under BPLR system, which continue till date. Such loans shall be covered under the terms of the loan agreements.

(c) Spread under MCLR system

In addition to the conditions laid down in section 8(a) of these Directions, banks shall adopt the following broad components of spread:

(i) *Business strategy*

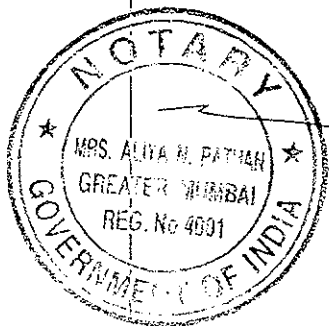
The component shall be arrived at taking into consideration the business strategy, market competition, embedded options in the loan product, market liquidity of the loan etc.

(ii) *Credit risk premium*

The credit risk premium charged to the customer representing the default risk arising from loan sanctioned shall be arrived at based on an appropriate credit risk rating/scoring model and after taking into consideration customer relationship, expected losses, collaterals, etc.

- (d) The spread charged to an existing borrower shall not be increased except on account of deterioration in the credit risk profile of the customer. Any such decision regarding change in spread on account of change in credit risk profile shall be supported by a full-fledged risk profile review of the customer.

**Provided** that the stipulation contained in sub-section 8(d) above shall not be applicable to loans under consortium / multiple banking arrangements.





**9. Reset of interest rates under MCLR system**

- (a) Banks shall, at their option specify interest reset dates on their floating rate loans. Banks shall have the option to offer loans with reset dates linked either to the date of first disbursement of the loan/credit limits or to the date of review of MCLR.
- (b) The Marginal Cost of Funds based Lending Rate (MCLR) prevailing on the date of first disbursement, whether partial or full, shall be applicable till the next reset date, irrespective of the changes in the benchmark during the interim. Future reset dates shall be determined accordingly.
- (c) The periodicity of reset shall be one year or lower. The exact periodicity of reset shall form part of the terms of the loan contract.

**10. Transition to Base Rate from BPLR**

Existing loans based on the BPLR system shall run till their maturity.

**Provided** that existing borrowers desirous of switching to the new Base Rate system, before expiry of the existing contracts shall be given an option on mutually agreed terms.

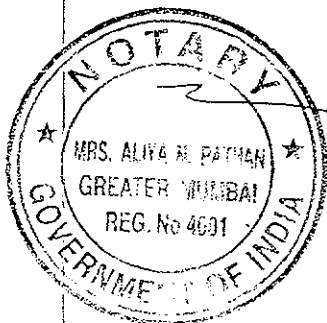
**Provided** further that no fee is charged for such switch-over.

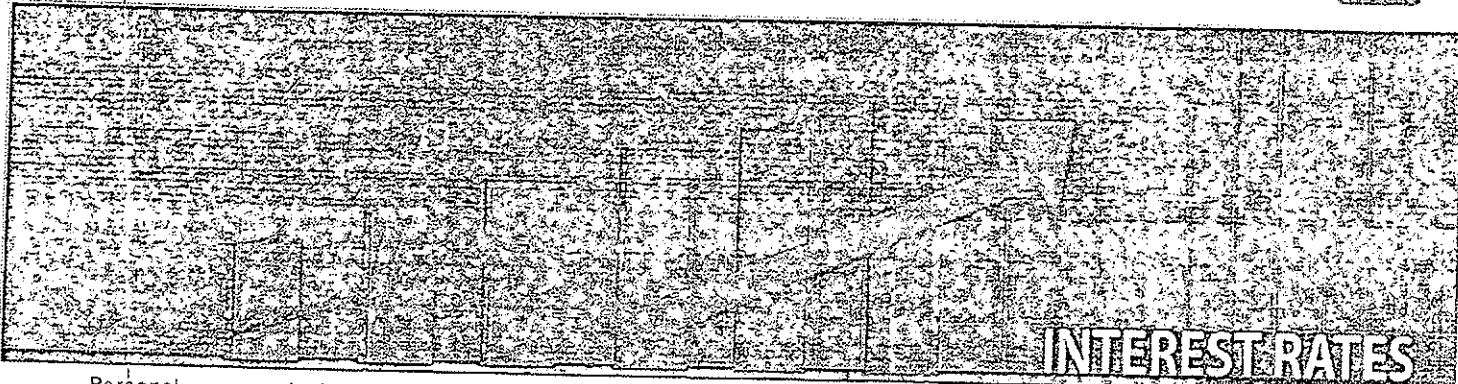
**11. Transition to MCLR from Base Rate/BPLR**

- (a) Banks shall continue to review and publish Base Rate as hitherto.
- (b) Existing loans and credit limits linked to the Base Rate/BPLR shall continue till repayment or renewal, as the case may be.

**Provided** that existing borrowers shall have the option to move to the Marginal Cost of Funds based Lending Rate (MCLR) linked loan at mutually acceptable terms.

**Provided** that the switch-over shall not be treated as a foreclosure of existing facility.





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BASE RATE (HISTORICAL DATA)

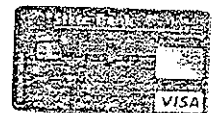
Effective Date	Interest Rate (%)
05.10.2015	9.30
08.06.2015	9.70
10.04.2015	9.85
07.11.2013	10.00
19.09.2013	9.80
04.02.2013	9.70
20.09.2012	9.75
13.08.2011	10.00
11.07.2011	9.50
12.05.2011	9.25
25.04.2011	8.50
14.02.2011	8.25
03.01.2011	8.00
21.10.2010	7.60
01.07.2010	7.50

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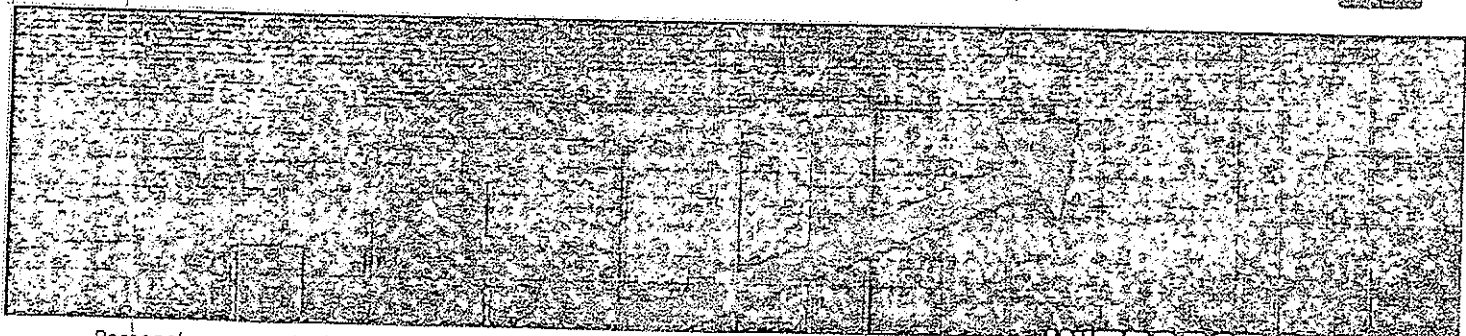


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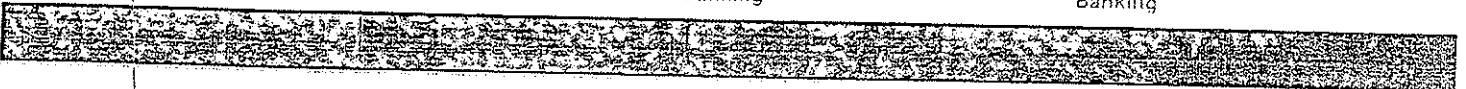
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**MARGINAL COST OF FUNDS BASED LENDING RATE (MCLR) WITH EFFECT FROM-01.12.2016**

Tenor-wise MCLR effective from 1<sup>st</sup> December 2016 will be as under:

Tenor	MCLR (In %)
Over night	8.65
One Month	8.75
Three Month	8.80
Six Month	8.85
One Year	8.90
Two Years	9.00
Three Years	9.05

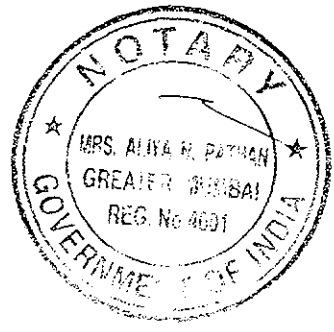
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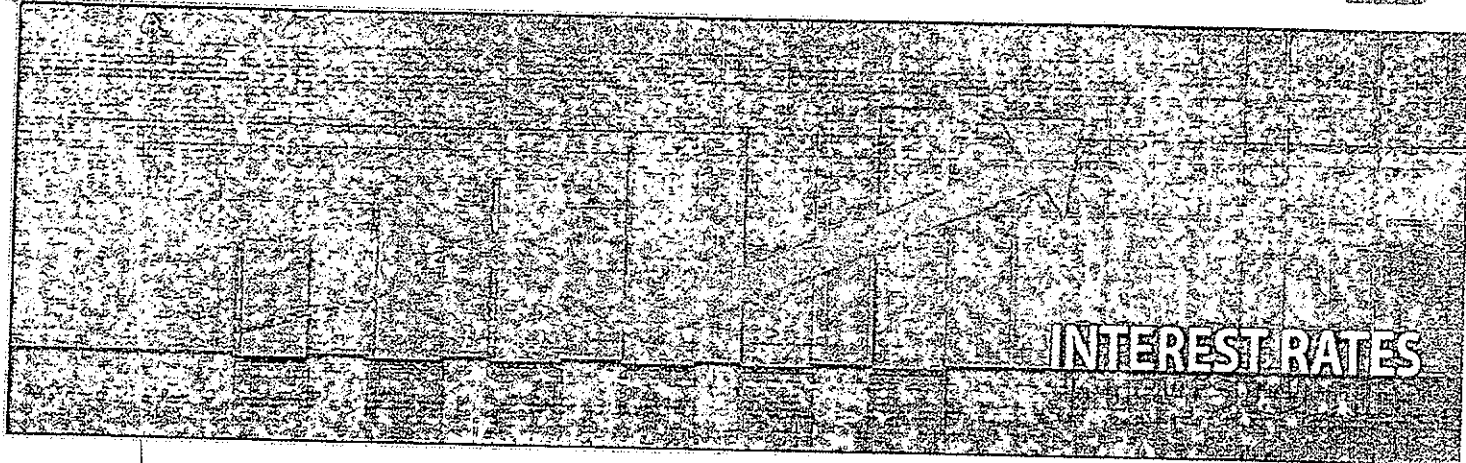




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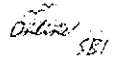
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  - Loan Schemes Interest Rates
  - Marginal Cost of fund based lending rate (MCLR) with effect from 01 12 2016
  - Interest Rate For Borrowers Other Than P Segment ( Commercial Loans)
  - Interest Rates On Pre-shipment Credit And Export Bill Discounting in Foreign Currency Loans
  - Interest Rates On FCNB Loans To Exporters Corporates
  - Processing Fees
  - Penal Interest & Other Charges
  - Benchmark Prime Lending Rate (Historical Data)
  - Base Rate (Historical Data)
  - Old Interest Rates (Last 10 Years)
  - SME Segment
  - Agricultural Segment

BENCHMARK PRIME LENDING RATE (HISTORICAL DATA)

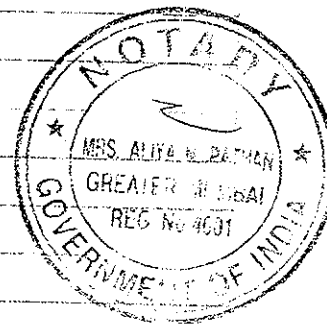
Effective Date	Interest Rate (%)
5.10.2015	14.05
8.06.2015	14.45
10.04.2015	14.60
07.11.2013	14.75
19.09.2013	14.55
04.02.2013	14.45
27.09.2012	14.50
13.08.2011	14.75
11.07.2011	14.25
12.05.2011	14.00
25.04.2011	13.25
14.02.2011	13.00
03.01.2011	12.75
21.10.2010	12.50
17.08.2010	12.25
29.06.2009	11.75
01.01.2009	12.25
10.11.2008	13.00
12.08.2008	13.75
27.06.2008	12.75
27.02.2008	12.25
16.02.2008	12.50
20.02.2007	12.25
27.12.2006	11.50

Interest Rates



Online SBI : Internet Banking Pay Your Utility Bill 24 X 7!

Interest Rates



Personal Banking

Agricultural / Rural

NRI Services

International Banking

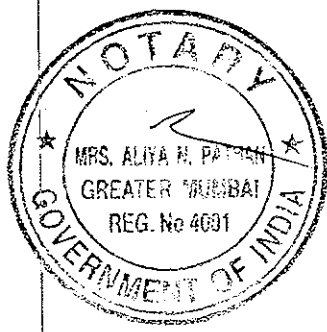
SME

Corporate Banking

Services

Benchmark Prime Lending Rate (Historical Data) - SBI Corporate Website

02.08.2006	11.00
01.05.2006	10.75
01.01.2004	10.25
05.05.2003	10.50
01.11.2002	10.75
01.04.2002	11.00
05.03.2001	11.50
12.08.2000	12.00
01.04.2000	11.25
01.03.1999	12.00
01.05.1998	13.00
02.04.1998	13.50
22.01.1998	14.00
01.11.1997	13.00
01.07.1997	13.50
16.04.1997	14.00
01.11.1996	14.50
06.09.1996	15.50
15.07.1996	16.00
10.11.1995	16.50
24.04.1995	15.50
15.02.1995	15.00
18.10.1994	14.00
02.09.1993	15.00
24.06.1993	16.00
01.03.1993	17.00
09.10.1992	18.00
02.03.1992	19.00
09.10.1991	20.00
04.07.1991	18.50
01.04.1991	17.00



TRUE COPY  
Agarwal

APPELLATE JURISDICTION

APPEAL NO. \_\_\_\_ OF 2018

IN THE MATTER OF:

Maharashtra State Electricity Distribution Co. Ltd. ... Appellant

Versus

Maharashtra Electricity Regulatory Commission and ors.  
... Respondents

APPLICATION FOR INTERIM ORDER

1. The instant Appeal is being preferred by Maharashtra State Electricity Distribution Company Ltd. (hereinafter referred to as "MSEDCL" for sake of brevity) under Section 111 of the Electricity Act, 2003 against order and judgment dated 16.11.2017 (hereinafter referred to as "Impugned Order" for sake of brevity) passed by Respondent No. 1, Maharashtra Electricity Regulatory Commission (hereinafter referred to as "MERC" for sake of brevity), in Case No. 24 of 2017 filed by MSEDCL seeking relief for the Change in Law event arising from the introduction by the Reserve Bank of India (RBI) of the Base Rate system and thereafter the Marginal Cost of Funds-based Lending Rate system in place of the Benchmark Prime Lending Rate in terms of the relevant provisions of its Power Purchase Agreements (PPAs) with various Independent Power Producer (IPP) Generating Companies under Section 63 of the Electricity Act (EA), 2003.
2. It is submitted that the contents of the accompanying appeal alongwith the facts of the case as well as the grounds for appeal may be treated as part and parcel of the present application and the same are not being repeated herein for sake of brevity. The present Applicant seeks the leave of this Hon'ble Tribunal to refer and rely on the contents of the accompanying appeal.

3. It is submitted that Ld. MERC has wrongly held that no change has taken place that would affect the basis of the rate underlying the Late Payment Surcharge and therefore the said RBI Guidelines/Circulars, by which RBI has introduced Base Rate system in 2010 and the MCLR system in 2016, are not Change in Law events as per the PPAs. The Ld. MERC failed to appreciate the huge impact of the increased rate of interest on LPS since SBAR as stipulated in PPA is higher than the present reference rates as notified by RBI. Moreover, the payment at the said SBAR rates would cause unjust enrichment to the Generators and injustice MSEDCL as well as the common consumers.
4. In light of the same, the Appellant seeks the kind indulgence of this Hon'ble Tribunal to stay the operation of the Impugned Order, and related/consequential proceedings arising out of or gaining strength by virtue of the Impugned Order, so that no prejudice is caused to the Appellant during pendency of the proceedings.
5. That the Appellant, prima facie, has a good case on merits. In case the operation of the Impugned Order, and related/consequential proceedings arising out of or gaining strength by virtue of the Impugned Order are not stayed, the Appellant shall suffer an irreparable loss, which cannot be compensated on account of any pecuniary consideration. Also, the balance of convenience is in favour of the Appellant. Further, it is submitted that the present application is being filed by the Appellant in bona fide and in the interest of justice. The Impugned Order may thus be stayed during the pendency of the present appeal.
6. The present Application has been filed bonfide and in the interest of Justice.
7. It is therefore, respectfully prayed that this Hon'ble Tribunal may be pleased to:

- 107
- (a) Grant a stay of the Impugned Order during the pendency of the accompanying appeal; and/or
- (b) Pass such further order or orders as thus Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

Through Counsel

COUNSEL FOR THE APPELLANT

*Aggarwal*

Samir Malik/ Varun Aggarwal,

Lex Global Legal Consultants

56, New Deluxe Apartments

Sector 9, Rohini,

New Delhi 110085

Mobile: 9871737960, 9717866618

Date: 02.01.2018

Place: New Delhi



**DECLARATION BY APPELLANT /MSEDCL**

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

Verified at Mumbai on this 2 day of January, 2018.

Agarwal  
Counsel for Appellant

*K. Gharat*  
Chief Engineer (Power Purchase Section)  
MSEDCL  
Prakashgad, 5th Floor,  
Prof. Anant Kanekar Marg,  
Bandra (East), Mumbai - 400 051.  
Appellant

**Verification**

I Kavita Gharat aged about 40 years, working as Chief Engineer (Power Purchase) in the office of the Maharashtra State Electricity Distribution Company Limited (MSEDCL), having its office at Prakashgad, 5<sup>th</sup> Floor, Bandra East, Mumbai do hereby verify that the contents of the paras 2 to 1 are true to my personal knowledge/derived from official record) and para 3 to 4 are believed to be true on legal advice and that I have not suppressed any material facts.

Date: 2-1-2018

Place: Mumbai

*K. Gharat*  
Chief Engineer (Power Purchase Section)  
MSEDCL  
Prakashgad, 5th Floor,  
Prof. Anant Kanekar Marg,  
Bandra (East), Mumbai - 400 051.  
**Signature of the Appellant or**  
**authorized officer**

BEFORE THE APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW  
DELHI

APPEAL NO. \_\_\_\_\_ OF 2018

IN

**IN THE MATTER OF:**

Appeal against Order dated 16.11.2017 passed by the Maharashtra Electricity Regulatory Commission in Case No. 24 of 2017.

**AND IN THE MATTER OF:**

Maharashtra Electricity Distribution Co. Ltd.

...Appellant

*Versus*

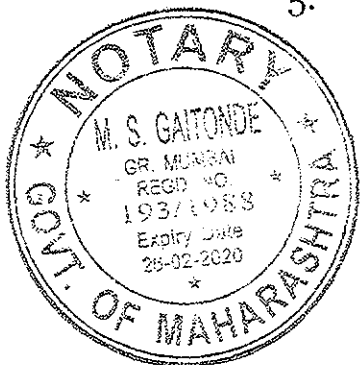
Maharashtra Electricity Regulatory Commission & Anr.

...Respondents

**AFFIDAVIT IN SUPPORT OF STAY APPLICATION**

I, Kavita Gharat, aged 40 years, working as Chief Engineer (Power Purchase) of the Maharashtra State Electricity Distribution Company limited (MSEDCL), having its office at Prakashgad, 5<sup>th</sup> Floor, Bandra East, Mumbai, do hereby solemnly affirm and declare as under:

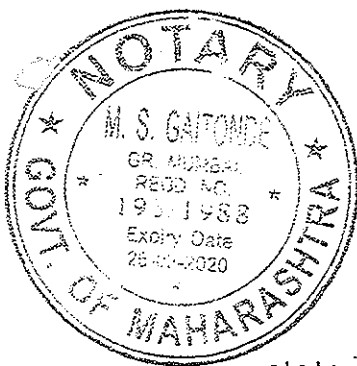
4. That I am the authorized person of Appellant, MSEDCL. I have perused the records of the case and as such I am conversant with the facts and circumstances of the case and thus, competent to swear the present affidavit on behalf of the Appellant, MSEDCL.
5. That I have read and understood the contents of the accompanying Stay Application on behalf of the MSEDCL which has been drafted by our counsel under our instructions and



supervision. It is respectfully submitted that the appeal deserves to be admitted and stay be granted on the basis of submission and averments made in the accompanying Stay Application.

6. That the facts stated above are true to my knowledge. No part of the above affidavit is false and nothing material has been concealed there from.

*K. Bharat*  
Chief Engineer (Power Purchase Section)  
MSEDCL  
Prakashgad, 5th Floor,  
Prof. Anant Kanekar Marg,  
Bandra (East), Mumbai - 400 051.  
Deponent



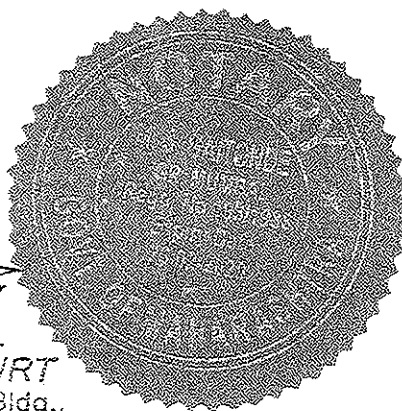
**Verification:**

I, the above named deponent do hereby verify that the facts stated in the above affidavit are true to my personal knowledge. No part of the same is false and nothing material has been concealed there from.

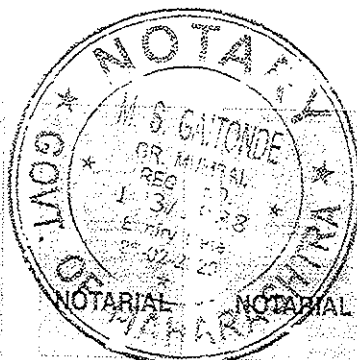
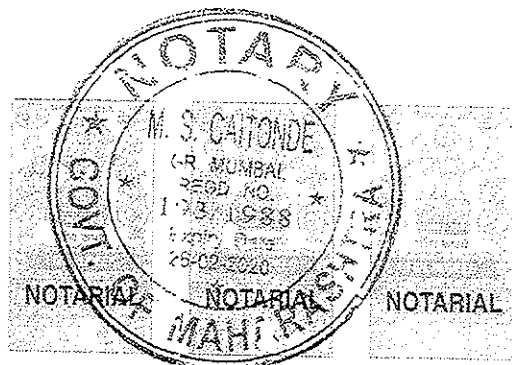
Verified at Mumbai on this 2<sup>nd</sup> day of January, 2018.

*K. Bharat*  
Chief Engineer (Power Purchase Section)  
MSEDCL  
Prakashgad, 5th Floor,  
Prof. Anant Kanekar Marg,  
Bandra (East), Mumbai - 400 051.  
Deponent

Identified By Me  
*[Signature]*  
**P. K. DUBEY**  
B.A.L.L.B.  
ADVOCATE HIGH COURT  
Lawyer's Chamber, Kanekar Bldg.,  
2nd Floor, High Court,  
Bandra (East), Mumbai - 400 051.



*[Signature]* 2/1/2018  
**BEFORE ME**  
**M. S. GAITONDE**  
NOTARY B.A.L.L.B.  
GREATER MUMBAI  
GOVT OF MAHARASHTRA  
INDIA



**NOTED REGISTER**  
Sl. No. 005 | 2-1-2018

## IN THE APPELLATE TRIBUNAL FOR ELECTRICITY NEW DELHI

## APPELLATE JURISDICTION

I.A. NO. 319 OF 2018

IN

DFR No. 23 OF 2018



## IN THE MATTER OF:

Maharashtra State Electricity Distribution Company Limited .... Appellant

Versus

Maharashtra Electricity Regulatory Commission &amp; Ors. ... Respondents

**APPLICATION ON BEHALF OF THE COUNSEL FOR THE APPELLANT**  
**SEEKING CONDONATION OF DELAY IN RE-FILING THE APPEAL**

1. The present Appeal has been filed by Maharashtra State Electricity Distribution Company Ltd. (hereinafter referred to as "MSEDCL" for sake of brevity) under section 111 of the Electricity Act, 2003 ("Act") before this Hon'ble Tribunal against the order dated 16.11.2017 (hereinafter referred to as "**Impugned Order**"), passed by Maharashtra Electricity Regulatory Commission (hereinafter referred to as the "**MERC**") in Case No. 24 of 2017 whereby MERC has dismissed the Petition filed by MSEDCL seeking relief for the Change in Law event arising from the introduction by the Reserve Bank of India (RBI) of the Base Rate system and thereafter the Marginal Cost of Funds-based Lending Rate system in place of the Benchmark Prime Lending Rate in terms of the relevant provisions of its Power Purchase Agreements (PPAs) with various Independent Power Producer (IPP) Generating Companies under Section 63 of the Electricity Act (EA), 2003.

2. It is submitted that the contents of the appeal along with the facts of the case as well as the grounds for appeal may be treated as part and parcel of the present application and the same are not being repeated herein for sake of brevity. The present Applicant seeks the leave of this Hon'ble Tribunal to refer and rely on the contents of the appeal.
3. It is submitted that the present appeal paper book was filed before this Hon'ble Tribunal on 03.01.2018 against the Impugned Order dated 16.11.2017 passed by MERC. Post filing of the present appeal, the legal firm appointed by the Appellant received a letter dated 22.01.2018 from the Registry of this Hon'ble Tribunal on 24.01.2018 in respect of defects in the appeal which had to be corrected/ cured.
4. It is submitted that Appellant was informed regarding the defects in the appeal by the legal firm on 26.01.2018 which included payment of additional court fees, proof of receiving the Impugned Order, signature of the Appellant on the last page of the appeal, filing of CD etc. Accordingly, all the required documents were collected from the Appellant on 06.02.2018 and the same were filed on 07.02.2018.
5. It is submitted that the Registry thereafter pointed that the proof of original receiving of the Impugned order on 20.11.2017 as submitted by the Appellant was not adequate. Hence, for purpose of limitation the delay will be calculated from the date of the Impugned Order because on the said date i.e. 16.11.2017 the order was uploaded on the website of the Commission. And accordingly the Appellant will be required to file an application for delay of 3 days in filing the Appeal.
6. Thereafter the counsel for the Appellant asked the Appellant to provide a copy of the inward register of the Appellant to further adequately demonstrate that the Order was received on 20.11.2017. The said

document was received by the counsel on 16.02.2018. The counsel further researched on the point raised by the Registry that "*for the purpose of limitation the delay will be calculated from the date of the Impugned Order because on the said date i.e. 16.11.2017 the order was uploaded on the website of the Commission*".

7. It is submitted that due to ill health of the counsel of the Appellant, it took some time to file the remaining documents and resolve the issue raised by the Registry on Limitation period. On 23.02.2018, the counsel apprised the Registry that as per the order of this Hon'ble Tribunal date 20.12.2012 in Brihanmumbai Electric Supply and Transport undertaking V. MERC, I.A. 278 of 2012 in DFR 1229 of 2012, the period of limitation for the person concerned preferring an Appeal under Section 111 of the Electricity Act, 2003 (Act) would commence only from the date of receipt of the authenticated copy of the Order by the concerned party from the Commission as per the procedure contemplated under the regulations, rules and the Act. The counsel further showed the inward register of the Appellant to demonstrate that the Order was received on 20.11.2017. Thereafter, the Registry conveyed that in view of the document and the order as cited above, there is no need for the Application of condonation of Delay.
8. Accordingly, the counsel filed the copy of the inward register along with other documents on 26.02.2018. That in view of the above stated process, the appeal was re-filed on 26.02.2018 with a delay of 26 days.
9. It is most humbly submitted that the delay so occasioned in refiling the appeal is neither intentional nor deliberate but it is a procedural delay caused while addressing the issues pointed by the Registry which took considerable amount of time. In light of the forgoing facts and

circumstances, the Applicant submits that the Appellant, prima facie, has a good case on merits and therefore seeks the kind indulgence of this Hon'ble Tribunal under Section 111 (2) of the Act to condone the delay of 26 days in re-filing of the present appeal as grave prejudice irreparable loss will be caused to the Appellant which can't be compensated in monetary terms if the said delay is not condoned.

10. It is submitted that the present application is being filed by the Applicant bona fide and in the interest of justice.
11. It is therefore, respectfully prayed that this Hon'ble Tribunal may be pleased to:
  - (a) Condone the delay of 26 days in re-filing of the present appeal;
  - (c) Pass such further order or orders as thus Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

**Through Counsel**

*Nikita*      *Aggarwal*  
**Samir Malik/ Varun Aggarwal,**  
**COUNSEL FOR THE APPELLANT**  
**Lex Global Legal Consultants**  
56, New Deluxe Apartments  
Sector 9, Rohini,  
New Delhi 110085  
Mobile: 9871737960, 9717866618

Date: 26.02.2018  
Place: New Delhi

**DECLARATION BY APPLICANT**

The applicant (s) above named hereby solemnly declare (s) that nothing material has been concealed or suppressed and further declare(s) that the enclosures and typed set of material papers relied upon and filed herewith are true copies of the original(s)/fair reproduction of the originals / true translation thereof.

Verified at New Delhi on this at 26<sup>th</sup> day of February 2018.

*Agarwal*  
Counsel for Appellant (s)

*Nikita*  
APPLICANT(S)

**VERIFICATION**

I, Ms. Nikita Choukse, D/O Mr. Mahesh Choukse Aged About 25 Years, having my office at, Lex Global Legal Consultants, 56, New Deluxe Apartments Sector 9, Rohini, New Delhi 110085, working as Counsel for Appellant (MSEDCL) do hereby verify that the contents of the paras 1 are true to my personal knowledge/derived from official record) and para 2 to 11 are believed to be true on legal advice and that I have not suppressed any material facts.

Date: 26.02.2018

Place: N. Delhi

*Nikita*  
DEPONENT

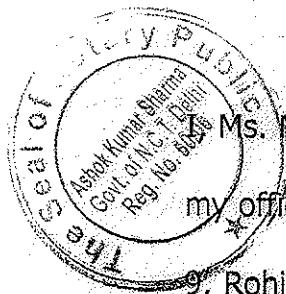


**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY****AT NEW DELHI****APPELLATE JURISDICTION****I.A. No \_\_\_\_ of 2018****IN****DFR No. 23 of 2018****IN THE MATTER OF:**

Maharashtra State Electricity Distribution Company Ltd. ....Appellant

**Versus**

Maharashtra Electricity Regulatory Commission and Ors ...Respondents

**AFFIDAVIT**

I, Ms. Nikita Choukse, D/O Mr. Mahesh Choukse Aged About 25 Years, having my office at, Lex Global Legal Consultants, 56, New Deluxe Apartments Sector 9, Rohini, New Delhi 110085, working as Counsel for Appellant (MSEDCL), do hereby solemnly affirm and state as under:

1. That I am the counsel for the Appellant Company and I am well conversant with the facts and circumstances of the present case and I am authorized and competent to file the present affidavit with reference to the accompanying Application filed on behalf of the Appellant, i.e. MSEDCL
2. That I have drafted the accompanying Application and the same has been read and understood me and are believed by me to be true. The contents of the accompanying Application may be treated as part and parcel of the instant affidavit and are not being repeated for sake of brevity.

3. That the contents of the present affidavit are true to the best of my knowledge and belief. No part of the same is false and nothing material or relevant has been concealed therefrom.

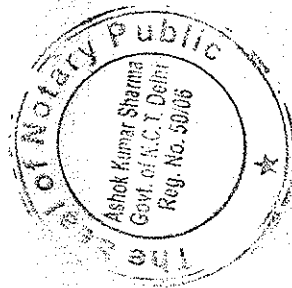
*Nikita*  
**DEPONENT**

**VERIFICATION**

I, the above named deponent do hereby verify that the facts stated in the above affidavit are true to my knowledge, No part of the same is false and nothing material or relevant has been concealed there from.

Verified at New Delhi on 26<sup>th</sup> day of February 2018.

*Nikita*  
**DEPONENT**



**ATTESTED**  
**NOTARY PUBLIC**  
*[Signature]*



**MAHAVITARAN**

Maharashtra State Electricity Distribution Co. Ltd.

CIN : U40109MH2005SGC153645

Ref. No. : SCR/CS30

Date : 30.01.2018

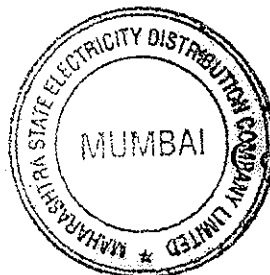
CERTIFICATE

TO WHOMSOEVER IT MAY CONCERN

Sub. : Authorisation letter to sign the Vakalatnama, Affidavit & reply etc. on behalf of MSEDCL for onward submissions before APTEL.

With reference to Delegation of Powers, Circular No. 23 dtd. 04.08.2006, in pursuance of Board Item no. 14 dtd. 08.09.2005 of the Company, Chief Engineer (Power Purchase) is Authorised to sign the Vakalatnama, Affidavit, appeal & written statement, etc. on behalf of Maharashtra State Electricity Distribution Company Ltd. for onward submissions before APTEL.

For Maharashtra State Electricity Distribution Company Ltd.



*Anjali*  
Company Secretary

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

(A Government of Maharashtra Undertaking)

Plot No. G-9, Prakashgad, 6th Floor, Prof. Anant Kanekar Marg, Bandra (E), Mumbai - 400 051.

(O) : 2647 4211 Ext. No. 2556 (P) : 2647 0953

E-mail : csmahadiscom@gmail.com / website : www.mahadiscom.in

119

  
**MAHAVITARAN**  
Maharashtra State Electricity Distribution Co. Ltd.  
(A Govt. of Maharashtra Undertaking)  
CIN: U40109MH2005SGC153645

Maharashtra State Electricity Distribution Co. Ltd.  
Office of the Director (Commercial)  
'Prakashgad', 6th Floor, Station Road, Bandra (E), Mumbai-400 051.  
Tel.: (P) 26476743 Extn: 2066, (O) 26474211  
Email: directorcomm@mahadiscom.in • Website : www.mahadiscom.in

CE/PP/MSEDCL/3961

Dt. 23/02/2018

TO WHOM SO EVER CONCERNED

This is to certify that Chief Engineer (Power Purchase), is duly authorised under the Delegation of powers to represent the Company, sign, and file all the pleadings, affidavits, documents, necessary papers and agreements, etc. & to collect paper and to do all other acts such as leading evidence, amicable settlement, executing vakalatnama for appointment of advocate on behalf of the company etc., that may be necessary from time to time, for and on behalf of the company before the Appellate Tribunal for Electricity and other Court of Law.



Director (commercial)  
MSEDCL

Director Commercial  
M.S.E.D.C.L. Prakashgad.

## INDEX

## Delegation of Powers

(To be read with the conditions mentioned in

Sr No	Section	Particulars	Page No.
1	PREAMBLE		
2	SECTION I	SUPPLY & SERVICE (STORES)	1 TO 2
3	SECTION II	WORKS	SEC I - 1 TO 24
4	SECTION III	CASH, INTEREST, ETC	SEC II - 1 TO 23
5	SECTION IV	MISCELLANEOUS MATTERS	SEC III - 1 TO 8
6	SECTION V	LEGAL MATTERS	SEC IV - 1 TO 12
			SEC V - 1 TO 7

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED

DELEGATION OF POWERS (w.e.f. 01.08.2006)

(To be read with the conditions mentioned in preamble)

SECTION-V (LEGAL MATTERS)

Sr. No.	Nature of Powers	Authority	Limit	Remarks
1	Administrative sanction to institute proceedings on behalf of the Company or to defend such proceedings against the Company in the Court of Law viz. Civil, Labour, Revenue Courts, Tribunals, Liquidators, Receiver, Arbitrator, Tax Authorities or any other judicial or quasi-judicial Authorities etc.	a) Officer concerned not below the rank of E.E. b) Officer concerned not below the rank of S.E. in consultation with Law Officer of Zone/Region. c) Head of Department including C.E. in the field in with Law Officer of Zone / Region d) Director (Operations) / Director (Finance) / Director (HR) in consultation with Chief Legal Advisor	a) In a proceeding involving claims upto Rs. 2 lakhs b) In a proceeding involving claims upto Rs. 5 lakhs c) In a proceeding involving claims upto Rs. 10 lakhs d) In a proceeding involving claims upto Rs. 50 lakhs	1) Provided that the competent authority shall consult next higher authority before initiating any action against Railway administration/local bodies. 2) Further provided that cases other than specified above against Govt. Corporation, the approval of M.D. shall be obtained.

Form No. VI  
[See Rule 67]

FORM OF VAKALATNAMA

APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

Appeal No. \_\_\_\_\_ of \_\_\_\_\_

Maharashtra State Electricity Distribution Company Limited

...Appellant(s)

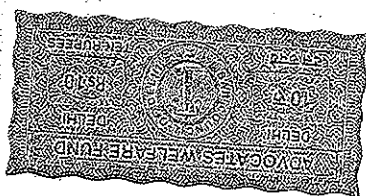
Vs

M.E.R.C & Ors.

...Respondent(s)

We, MSED Co. Ltd. Through Chief Engineer ( Power Purchase), Appellant in the above appeal do hereby appoint and retain, M/s Lex Global Legal Consultants, Advocates and Solicitors including advocates Shri Ravi Prakash, Shri Varun Agarwal, Shri Samir Malik, Shri Varun Pathak, Shri Raheel Kohli, Shri Aditya Dewan, Shri Nitish Gupta and Smt. Rimali Batra Advocate/s to appear, plead and act for us in the above appeal and to conduct and prosecute all proceedings that may be taken in respect thereof and applications for return of documents, enter into compromise and to draw any moneys payable to me/us in the said proceeding and also to appear in all applications for review and for leave to the Supreme Court of India in all applications for review of judgment.

Place : Mumbai



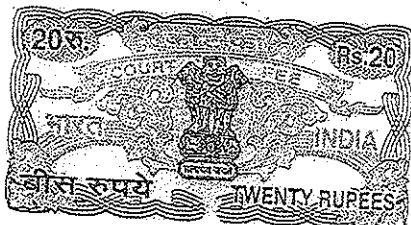
*Kharat*  
Signature of the Party/Appellant  
Chief Engineer (Power Purchase)  
M. S. E. D. C. L.

Date : 4-1-2018

Executed in my presence.

Signature with date  
VARUN Agarwal

*Nikita*  
MP/12-73/2014  
*Agarwal*



"Accepted"

M/S LEX GLOBAL LEGAL CONSULTANTS  
Sector-9, NEW DELHI APARTMENT  
ROHINI

\*\*Signature with date (Name and Designation)

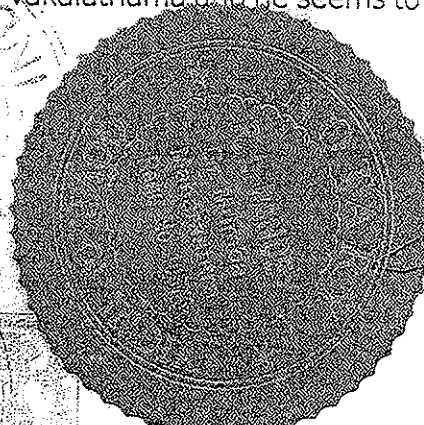
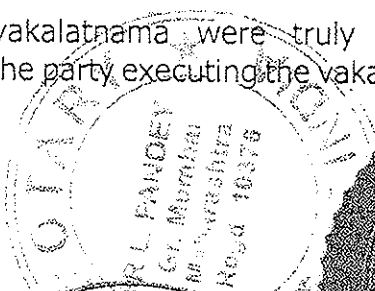
Mobile: 9717866618

*Rimali*

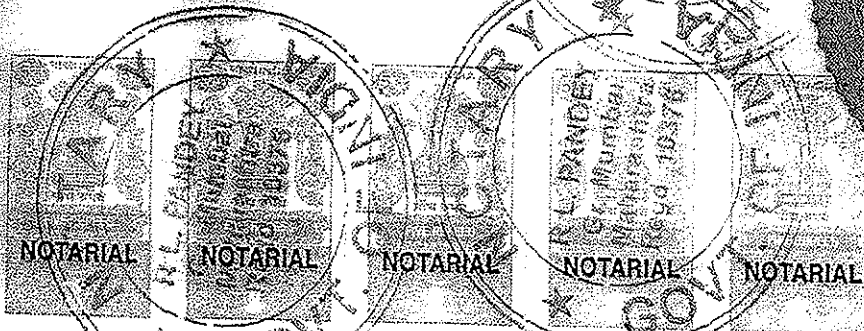
\*The following certification to be given when the party is unacquainted with the language of the vakalat or is blind or illiterate:-

The contents of the vakalatnama were truly and audibly read over/translated into ..... language known to the party executing the vakalatnama and he seems to have understood the same.

Signature with date  
(Name and Designation)



BEFORE ME  
R.L. PANDEY  
M.A.L.L.  
NOTARY  
MAHARASHTRA  
(Govt. of India)



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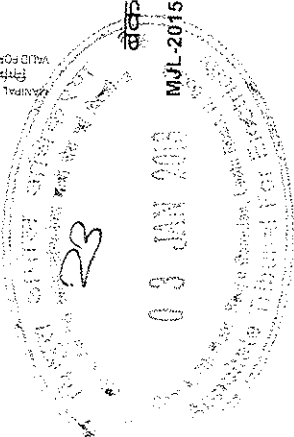
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