

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 105 of 2019

Case of Maharashtra State Electricity Distribution Company Limited for review of part of Order dated 26 March, 2019 in Case No. 26 of 2019

Coram

I.M.Bohari, Member
Mukesh Khullar, Member

M/s Maharashtra State Electricity Distribution Co. Ltd.... Petitioner

V/s

Rajlakshmi Minerals..... Respondent

Appearance

For the Petitioner : Shri. Ashish Singh (Adv.)

For the Respondent :Shri. Pratek Pai (Adv.)

ORDER

Date: 2 August , 2019

1. Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) has filed this Case dated 2 May, 2019 under 85 of MERC (Conduct of Business) Regulations, 2004 and Section 94 (1) (f) of the Electricity Act, 2003(**EA**) to review part of Order dated 26 March, 2019 in Case No. 26 of 2019 (said Order) in which the Commission has held that 1.25% shall be levied as penal interest every month, in addition to the penalty in the form of Delayed Payment Charges (**DPC**) for late payment of outstanding bills by MSEDCL.

2. Main prayers of MSEDCL are as follows:

- a) *Review/modify the observations in Para 18 & Para 3 of the operative part of the order dated 26.03.2019 passed in Case No. 26 of 2019 to the extent as prayed herein.*
- b) *Hold and declare that there can be no “Additional Interest Penalty” over and above the mechanism of “Delayed Payment Charges” as provided for in the Energy Purchase Agreement, in case of delay in payment of invoices by MSEDCL.*
- c) *Pass such further orders as this Hon’ble Commission deems fit and proper in the interest of justice and good conscience.*

3. MSEDCL has stated as under:

3.1 The present review Case is being filed for seeking review only part of observations under Para 18 and Para 3 of the operative part of the said Order dated 26 March, 2019 on the ground that levy of 1.25% as penal interest every month, in addition to the penalty in the form of “delayed payment charges” (DPC) for late payment as ordered by the Commission is a mistake/error apparent which has inadvertently crept in the Order dated 26 March, 2019 in Case No. 26 of 2019.

3.2 Observations under Para 18 & Para 3 of the operative part of the Order dated 26 March, 2019, are as under:

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

ORDER

3. *Further, Maharashtra State Electricity Distribution Co. Ltd, should note that if it deviates from its commitment given in the payment plan, penal interest will accrue thereafter (beyond the date committed in the plan) at 1.25% per month on any LPS/DPC.*

3.3 The observation in the said Order is an error apparent as the Commission has failed to appreciate the following:

- 3.3.1 Said observations were passed by the Commission without affording any reasons for the same and without going into the other material clauses of the Wind Energy Purchase Agreement (**WEPA**).
- 3.3.2 1.25% interest penalty over and above DPC was never part of the Petition or Prayers in the original proceedings and allowing the same without according a reasonable opportunity of hearing to MSEDCL on the said issue to defend its case is a violation of the principles of natural justice and thus is bad in law and needs to be declared as ultra-vires.
- 3.3.3 WEPA is sacrosanct between parties which already has a clause in the name of “Delayed Payment Charges” which has a provision for levy of interest, in case, MSEDCL delays payment of invoices/outstanding bills. Once WEPA provides for a penalty in the form of DPC in case of delayed payments, then there cannot be another penal interest on MSEDCL on the same issue. This important aspect has been completely overlooked by the Commission as the said issue was never part of the original record.
- 3.3.4 The Commission cannot novate WEPA between parties by means of the said order. Such observations are contrary to the established principles and precedents in matters of sanctity of WEPA.
- 3.3.5 Inflicting penal interest of 1.25% over and above the DPC when there already exists a penalty in the form of DPC is without any basis and reasoning that too when on one hand, specific relief has been provided for in the WEPA in the form of DPC in case of non-timely payment of invoices by MSEDCL and on the other hand, other clauses of WEPA expressly limit the penalties/damages etc to the extent as provided for in the Energy Purchase Agreement.
- 3.3.6 Interest penalty is not a pass through component in tariff and imposing double penalty in the form of interest would negatively burden/effect MSEDCL as the same would never be allowed to be a pass through in tariff.
- 3.4 The Commission has the jurisdiction to adjudicate the present dispute. MSEDCL had filed an Appeal on 30 March 2019 bearing Appeal No. 1629 of 2019 before the Appellate Tribunal for Electricity (ATE) against the Order dated 26 March, 2019 in Case No. 26 of 2019. This appeal was filed well within the period of limitation. The ATE vide its Order dated 16 April, 2019 gave liberty to the Petitioner to approach the Commission under “Review Jurisdiction” and file a “Review Petition” within a period of two (2) weeks. Accordingly, present “Review Petition” is being filed by MSEDCL before this Hon’ble Commission.

4. Rajlakshami Minerals (RM) in its reply dated 9 July, 2019 has stated that:

- 4.1 As per said Order, MSEDCL is required to make payments of the principal amounts as well as DPC. Moreover, the parties were to complete the reconciliation of outstanding dues

within a period of two weeks from the Said Order i.e. on or before 9 April, 2019. Thereafter, within two days of the reconciliation taking place, MSEDCL was required to submit the reconciliation statement together with the details of the time period within which the outstanding principal and DPC would be remitted by MSEDCL. The record demonstrates that MSEDCL has failed to comply with the aforesaid directions of the Commission.

- 4.2 Reconciliation was completed after nine days. MSEDCL moved to APTEL without notice to the RM. MSEDCL has failed to comply with the directives in the said Order, despite more than two months having been passed. RM has neither received the Reconciliation Report nor the intimation of the exact time limit by which the principal and DPC amounts would be remitted by MSEDCL. Therefore, the Commission ought not to entertain a party which approaches the Commission seeking redressal of its grievances, while failing to comply with the necessary directions issued to it.
- 4.3 Without prejudice to the foregoing, the present Petition is even otherwise legally untenable and an afterthought. It is settled law that an “*error apparent from the face of the record*” should not require a long-drawn process of reasoning on aspects where there may conceivably be two opinions. It is also settled law that a review has a limited purpose and scope and cannot be allowed to serve as an appeal in disguise. MSEDCL, in the present Petition, has failed to show any fundamental and/ or statutory and/ or other legal provisions that have been ignored by the Commission hence present Petition is legally untenable and is liable to be dismissed with costs.
- 4.4 The Commission has issued various Orders with same dispensation, however MSEDCL has not challenged other Orders. In essence, the direction challenged in the present Petition was contained in the Common Order dated 16 May, 2017. That Common Order was not challenged by MSEDCL.
- 4.5 MSEDCL, in the present Petition, has contended that it is in the nature of levying interest on interest, which is impermissible. This contention is untenable and is contrary to judicial decisions. It is a settled position that the interest is not granted on the interest but upon the claim made. The claim was made under two heads, the principal amount due and payable under various invoices raised by RM upon MSEDCL; and the interest due and payable as and by way of DPC in view of the default on the part of MSEDCL to remit the monies within the time period under the aforementioned invoices. It was essentially interest levied on the DPC which had become a part of the principal claim on the part of RM. The Commission was correct in granting interest on the crystallised amount of DPC, in the event of further default on behalf of MSEDCL.
5. At the hearing held on 12 July, 2019, the Advocate of MSEDCL reiterated its submission and stated that as per Section 11.04 (Payments) of WEPA, there is provision of entitlement of late payment surcharge at the rate of 1.25 % per month for delay in payment beyond 60 days from receipt of energy bills. Section 13.03 (Liquidated Damages) of WEPA is applicable and shall be considered and read with Section 11.04. Penal interest of 1.25% per month over and above

DPC is not in consonance with the terms of WEPA. Hence, MSEDCL had filed an Appeal on 30 March, 2019 before APTEL against the dispensation provided by the Commission in the said Order. APTEL by its Order dated 16 April, 2019 has granted liberty to MSEDCL to approach the Commission under review jurisdiction. Hence, MSEDCL has approached the Commission through instant Case. The Advocate of RM stated that MSEDCL has failed to comply with the provision of WEPA, hence the Commission in its various Orders has provided similar dispensation. However, only the said Order in Case of RM is challenged by MSEDCL. Advocate of RM further stated that interest granted by the Commission is not interest on the interest but upon the claims made for principal amount due and payable under various invoices raised and interest levied on the DPC which had become a part of the principal claim. In support of its contentions, the Advocate of RM has placed on record few citations of the Hon'ble Supreme Court of India.

Commission's Analysis and Ruling:

6. In the instant Case, MSEDCL has sought review of only part of observations made by the Commission under Para 18 and Para 3 of the operative part of the said Order dated 26 March, 2019 under the Regulation 85 of MERC (Conduct of Business) Regulations, 2004 and Section 94 (1) (f) of EA. The ambit of review is limited and the Case has to be evaluated accordingly.
7. The Commission notes that before filing this review Case, MSEDCL has challenged the said Order before the APTEL in Appeal No. 141 of 2019. APTEL by its Order dated 16 April, 2019 has granted liberty to MSEDCL to approach the Commission under review jurisdiction and file review Petition within two weeks. Relevant part of APTEL Order is reproduced below:

“6. In the light of the submissions of the learned counsel appearing for the Appellant, as stated supra, the instant appeal, being Appeal No. 141 of 2019, on the file of the Appellate Tribunal for Electricity, New Delhi stands disposed of reserving liberty to the Appellant to file a review petition for reviewing the Impugned Order dated 26.03.2019 passed in Case No. 26 of 2019 so far as it relates to the limited extent it imposes additional 1.25% penal interest per month over and above the DPC on the file of the Maharashtra Electricity Regulatory Commission, Mumbai (first Respondent herein) within a period of two weeks from the date of the receipt of the copy of this Order.

7. It is needless to clarify that, in the event, the Appellant could not get any relief in the review petition filed before the first Respondent/ Maharashtra Electricity Regulatory Commission, it is open to the Appellant to question the correctness of the impugned Order dated 26.03.2019 before this Tribunal if they so advised or need arises.”

Accordingly, MSEDCL has filed this review Case dated 2 May, 2019.

8. The Commission notes that MSEDCL in this review Case has contended that the observation made by the Commission in the said Order is an error apparent as the Commission failed to consider some of the issues which are summarized as under:
- a) 1.25% interest penalty over and above DPC was never a part of the Petition, also no reasons as well as opportunity was given to MSEDCL to defend the Case.
 - b) WEPA has provision in the form of DPC for delayed payments by MSEDCL, hence there cannot be another penal interest or interest on interest for the same issue, which is not in consonance with the terms of WEPA and the Commission cannot novate WEPA between parties.
 - c) Interest penalty is not a pass-through component in tariff and imposing double penalty in the form of interest would negatively burden MSEDCL.
9. Regarding MSEDCL's contention that 1.25% interest penalty over and above DPC was never part of the Petition and reasonable opportunity was not given to it, the Commission is of the view that before making such statement it seems that MSEDCL had not gone through the details of the Petition filed by RM in Case No. 26 of 2019 in which RM has specifically prayed for interest on DPC which is reproduced as under:
- c) *Direct the Respondent to pay a sum of Rs. 17,77,160/- to the Petitioner as interest on delayed payment charges, as more particularly set out in Annexures 'HH' and 'II' hereto;*
 - e) *Direct the Respondent to pay interest pendente-lite till the eventual payment of the sum at the rate of 1.25% per month;*

RM in its said Petition also gave the table in which it indicated the amount of interest on DPC, which is captured under Para 3.10 of the said Order. MSEDCL in the said Case had contended that it never disputed the liability of RM and other Wind Generators and hence in absence of any dispute, the Commission was requested not to entertain such Petitions which are out of the Commission's jurisdiction and in fact, it is a civil dispute. MSEDCL neither in its reply nor during the hearing held in the said Case has categorically denied the claims (including interest on DPC) of RM but instead stated that due to its financial issues/difficulties there is delay in release of the payment to the generators. Hence, the Commission finds that MSEDCL's contention that reasonable opportunity was not given to it to respond to the issue relating to interest on DPC is misleading. Therefore, this cannot be ground for review.

10. Further, the Commission notes that Order dated 26 March, 2019 in the case filed by RM, on which MSEDCL has sought review is not a first Order imposing interest on unpaid DPC. It has evolved over the period the chronology of which is summarized below:

10.1 M/s Hindustan Zinc Ltd (HZL) had approached the Commission in Case No 150 of 2015 and sought directions to MSEDCL to pay the late payment surcharge due to delay in making payments for the energy delivered from September, 2011 to September, 2015. Considering delay in payment of bills (since September, 2011), the Commission in its Order dated 10 August, 2016 in Case No 150 of 2015 has ruled as under:

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

Aggrieved by the Commission’s Order dated 10 August, 2016, MSEDCL has challenged the Commission’s Order in APTEL. From, the following paragraph of the APTEL Judgment, it is observed that MSEDCL has only challenged DPC part of the above Order:

“1. The present appeal is being filed by Maharashtra State Electricity Distribution Co. Ltd. (hereinafter referred to as the “Appellant”) under Section 111 of the Electricity Act, 2003 (hereinafter referred to as the “Act”) against the order dated 10.08.2016 (“Impugned Order”) passed by Maharashtra Electricity Regulatory Commission (hereinafter referred to as the “State Commission”) in Case No. 150 of 2015 regarding directing the Appellant to pay late payment surcharge @1.25% per month to the Respondent No. 2 as per Section 11.02 of the Energy Purchase Agreement.”

Admittedly, MSEDCL has not challenged Commission’s direction relating to payment of interest at 1.25% on unpaid surcharge amount. APTEL in its judgment dated 24 April, 2018 in Appeal No 75 of 2017 has held as under:

“Having regard to the legal and factual aspects of the matter as stated above, we are of the considered view that the issues raised in the instant appeal have no merit. The appeal is hereby dismissed devoid of merits. The Impugned Order dated 10.8.2016 passed by the State Commission is hereby upheld.

10.2 Afterwards some other Wind Energy Generators also approached the Commission for prolonged non-payment and/or late payment of principal amounts for the supply of energy as well as the Delayed Payment Charge (DPC) by MSEDCL. The Commission had issued a common Order on these Petitions in Case Nos. 53, 62, 68, 74, 75, 79, 135, 136 and 144 of 2016 and Miscellaneous Application No 22 of 2016 in Case No 53 of 2016 dated 16 March, 2017. In that Order, the Commission directed MSEDCL as follows:

“54. In view of the foregoing, the Commission expects MSEDCL to pay the principal amounts due to the Petitioners expeditiously. In the meantime, in line with its Order in Case No. 150 of 2015, the Commission directs MSEDCL to pay the DPC amounts due within 30 days. Thereafter, interest will accrue at 1.25% per month on any DPC

amount remaining to be paid. In the case of those Petitioners who are also consumers of MSEDCL, these amounts could also be adjusted against their consumer energy bills.”

Aggrieved by the Commission’s above stated combined Order dated 16 March, 2017, MSEDCL again filed Appeal before the APTEL. In this appeal also, MSEDCL did not challenge Commission’s decision on imposing interest on unpaid DPC amount. APTEL in its judgment dated 7 May, 2018 has disposed off the Cases regarding outstanding payment, delay payment surcharge of Wind Generators in terms of its earlier judgment dated 24 April, 2018 passed in Appeal No 75 of 2017.

- 10.3 As stated above, MSEDCL did not challenge the Commission’s decision of imposing interest on unpaid DPC in the appeal filed before APTEL, which can also be interpreted to mean that MSEDCL has accepted the Commission’s ruling on imposition of interest on unpaid DPC.
- 10.4 Subsequently, RM had approached the Commission vide its Petition in Case No. 166 of 2016 regarding non-payment and/or late payment of principal amounts as well as DPC. The Commission by its combined Order dated 16 May, 2017 had provided similar dispensation as under:

In view of the foregoing, the Commission expects MSEDCL to pay the principal amounts due to the Petitioners expeditiously. In the meantime, in line with its Order in Case No. 150 of 2015 and the more recent Orders dated 16 March, 2017, the Commission directs MSEDCL to pay the DPC amounts due within 30 days. Thereafter, interest will accrue at 1.25% per month on any DPC amount remaining to be paid. In the case of those Petitioners and concerned WOWAI Members who had sought set-off of dues, MSEDCL can also opt to adjust these amounts against their consumer energy bills.

- 10.5 Above combined Order dated 16 May, 2017 in which RM was one of the Petitioner was not challenged by MSEDCL.
- 10.6 After consistent failure by MSEDCL to make payment as per provision of WEPA, RM again approached the Commission in Case No 177 of 2017 for non-compliance of the Commission’s Order. The Commission in its Order dated 18 January, 2018 had recorded that since some part payment has been made by MSEDCL it was not inclined to take action against MSEDCL under Sections 142 and 146 read with Section 149 of the EA.
- 10.7 On continuing non-payment, RM again approached the Commission in Case of 26 of 2019 for outstanding principal, DPC and interest on DPC. The Commission dealt with these issues and issued Order dated 26 March, 2019. Same is under review in present Petition.

11. The Commission observes that MSEDCL while seeking the review of observation under Para 18 of said Order has selectively ignored the fact that the Commission has recognized financial difficulties faced by MSEDCL and accordingly provided the dispensation under Para 18 of the said Order which is reproduced as under:

18 The Commission is sympathetic to the difficulties faced by MSEDCL on account of various factors on which MSEDCL might not have direct control within the prevailing operating mechanism. The Commission is inclined to look into additional burden that MSEDCL gets to bear because of such difficulties provided it makes sincere efforts to find lasting solution to recurring issue of non payment of dues including those of the wind generators. The Commission has already directed MSEDCL in recent Order in Case No 205, 221, 232, 265, 285, 287 and 288 of 2018 dated 9 January, 2019 as under:

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

35. Further, the Commission notes that the plan is based on objective criteria for clearing outstanding dues in a sequence among concerned wind energy generators. The Commission directs MSEDCL to strictly adhere to the plan as submitted to the Commission in its true letter and spirit and release the amount to the Wind generators without any deviation in chronological order. In order to resolve issues of crystallization of outstanding dues (disputes, if any), the Commission directs the parties involved from both the sides in the present Cases to sit together and reconcile the statement of account within two weeks from the date of this Order. At the time of reconciliation, MSEDCL shall inform the Petitioners the exact time limit in which the payment would be made to wind generators for their outstanding dues of principal and DPC amount. Further, MSEDCL should note that if it deviated

from its commitment given in the plan, interest will be payable thereafter (beyond the date committed in the plan) at 1.25 % per month on any LPS/DPC”.

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

12. Thus, the Commission while providing above dispensation has not altered/changed the terms of WEPA, but considered it necessary to levy penal interest on the amount of DPC which remained unpaid even after passage of several months. Initially, such interest on unpaid DPC amount was made applicable after 30 days from the Order. However, after considering efforts of MSEDCL towards developing mechanism to clear the outstanding claims of all the Wind generators, the Commission relaxed payment of such interest on unpaid DPC amount and made it applicable only if MSEDCL does not honor its own committed payment plan. The entire approach of the Commission was conciliatory balancing the interest of both the parties and at the same time allowing some room to MSEDCL to resolve its chronic financial difficulties. By doing so the Commission has not altered or changed the terms of the WEPA. The Commission time and again stated that it expects MSEDCL to release the outstanding dues of the wind generators as per the terms of the WEPA without waiting for the wind generators to approach the Commission.
13. Regarding MSEDCL's contention that double penalty i.e. interest on interest is not in consonance with the terms of WEPA, the Commission notes that MSEDCL has relied on Section 13.03 (Liquidated Damages) of WEPA to state that any liability out of the WEPA are restricted to this clause and the Commission cannot grant penalty/compensation dehors this provision of WEPA. Section 13.03 (Liquidated Damages) of WEPA is reproduced as under:

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

In this regard, the Commission notes that provision of WEPA needs to be honored and any relief granted should be in accordance with the provisions of WEPA. In the present case, MSEDCL's contention is that once WEPA provides for DPC for compensating delayed payment, the Commission cannot allow interest on DPC as additional compensation for same purpose i.e. delayed payment. The Commission notes that just because WEPA has provision of DPC, buyer cannot take a stand that it will not pay amount outstanding for several months and then compensate the seller with DPC. The Commission is mandated by the EA to promote renewable energy sources. Hence, the Commission has to intervene when it comes across the cases where MSEDCL has not paid amount due to Wind Generators for several months. While doing so, the Commission cannot be restricted by any provision of WEPA in giving its dispensation when the Commission is statutorily bound with the responsibility of ensuring compliances by balancing the interests of all the stake holders. Delay payment charges are in the nature of compensation for the working capital available to MSEDCL for the amount unpaid to seller. It has a cost and that legitimately gets paid as DPC to the seller of energy. Prolonged nonpayment for whatever reasons, puts the seller in serious cash flow issues for which distribution licensee cannot escape its liability to comply with the WEPA in honoring the payment. Commission has not altered any provision of WEPA but had to intervene in the interest of justice and impose penal interest on unpaid DPC amount so that MSEDCL expedites the payment of dues to Wind Generators as per WEPA. Hence, there is no merit in MSEDCL's contention that the interest of DPC cannot be allowed.

14. The Commission also notes that RM in its reply has relied upon judgment of the Supreme Court of India in the matter of *Oil and Natural Gas Commission v/s M.C. Celland Engineers S.A (1999) SCC 327*. Relevant part of judgment is reproduced below:

“3.His point is that there cannot be interest upon interest when the claim itself is one of interest and interest upon that amount could not have been granted by the arbitrators and relied upon Section 3 of the Interest Act, 1978.

4.It is clear that interest is not granted upon interest awarded but upon the claim made. The claim made in the proceedings is under two heads - one is the balance of amount claimed under invoices and letter dated February 10, 1981 and the amount certified and paid by the appellant and the second is the interest on delayed payment. That is how the claim for interest on delayed payment stood crystallized by the time the claim was filed before the Arbitrators. Therefore, the power of the Arbitrators to grant interest on the amount of interest which may, in other words, be termed as interest on damages or compensation for delayed payment which would also become part of the principal. If that is the correct position in law, we do not think that Section 3 of the Interest Act has any relevance in the context of the matter which we are dealing with in the present case. Therefore, the first contention raised by Shri Datta, though interesting, deserves to be and is rejected.”

(2002) 1 Supreme Court Cases 367, Central Bank of India v/s Ravindra & others is cited on the point that a creditor can charge interest from his debtor on periodical rests and also capitalize the same so as to make it part of the principal. It has further held as follows:

“Such a course can be justified by stipulation in contract voluntarily entered in to between the parties or by a practice or usage well established in the world to which parties belong. Such practice is to be found already in vogue in the field of banking business. Such contract or uses of practice can stand abrogated by legislation such as usury laws or debt relief laws and so on.”

For want of such abrogation, pecuniary loss caused to the creditors by delayed payments can not at all be allowed to automatically enrich the debtors. If the debtor does not want to pay penalty or say interest on interest it has to work out on financial discipline to clear dues of the creditors in time. At times delays have dangerous consequences. The party inviting such delay has obviously to face the same.

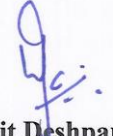
15. In view of above citations, DPC merges with the principal amount once such claim is submitted. Thereafter, interest can be granted for delay in payment of such claim.
16. As far as issue of interest on DPC negatively affecting MSEDCL, the Commission notes that the Commission was constrained to impose such interest as MSEDCL has repeatedly failed to honor the commitment under payment plan submitted by it. Hence, this cannot be ground for review of Order.
17. The Commission does not find any merit in MSEDCL’s argument on the ground of error apparent in the said Order. Arguing on the earlier issues in the original matter or mere disagreement with the dispensation already provided by the Commission cannot be the ground for invoking review jurisdiction. None of the grounds stated in this Case can be said to fall within the ambit and scope of Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 (Review of decisions, directions, and Orders).
18. In view of the above, the Commission thinks it fit to reject the Case filed by MSEDCL seeking review of part of the said Order as it is devoid of any merits. Hence the following Order

ORDER

1. The Case No.105 of 2019 is dismissed.

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(I.M.Bohari)
Member**


**(Abhijit Deshpande)
Secretary**

