

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

CASE No. 248 of 2018

Maharashtra State Electricity Distribution Co. Ltd.'s Case seeking review of the Commission's common Order dated 4 May, 2018 in Case No. 37 and 38 of 2017

**Coram
Anand B. Kulkarni, Chairperson
I. M. Bohari, Member
Mukesh Khullar, Member**

Maharashtra State Electricity Distribution Co. LtdPetitioner

Vs

1. **Kores (India) Ltd.**
2. **Cooper Corporation Pvt. Ltd.**Respondents

Appearance:

For the Petitioner

: Shri. Ashish Singh (Adv.)
: Shri Anil Mahajan (Rep)
: Shri A.V. Bute (Rep.)

For the Respondents

: Shri S. R. Nargolkar (Adv.)

ORDER

Dated: 30 October, 2018

Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**) has filed this Case under Section 94 (1) (f) of the Electricity Act, 2003 (**EA**) read with Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004, seeking review of the Commission's common Order dated 4 May, 2018 in Case No. 37 and 38 of 2017 (**impugned Order**).

2. MSEDCL's main prayers are as follows:

- (a) *Allow the present review petition by reviewing the order dated 04.05.2018 as prayed herein.*

- (b) *Hold and declare that the Respondents are not entitled to any reliefs especially for the month of August, 2016 as the Respondents never followed the procedure for revision/restoration of contract demand.*

3. MSEDCL in its Petition states as follows:

3.1 M/s Kores (India) Limited (**KIL**), Chakan Foundry Division, Consumer No. 176099030420 is located at Gat No. 149, Chakan, Talegaon Road, Tal. Khed, Pune. It is a partial Open Access (OA) consumer availing Short Term Open Access (**STOA**) and had entered into an agreement with a Trading Licensee, Adani Enterprises Ltd. (AEL), for purchasing thermal power of 3150 kVA for the month of August, 2016.

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

3.3 The dispute is regarding the issues wherein the Commission vide its Order dated 4 May, 2018 has held that:

- (i) The application for surrender of Contract Demand was an integral part of the process of Open Access and was not independent of it and cannot be seen in isolation.
- (ii) Regulation 4.2 of the Distribution Open Access Regulations, 2016 (**DOA Regulations**) provides that retention or reduction of Contract Demand shall be governed by the provisions of Supply Code and the Standard of Performance (**SOP**) Regulations only in respect of a consumer availing LTOA and STOA.
- (iii) However no material has been placed on record by MSEDCL to rebut CCPL's contention that it had not applied for reducing its Contract Demand for August, 2016 in the first place for sourcing either thermal power from AEL or the RE Power from other sources.
- (iv) MSEDCL has also not shown that CCPL had applied for reduction in Contract Demand in the months prior to August, 2016 independently of its OA applications, in which case it might have been justified in not restoring it without a specific application for the propose.

3.4 The Commission's Order is vitiated by error apparent as the Commission has erroneously not appreciated that:

- a) The choice to reduce the Contract Demand entirely vests with a consumer; hence the choice to restore the same also vests with the consumer.
- b) Respondents at no point in time after the cancellation of Open Access on 29 July, 2016 which was communicated to them, applied for restoration of the same either immediately or even in the month of August, 2016. Hence, reliefs for the month of August, 2016 could not have been granted.
- c) The formalities for restoration of Contract Demand were completed by the Respondents on 30 September, 2016. Hence, any reliefs for months prior to 30 September, 2016 could not have been allowed.
- d) The utilization of Contract Demand is completely a prerogative and choice of a consumer. Hence any change in the same has to be specifically made by that consumer.
- e) Regulation 4.2 of the DOA Regulations clearly states that matter of revision of Contract Demand has to be governed in accordance with the SOP Regulations.
- f) Respondents were guilty of availing STOA from a Generator (Adani) which was already tied up in a long term Power Purchase Agreement (PPA) of 25 years with MSEDCL with a specific condition that it cannot sell power to any third party. Hence such cancellation of Open access was justified by MSEDCL.
- g) Any loss caused to the Respondents for the month of August, 2016 is on account of the Respondents' own fault for which it has a remedy to sue generator and not MSEDCL.
- h) The Contract Demand once reduced remains the same in perpetuity till the time an application for restoration of the same is not received which in the present case was only received belatedly in the month of September, 2016.
- i) Open Access is the sole choice of a consumer which has to be exercised diligently and with caution. The Respondents in the present case are guilty of sleeping over the same which has led to the penalty as per the DOA Regulations, 2016.
- j) Respondents were still availing Open Access under multi party route i.e. through other sources. Hence in any event, MSEDCL could not have restored the Contract Demand on its own.
- k) MSEDCL being a supplier only accepts the request of consumers and supplies in accordance with such request. Hence reliefs granted for the

month of August, 2016 without there being any specific request for the same by the consumers is completely erroneous.

3.5 The impugned Order was passed on 4 May, 2018. There is a delay of 62 days for filing the review Petition, which may be condoned as such delay is only on account of delay in procedural approvals. The delay is neither deliberate nor intentional.

3.6 The issues raised in the Review Petition are as below:

- (a) Whether the DOA Regulations provides for reduction in Contract Demand for STOA?
- (b) Whether the reduction in Contract Demand was on the basis of request received from the consumer itself and not a mandate asked for by MSEDCL?
- (c) Whether Revision in Contract Demand as per Regulation 4.2 of the DOA Regulations has to be governed as per SOP Regulations?
- (d) Whether availing Open Access with a generator (Adani) who is already tied up under 25 Years PPA with MSEDCL is correct?
- (e) Whether cancellation of Open Access was on account of genuine reasons?
- (f) Whether the Respondents took any effort for restoration of Contract Demand after Open Access was cancelled?
- (g) Whether MSEDCL can itself restore the Contract Demand when already the consumer was under another Open Access availing multi party Open Access at the same time from another consumer?
- (h) Whether MSEDCL can reduce/restore a Contract Demand by itself or only on a request by the consumer?
- (i) Whether choice to maintain a specific Contract Demand is completely of the consumer and whether such choice can be arbitrarily exercised?
- (j) Whether the Respondents after the cancellation of Open Access from Adani on 29 July, 2016 immediately applied for restoration of the same or even in the month of August, 2016?
- (k) Whether a Contract Demand once reduced can only be restored on a request from the consumer and whether a Contract Demand reduced once remains the same in perpetuity till the time a specific request is received from a consumer for restoration of the same.

4. In its submission, KIL has stated as follows:

- 4.1 The Review Petition is not maintainable. No error apparent/patent on the face of the record has been demonstrated. No material which was not presented at the time of hearing of Case Nos.37 & 38 of 2017 and which could have been available to MSEDCL with diligent search has been relied upon for maintaining the Review Petition.
- 4.2 The Review Petition is in the nature of an Appeal from the Order of which review has been sought. The grounds taken in the review are more the grounds of challenge as available in an appeal from the Order and not available for seeking a review of the Order and on this ground alone; the review Petition deserves to be rejected.
- 4.3 It is settled law that the scope of review Petition is extremely narrow and it is a limited jurisdiction. The parameters of entertaining review are well settled by judgments of the Courts. The power for review cannot be invoked on the grounds upon which the review Petition has been filed.
- 4.4 The entire Order which has been issued in favour of the Respondents by the Commission is based upon two events which occurred between the Contract Demand was sought to be reduced in view of the Open Access which the Respondents sought to be availed and which was a composite proposal/application given by the Respondents and which was accepted by MSEDCL and secondly, the revocation of the Open Access which was initially permitted by MSEDCL.
- 4.5 The Contract Demand of a consumer is permitted to be reduced / revised if the consumer opts to avail energy through Open Access and the revision/reduction in the Contract Demand is for a limited period and only to the extent of Open Access as sought to be availed by the consumer.
- 4.6 In such cases, the Contract Demand for which a contract has been entered into by executing an agreement in the prescribed format stands modified by agreement of parties to the extent of reduction in the Contract Demand by virtue of permitting Open Access to that extent by the Distribution Licensee.
- 4.7 Hence when the consumer opts for availing energy through Open Access, the Contract Demand is reduced / revised downward to that extent by the Distribution Licensee.
- 4.8 By a downward revision/reduction in Contract Demand, the original contract for the Contract Demand is modified to that extent for the period for which Open Access has been sought.

- 4.9 In the present case, admittedly, the Open Access that was sought for was for a limited period of a month which is STOA. Whenever STOA is to be availed by a consumer, the consumer has to submit a proposal to the Distribution Licensee, in this case MSEDCL. Accordingly the Contract Demand is brought down for a period of one month or the period for which the STOA is proposed to be availed of. The STOA and reduction in Contract Demand is contemplated only in the case of fixed supply and in case of renewable energy the Contract Demand is neither applied for nor is it brought down as the same is not firm energy which can be banked upon.
- 4.10 The Respondents are energy-intensive manufacturing Units and have a consumption of the electricity at a high level. It is imperative for the Respondents to have assured electricity supply for their manufacturing activity. The reliable energy can be availed of through Open Access only in the form of thermal energy and secondly, the STOA which is availed of by the consumers for which the Contract Demand is sought to be reduced / revived is only to the extent of thermal energy from reliable sources. In case of Renewable energy such as wind energy, the Contract Demand is never brought down as there may be a gap between the Renewable energy that is supplied and which is required through Open Access by the consumer.
- 4.11 The Respondents would refer to and rely upon the application for STOA which it had preferred for the month of August 2016. The prescribed format of the MSEDCL itself indicates that STOA is for thermal energy. The said application was made for a period bound by time that is the month of August 2016 only i.e. 1 August, 2016 to 31 August, 2016. Two separate applications were made for the two factories i.e. Chakan Foundry and PEFCO Foundry in the prescribed format.
- 4.12 The Contract Demand was sought to be brought down to the extent of energy to be obtained from Open Access from thermal energy. The said application of Respondent No.1 was granted by office letter No. 24154 dated 29 July, 2016 by MSEDCL. However, the same was revoked on the very next day after the same was granted i.e. on 30 July, 2016.
- 4.13 Thus MSEDCL has revoked the OA permission. Consequently, the application for reduction in Contract Demand and permission for Open Access had been declined. When a composite application for Open Access supply of electricity and revision of Contract Demand has been rejected/ declined by the MSEDCL, it is incomprehensible how merely Open Access only can be said to have been revoked and the Contract Demand however continues.
- 4.14 It is settled law that when an application contemplates two prayers which are interlinked with each other, either the application has to be allowed in toto or the same has to be rejected out-right. If an application is so interlinked, that one prayer cannot be granted without granting the other prayer then rejection of one prayer would not mean that the other prayer was automatically granted. Rejection of one prayer would

entail rejection of the other automatically. The Performa application itself contemplates in column 8 that approval is sought for Open Access and in the same column revision in Contract Demand is mentioned as the Contract Demand retained and the Contract Demand which is applied in toto. Thus the two are integrally linked with each other and one cannot be granted without allowing the other.

- 4.15 The object of revision in Contract Demand and the extent of revision of Contract Demand is to the extent that the Open Access has been sought to be availed of.
- 4.16 In case of Pepco Foundry, the Contract Demand was 2.99 MVA. The Open Access for which approval was sought was to the extent of 1.3 MVA and thus the retained Contract Demand was 1.69 MVA. Insofar as the Chakan Foundry is concerned, the Contract Demand is 6.34 MVA, the Open Access sought was 3.15 MVA and the retained Contract Demand was 3.19 MVA. It is thus clear that the Contract demand which is retained is to the extent needed to make up the total demand by availing of Open Access energy. If it was to be contended that upon the downward revision of the Contract Demand, the contract itself came to an end, there was no question to retain a part of the Contract Demand being mentioned in the application as well as the approval letter. Thus the contract/agreement between the parties to the extent of STOA stood revised / novated only for the limited period for which STOA was permitted. This is the concept of STOA and once STOA is discontinued, the Contract Demand revives.
- 4.17 It is trite law that the contract can be deduced from correspondence / letters / communications and that there need not be a separate agreement entered into between the parties to constitute a valid contract. Thus for the limited period during which the STOA is allowed, the agreement for Contract Demand stands modified for the limited period to the limited extent for which Open Access is permitted and the contract thereafter revives to the extent of Contract Demand as soon as the period of STOA expires.
- 4.18 MSEDCL has in fact understood this position of law and in a communication dated 17 November, 2016, MSEDCL has written to several of its consumers to inform that the many HT consumers have submitted their request to cancel Open Access to utilize 100% power from MSEDCL. MSEDCL has written specifically that “the Contract Demand of the said consumer will be restored to the original sanctioned Contract Demand with MSEDCL with effect from 1 December, 2016 and will be billed as normal HT consumer at circle level. Fresh agreement for the restoration of the Contract Demand shall not be executed”. It is also further specified that all those consumers who want to avail MSEDCL supply from mid-month with immediate effect will also be billed as normal HT consumer from the date of withdrawal of OA. Thus it is clear that once the revision due to limited period for which application is made is over and STOA period is over, the original Contract Demand agreement

stands revived and the consumer will be billed as a consumer for the entire consumption of Contract Demand electricity.

- 4.19 Respondent had submitted letters for both Units immediately and definitely on 26 August, 2016 that the Contract Demand be restored in view of the revocation of the STOA approval/permission by MSEDCL. It was stated in the said letters that the Contract Demand cannot be said to have been revised permanently when the request for STOA was only for a limited period and that Regulation 4.2 of the DOA Regulations, 2016 contemplate applicability of Electricity Supply Code and SOP Regulations to LTOA and MTOA but not to STOA, in respect of which this provision is conspicuously silent.
- 4.20 Furthermore, the clause 4.2 of the DOA Regulations, 2016 specifically contains a proviso regarding STOA that Contract Demand revision shall not be permitted during the Open Access meaning thereby that the same shall take place on the termination of Open Access period. It is further submitted that by way of abundant precaution A1 form duly filled in was submitted and hence the review Petition insofar as the present Respondent No. 1 is concerned, is devoid of any merits and the same deserves to be dismissed as against the Respondent No. 1. Without prejudice to the aforementioned contention, the Respondent No. 1 also executed an agreement as the MSEDCL had insisted upon the same by email communication dated 26 August, 2016 though the same was unwarranted.
- 4.21 The issues raised in the Review Petition are replied as below:
- a) The DOA Regulations, 2016 relates and specifies the incidence and outcome of reduction of Contract Demand for STOA and it also demonstrates that the two are interlinked with each other. Reduction in Contract Demand shall on the basis of request received from the consumer but that the provisions of Regulation 4.2 of the DOA Regulations, 2016 cannot be interpreted as contended by MSEDCL.
 - b) The consumers were unaware that there is an arrangement between Adani Power Ltd. and MSEDCL which would not permit Adani to supply electricity without following certain restrictive covenants in the agreement. In any case, this aspect is irrelevant for determination of the issue before the Commission in Case no. 37 and 38 of 2017.
 - c) With reference to paragraph 5(e), it is not the case of the Respondents that cancellation of Open Access was incorrect. The Respondents have no knowledge of the arrangement/covenants of binding contract between APL and MSEDCL and hence no comments can be made in this behalf. The aspect of whether the MSEDCL was justified in disapproving STOA or not has

absolutely no bearing and connection nor any impact on the determination of the issue at hand.

- d) Once STOA comes to an end either by efflux of time or earlier termination of the approval/permission granted by the Distribution Licensee, the Contract Demand stands restored automatically. In the present case, the Open Access was not permitted at all for the relevant period and before it could start, the permission for the same was revoked and hence in the absence of Open Access being permitted, there was no question of revocation/revision downward of the Contract Demand. The contract for the demanded contract energy continued without any impact.
- e) With reference to para 5(g) & (h), it is submitted that volition of the MSEDCL was not at all necessary for restoring the Contract Demand since the approval for STOA and consequent revocation of the Contract Demand was never put in action and was not approved by MSEDCL. The Respondents were not availing of any other Open Access through firm sources and that Open Access for renewable energy was neither in this case made the basis of rejection/retention of Contract Demand, nor can it be made the basis of reduction/revision in Contract Demand due to its lack of firm supply assurance. The renewable energy being non firm energy, the Contract Demand can never be reduced on the assumption that RE would be available and in any case, in the present contractual decision, it was not sought to be made the basis for reduction on Contract Demand. The same, therefore, has no relevance whatsoever in determining the Contract Demand restoration/retention.
- f) The contract is validly entered into between MSEDCL and the Respondents and the same will apply between the parties and that there is no question of any arbitrariness in respect of the same.
- g) The Contract Demand is reduced only for a specific period in case of STOA and the same revived immediately after the period specified in the application is over. The proforma application of the MSEDCL in this behalf itself makes it clear that the Open Access is for a limited period and that the Contract Demand is reduced only for the specified period. The entire petition is, therefore, misconceived.
- h) With reference to para 6(a), it is submitted that though the choice to reduce the Contract Demand vests with the consumer, and secondly though the choice to restore the same also vests with the consumer, in the present case, the choice was never permitted to be exercised inasmuch as the Open Access was declined and hence composite application for availing Open Access energy

and consequent reduction in Contract Demand was declined by virtue of revocation of the approval granted to the same.

- i) There was no question of applying for restoration of Contract Demand. However, by way of abundant precaution, the Contract Demand agreement was once again executed but a perusal of the same would indicate that such contract was not necessary to be executed and that format in which it is executed is only for grant of fresh electricity supply. The said event therefore cannot be relied upon by the MSEDCL to contend that the restoration of Contract Demand had not taken place.
- j) The concept of STOA is that the Open Access is for a limited period during which the Contract Demand stands revised if the Open Access is granted and that the revision is to the extent of the energy availed through Open Access and that therefore, the two are integrally intertwined.
- k) It is immaterial that the Respondent was availing of Open Access through multi-party route but through other sources inasmuch as the other sources were not reliable sources and that they had no bearing or impact on either the Open Access that was sought or on the Contract Demand which was sought to be reduced. The other sources were not firm source of thermal energy which could be relied upon to reduce Contract Demand.

4.22 The Open Access and consequent reduction in Contract Demand was sought by a common application form which was filled up. The said was approved by a single communication which was revoked admittedly. The revocation letter did not mention that the Open Access is denied but that reduction of Contract Demand continues. In the absence of any such specific clause, the revocation of the permission granted would be a total revocation of the letter in its entirety including the permission to reduce Contract Demand and permission to avail Open Access.

4.23 A common review Petition has been filed in the two cases No. 37 and 38 of 2017. However, the facts of the cases in the context of the review are different though for determination of the original cases the issues were the same, and hence, separate review applications / Petitions ought to have been filed. The Commission may direct the MSEDCL to present and file separate review Petitions in the two cases and the Commission be pleased to decline to entertain the common Petition.

4.24 In the improbable event that the Commission decides to review the Order, thereby reviving the Original Case, the Respondents be permitted to file fresh submissions on the issue raised in the Case and the Respondents be given fresh hearing while deciding the Cases.

5. In its submission CCPL has made similar submissions as made by KIL:

5.1 In addition, CCPL has also stated that it had submitted letters for both Units immediately on 10.08.2016 that the Contract Demand be restored in view of the revocation of the STOA approval / permission by MSEDCL. This was done by way of abundant precaution as in respect of the Respondent No. 2 no downward revision / reduction in the Contract Demand was applied for and hence the Review Petition insofar as the present Respondent No. 2 is concerned, is devoid of any merits and the same deserves to be dismissed as against the Respondent No. 2.

6. During the **hearing** the Advocate of the Petitioner and Respondents reiterated their submissions.

Commission's Analysis and Ruling:

7. As far as delay in filing the present review Case is concern, according to the MSEDCL delay of 62 days in caused. On that score KIL and CCPIL have not raised any objection. Even otherwise period of limitation for such Petitions under Regulation 85 (a) of the Conduct of Business Regulations, 2004 is 45 days. The impugned Order is dated 4 May, 2018. Present review Case is dated 24 August, 2018. The prescribed limit of 45 days plus days required for obtaining the certified copy of the impugned Order will have to be deducted from the total period of 114 days after which the present Case was filed. Thus delay is only of few days which in the interest of justice and better adjudication needs to be condoned.

8. The issues raised by MSEDCL and its claims for review of the impugned Order need to be assessed considering the limited scope of review specified in Regulation 85 (a) of the MERC (Conduct of Business) Regulations, 2004, which reads as follows:

“Review of decisions, directions, and orders:

85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission...”

Thus, this Petition has to be evaluated accordingly.

9. Issue wise Commission's analysis and the findings on the contentions raised by MSEDCL in its Review Petition are as follows:

9.1 The Commission notes that in its Order dated 4 May, 2018 in Case No. 37 and 38 of 2018 ruled as under:

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

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

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

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

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

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

"4.2 Revision of Contract Demand

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

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

14.5 *Under the earlier DOA Regulations, 2014, reduction of Contract Demand to the extent of OA and its restoration to the original level upon expiry of the OA period was automatic. However, the DOA Regulations, 2016 provide that a consumer availing STOA cannot revise its Contract*

Demand during the tenure of the STOA, but may do so at the time of applying for OA. Thus, the choice of reducing its Contract Demand to the extent of the OA granted or retaining it is that of the consumer.

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

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

“Reduction in Load

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

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

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

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

14.10 Moreover, Regulation 4.2 of the DOA Regulations, 2016 (quoted earlier) provides that the retention or reduction of Contract Demand

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

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

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

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

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

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

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

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

15.3 It can only be surmised, presuming that CCPL had also sought STOA and reduction in Contract Demand for the months after May, 2016, that either MSEDCL had continued with that reduction in August, 2016,

or decided on such reduction for that month on its own. MSEDCL has also not shown that CCPL had applied for reduction in Contract Demand in the months prior to August, 2016 independently of its OA applications, in which case it might have been justified in not restoring it without a specific application for the purpose.

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

9.2 The key issues pertinent to this review Petition that need to be addressed are as following, which would also form the grounds for deciding on the present review Petition:

- a) Whether Revision in Contract Demand for STOA as per Regulation 4.2 of the DOA Regulations, 2016 has to be governed as per SOP?
- b) Whether the DOA Regulations provides for restoration of Contract Demand in case of cancellation of STOA and without specifically so requested by the consumer?
- c) Whether restoration of Contract Demand is the prerogative/responsibility of the consumer or the Distribution Licensee?

9.3 The Commission has looked into above issues as elaborated in the following paragraphs.

9.4 In the impugned Order in Case No. 37 and 38 of 2017, the Commission had reiterated the provision 4.2 of DOA Regulations, 2016, which specifies that a consumer availing STOA shall not be eligible to revise its Contract Demand during the tenure of STOA, but can do the same at the time of application of STOA. The relevant extract of the Regulation is reproduced as under for ease of reference.

“4.2 Revision of Contract Demand

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

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

- 9.5 Citing the above in the impugned Order, the Commission had highlighted that a consumer availing STOA cannot revise its Contract Demand during the tenure of STOA. However, it had not made any detailed interpretation of the said provision.
- 9.6 The Commission now would like to highlight that, from the above provision, it should also be construed that the restriction on consumers of not exercising its choice of revision of Contract Reduction under SOP is limited only during the period it is availing STOA. All other time the same consumer necessarily comes under the purview of provisions under the SOP for Contract Demand revision. The above provision of the DOA Regulations also does not exempt such consumers from complying with SOP outside the STOA period. Thus, beyond the STOA period, the onus of any revision in the contract demand is on the Consumer and it has to necessarily exercise its choice as per SOP.
- 9.7 The above understanding would be irrespective of the fact that whether the application of revision in Contract Demand is made together with the STOA application or other-wise.
- 9.8 In view of the above, it is clear that there is no provision for automatic revision of Contract Demand unless the consumer applies for. Thus, if the Consumer has applied for reduction in Contract Demand Reduction once, it has to necessarily apply again for restoration of Contract Demand as per the provisions of the SOP for the period beyond STOA.
- 9.9 The above interpretation of the Regulations and applicability of SOP to even consumers availing STOA except during the STOA period, however was missed out and this qualifies as error apparent and hence this review.
- 9.10 In the present cases, both KIL and CCPL had applied to MSEDCL for contract demand reduction when they intended to avail STOA. However just by virtue of the fact that application for contract demand reduction was made as part of the STOA application, does not relieve the said consumers from applying for restoration of the Contract Demand irrespective of whether STOA is availed or not.
- 9.11 In case of KIL, once the STOA application was rejected by MSEDCL, KIL remained under the impression that Contract Demand Reduction application also remained revoked and did not apply for restoration. However, it is observed from the submissions that that at later point in time after a month or so post initial application for CD reduction, KIL had gone ahead and applied for Contract Demand restoration with MSEDCL. This shows that there was no action from KIL until it realized that it had to apply for Contract Demand restoration, so as to effect restoration since no automatic revision happens. KIL also had not sought any clarification in the matter at the time of rejection of STOA application by MSEDCL.

9.12 In case of CCPL, it is again noted that during the month of May 2016 it had to avail STOA and at that point it had applied for Contract Demand reduction. However subsequently till the period ending August 2016, there was no application from the CCPL for Contract Demand restoration. Here again no action from CCPL was initiated so as to restore the Contract Demand. Further, as understood from submissions made as part of the proceedings it also had not sought any clarification in the matter from MSEDCL.

9.13 The practice of application of Contact Demand restoration by the consumer after the period of STOA has lapsed, is already in vogue for approved STOA transactions, which would apply in toto in both the above cases of KIL & CCPL as well. In view of the above, MSEDCL's review of the Impugned Order is upheld.

9.14 As regards the issue of whether the cases of KIL and CCPL are identical, the Commission is of the view that the same are not identical. In case of KIL, it applied for contract demand reduction for August 2016 and also applied for restoration after end of August 2016 despite not availing STOA. However in case of CCPL, it had not applied for contract demand reduction specifically for August 2016 however was not restored the contract demand reduction availed as part of STOA availed in months prior to August 2016. Para 15.1 of the Order (Case No. 37 and 38 of 2017) refers to the specific transaction and process followed by CCPL and the same is reproduced for ease of reference.

“... ”

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

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

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

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

“... ”

9.15 Further, as regards the issue of the validity and legality of the cancellation of STOA on the issue of the PPA with Adani was never been contested by the Petitioners in the

Original Case, hence the same is not taken up in this review Order. The relevant abstract of MSEDCL's submission in original Case is reproduced as below:

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

10. With the above findings and observations, and having considered the submissions of MSEDCL, the impugned Order has error apparent as detailed under para 9.3 to 9.15 and as such necessitate review. It is the consumer who has to apply to reduce or restore the contract demand. It cannot be automatically reduced or restored by the distribution licensee. Hence the following Order:

ORDER

- 1. The delay caused in filing the present review Case is condoned.**
- 2. The Case No. 248 of 2018 is allowed.**
- 3. The impugned Order dated 4 May, 2018 in Case Nos. 37 & 38 of 2017 is set aside and considering that the consumers (i.e. KIL & CCPL) did not request for restoration of reduced contract demand, there is no relief which could be extended to them for the energy drawn over and above the contract demand. Consumers are liable for payment of prescribed tariff for the overdrawn energy for the period until the contract demand was restored at their requests.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Anand B. Kulkarni)
Chairperson


(Abhijit Deshpande)
Secretary


MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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