

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

Approved

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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 & 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	<ol style="list-style-type: none"> 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, 7th Floor, Naman Centre, A-wing, BKC, Bandra, Mumbai- 400 051, Through its Director, 	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.	<ol style="list-style-type: none"> 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

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.

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

DATES	PARTICULARS
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

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">a) APML for the PPAs of 1320 MW, 1200 MW and 125 MWb) RPL for 750 MW and 450 MW.c) GMR for 200 MWd) JSW for 300 MWe) Coastal Gujarat Power Ltd. (CGPL)
	<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,

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

..Respondents

THROUGH

COUNSEL FOR THE APPELLANT

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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.
Achraj, 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, 7th 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 MSEDCCL 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 MSEDCCL.

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, 7th 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 _____

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. MSEDCCL 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. MSEDCCL 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

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 Ascribed thereto in 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 (lowWC) 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