

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13<sup>th</sup> Floor, Cuffe Parade, Mumbai 400005.**  
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**Case No. 84 of 2021**

**Petition filed by Maharashtra State Electricity Company Limited seeking directions to all Respondent IPPs having long term PPA with it for providing rebate in fixed charges, interest free deferment of capacity charges and reduced late payment surcharge on account of Covid-19 pandemic**

**Coram**

**Sanjay Kumar, Chairperson**  
**I.M.Bohari, Member**  
**Mukesh Khullar, Member**

Maharashtra State Electricity Distribution Company Limited: -	Petitioner
Vs	
1. Adani Power Maharashtra Limited: -	Respondent No.1
2. RattanIndia Power Limited: -	Respondent No. 2
3. JSW Energy Limited: -	Respondent No. 3

**Appearance**

For Petitioner: -	Shri Ravi Prakash ( Adv.)
For Respondent No. 1 and 2:	Shri Venktesh (Adv)
For Respondent No. 3:-	Shri. Aman Anand (Adv.)

**ORDER**

**Date: - 4 May, 2022**

1. Maharashtra State Electricity Distribution Company Limited (MSEDCL) has filed this Petition on 18 August, 2021 seeking directions to all Respondent Independent Power Producers (IPP)s having long term PPA with MSEDCL for providing rebate in fixed charges, interest free deferment of capacity charges and reduced late payment surcharge on account of Covid-19 pandemic in view of the Ministry of Power (MoP) notification dated 15 May, 2020 and 16 May, 2020. This Petition has been filed under Section 94(1) (g) of Electricity Act, 2003 (EA, 2003) read with Regulation 105 and 106 of the MERC Multi Year Tariff Regulations 2019; and Regulation 92, 93 and 94 of of MERC (Conduct of Business) Regulation, 2004.

**2. MSEDCL's main prayers are as under:**

- a. *Direct the Respondent IPPs in long term PPAs with the Petitioner to provide COVID rebate and interest free deferment of capacity charges to the Petitioner in line with directives of MOP dated 15th & 16th May 2020;*
- b. *Direct all Respondent IPPs in long term PPAs with the Petitioner to adjust the rebate for April 2020 and May 2020 in future bills;*
- c. *Direct all Respondent IPPs to reduce the rate of LPS during the COVID-19 pandemic, regardless of the rate set out in the PPAs/regulations, which rate should be restricted to lower of 12% per annum, or to the rate at which interest has been incurred to raise/borrow funds from 24.03.2020 till normalization of the current situation;*
- d. *Consider the unforeseen and the unprecedented situation prevailing on account of COVID-19 as a Force Majeure event;*

**3. MSEDCL in its Petition has stated as follows:**

- 3.1 COVID-19 has affected many Countries and the World Health Organization has declared it as 'Pandemic'. Ministry of Home Affairs (MHA) has issued an Order dated 24 March 2020 under Section 10(2) (1) of the Disaster Management Act, directing the Ministries/ Departments of Government of India, State/Union Territory Governments and State/ Union Territory Authorities to take effective measures for ensuring social distancing so as to prevent the spread of COVID-19 in the country. The Order remained in force, in all parts of the country, for a period of 21 days with effect from 25 March, 2020.
- 3.2 On 26 March, 2020 the Commission acknowledged this situation of the State of Maharashtra and issued 'Practice direction measures to minimize public interface in view of Coronavirus Epidemic (Covid-19). Vide the said practice direction, the Commission inter alia directed distribution companies to suspend non-essential services including bill collection.
- 3.3 Typically, MSEDCL has been collecting maximum revenue during the month of March of each financial year. However, MSEDCL's collection has reduced to Rs. 5057 Cr for March 2020 as against Rs. 5621 Cr. in the month of March 2019, which was otherwise expected to be higher than last year's collection. The COVID-19 pandemic has thus affected the performance of MSEDCL, for reasons completely beyond its control.
- 3.4 Due to the pandemic, the demand for supply of electricity by the MSEDCL has crashed by about 4500-5000 MW than the expected projected demand. Due to this situation, the revenue cycle of the MSEDCL has also been badly hampered.

- 3.5 The Commission has issued MYT Order for MSEDCL in Case No. 322 of 2019 dated 30 March, 2020 wherein COVID-19 situation was considered as an extraordinary, unforeseen and alike Force majeure situation and provided three months of Moratorium period to Commercial and Industrial Consumers and also facilitated with the rebate or instalment without Delay Payment Charges (DPC) for the payment of bills which has further worsened the financial situation/ cash flows of MSEDCL. Resultantly, it has become difficult for MSEDCL to adhere to payment schedules.
- 3.6 Ministry of Power (MoP) vide its letter dated 28 March, 2020 has acknowledged the force majeure situation being faced by distribution companies and issued directions under Section 107 of the EA, 2003 to the Central Electricity Regulatory Commission (CERC) with regard to the Late Payment Surcharge (LPS) to be charged by the generating companies and transmission licensees Further, the CERC in its Order in Case no. 06/SM/2020 dated 3 March, 2020 has stated that in case of any delayed payment by the distribution companies to the generating companies and inter-State Transmission licensees beyond 45 days from the date of the presentation of the bills falling between 24 March, 2020 and 30 June, 2020, the concerned distribution companies shall make the payment with LPS at the reduced rate of 12% per annum that translates into 1% per month.
- 3.7 Thereafter, as per communication issued on 15 May, 2020, the MoP decided to defer the fixed charges on power of Central Generating Companies, which was not scheduled for the lockdown period. Further, the same would be repaid in three equal, interest free instalments in subsequent months. The Central Power Sector Units (CPSU)s had also been suggested to grant a rebate of 20-25 per cent on power supplied (fixed cost) including Inter State Transmission Charges (ISTS) payable to PGCIL for the lockdown period. The DISCOMS had been asked to pass on these cost savings to the end consumers which will lead to reduction in electricity cost to end consumers.
- 3.8 Subsequently, on 16 May, 2020; the MoP, vide its Corrigendum has clarified that the Rebate of 20-25% shall be in fixed cost on power supply billed to DISCOMS and inter-state transmission charges levied by PGCIL.
- 3.9 Further, in order to alleviate the financial stress on DISCOMS due to Covid-19, the MoP vide its letter dated 20 August, 2020 & further clarification letter dated 20 November, 2020 has advised all the Generating & transmission companies to charge LPS at the rate not exceeding 1% p.m. on the principal due for all payments, which are due either from projects developed under Section 62 or Section 63 of the EA, 2003, made by the DISCOMs under the liquidity infusion scheme of Power Finance Corporation (PFC) & Rural Electrification Corporation (REC) under Atmanirbhar Bharat.
- 3.10 In line with the above communication(s) issued by the MoP and the Order issued by the CERC, the IPPs should also defer the fixed charge on power not scheduled for lockdown period to be repaid in interest free three equal instalments in subsequent months. The

IPPs should also provide a rebate on power supplied during the months of Lockdown Period where the demand was at lower side.

- 3.11 Hence, this Petition is filed seeking issuance of directions to IPPs having PPA with MSEDCL for providing rebate, interest free deferment of the capacity charges and reduced LPS on account of COVID-19 pandemic.
- 3.12 As per the MoP notification dated 15 May, 2020 and 16 May, 2020 PGCIL has passed total rebate of 109.13 crores on 12 June, 2020 and NTPC has passed rebate of 167.97 crores on 17 August, 2020 for the period of April-2020 and May-2020. Accordingly, a total rebate of Rs. 277.10 crores have been passed to MSEDCL for period of April-2020 and May-2020.
- 3.13 MSEDCL has also requested to Maharashtra State Electricity Board Holding Company Limited (MSEBHCL) to provide 20% rebate in MSPGCL's Fixed charges in line with the rebate passed by NTPC and PGCIL as per MoP's notification,
- 3.14 MSEDCL vide letter dated 1 October, 2020 has requested all IPPs for rebate in fixed charges, deferment of capacity charges and reduced LPS until situation normalizes on account of COVID pandemic in line with MoP's notification dated 15 May, 2020 and CERC order dated 3 April, 2020. All IPPs were requested to pass on the rebate as calculated above for April and May 2020 and reduced LPS until situation normalizes on account of COVID pandemic.
- 3.15 In response, JSW Energy Limited (JSW) and RattanIndia Power Limited (RPL) have denied considering any rebate sought by MSEDCL and Adani Power Maharashtra Limited (APML) has not replied.
- 3.16 In line with the MoP notification, MSEDCL proposes that a 20% rebate be provided by the IPPs for the months of April and May 2020. Since GMR and CGPL are under CERC jurisdiction, MSEDCL is seeking reliefs pertaining to only the IPPs falling under the jurisdiction of MERC i.e., APML, JSW and RIPL. MSEDCL shall seek relief from GMR and CGPL from CERC through a separate petition. Following table summarizes the financial impact of the rebate in Fixed Charges at the rate of 20%.

Name of Genco/Transco	April 2020	May2020	Total Fixed Cost	Rebate(20%)
APML	241.42	234.33	475.75	95.15
RIPL	56.92	58.81	115.73	23.15
JSW	13.19	13.40	26.58	5.32
Total IPPs	311.53	306.54	618.06	123.62

- 3.17 COVID-19 qualifies as a Force Majeure Event. NDMA order for national lockdown, dated 24 March 2020 and subsequent Orders of Government of Maharashtra make it abundantly clear that COVID-19 is a Force Majeure Event. Therefore, it is requested to acknowledge COVID-19 pandemic as a Force Majeure Event.

3.18 It is also requested to direct IPPs to adjust the rebate for month of April and May 2020 in future bills.

3.19 Regulations 92, 93 and 94 of the MERC Conduct of Business Regulations, 2004 and Regulations 105 and 106 of the MERC (Multi-Year Tariff) Regulations, 2019 provide for inherent powers of the Commission which can be exercised to deal with matters which are not covered in any Regulations.

**4. APML and RPL in its submission dated 21 September, 2021 have stated as follows:**

4.1 The directives issued by the MoP pertain to the CPSU and are not applicable to IPP. MoP directive dated 28 March, 2020 was issued under Section 107 of the Act which is applicable only on Central Commission and no such corresponding directions have been issued to this Commission under Section 108 of the Act.

4.2 Powers vested with the Commission under the said provisions of MYT Regulations, 2019 and Conduct of Business Regulations, 2004 cannot be invoked and employed to change the explicit terms of the PPAs entered under Section 63 of the Act. In case, such an approach is endorsed, it would vitiate the sanctity of a statutory contract such as the PPAs in the present case. The exercise of re-writing the terms of contract has been held to be outside the scope and powers of any Court. Reliance is placed on Hon'ble Supreme Court Judgment in *Export Credit Guarantee Corporation of India Ltd. vs. Garg Sons International*, (2014) 1 SCC 686

4.3 As per *Energy Watchdog* Judgment a dispensation / regulatory power can be exercised only when there is a gap in the guidelines or the contract (PPA). In other situations, when the guidelines/PPA cover the field, then the Commission exercises its power in conformity with the Guidelines/PPA. In the present instance, the relief sought by MSEDCL qua payment of capacity charges, rebate and LPS are components which are explicitly provided under the PPAs

4.4 In the present instance, the PPAs are governed by Section 63 of the Act and specifically provide detailed mechanism against which MSEDCL is seeking relaxation. Therefore, when there are specific provisions holding the ground, there ought not to be any deviation therefrom. Inherent powers of the Commission cannot be used to alter substantive provisions of a contract especially a statutory contract under Section 63 of the Act.

4.5 The Covid-19 pandemic cannot be claimed to be a Force Majeure event on the basis that the IPPs continued to perform their obligations under the said PPAs. A force majeure event clause generally excuses performance, only if the party cannot overcome or avoid it through reasonable and diligent efforts. Performance should be actually impossible or merely impractical. Further, despite there being a categorical provision in the PPAs for issuing a notice intimating occurrence of force majeure, no such notice has been issued

by MSEDCL. Therefore, even otherwise in the absence of a Force Majeure Notice, no relief can be claimed under the PPAs.

- 4.6 PPAs specifically provide that an amendment/alteration of the agreement is only permissible by way of a written supplementary agreement after obtaining approval of the Commission. MSEDCL cannot be allowed to file a frivolous Petition seeking a relief by overriding the mechanism prescribed under the PPAs. This approach would render the contractual provisions nugatory and would also be against the purport of Section 63 of the Act where the interference of a judicial body has been limited.
- 4.7 Section 94(1)(g) of the Act provides the Commission with same powers as vested in a civil court under the Code of Civil Procedure, 1908 with respect to 'any other matter which may be prescribed' for the purpose of any enquiry and proceedings under the Act. The said provision cannot be invoked to seek relief as sought in the present Petition.

**5. JSW in its submission dated 22 September, 2021 has stated as follows:**

- 5.1 Through the present Petition MSEDCL is seeking amendment of an approved PPA under Section 63 of EA, 2003 which cannot be permitted without consent of both the parties. None of the provisions cited in the Petition empowers the Commission to grant relief being sought by MSEDCL.
- 5.2 Rate of LPS, tariff and rebate are all matters dealt with under PPA under Section 63 of EA, 2003 and the Commission has no general regulatory jurisdiction as far as these issues are concerned.
- 5.3 MoP directives dated 15/16May,2020 are applicable to CPSU and their joint ventures and subsidiaries and are not binding on IPP.
- 5.4 Reduction in the rate of LPS is barred by *res judicata* as was being addressed by the Commission in its Order in Case No 24 of 2017 dated 28 June, 2021 referring MoP Notifications and CERC Order.
- 5.5 MSEDCL failed to demonstrate that it is making payment to JSW under liquidity infusion scheme covered under MoP communications. Further applicability of dispensation was valid up to 30 June, 2020
- 5.6 Issue of force majeure event cannot be considered in absence of material facts that MSEDCL has not served notice under Article 12.5 as required to declare force majeure event. Further JSW continued to perform their obligations under the said PPAs and there was no impediment faced by MSEDCL to off take power from March 2020 to August 2021.

**6. At the time of E- hearing dated 24 September, 2021**

- 6.1 Advocate of MSEDCL requested for postponement of hearing on account of health issues of his arguing advocate. Respondents did not object to the same.
- 6.2 Considering health issues cited by MSEDCL, the Commission adjourned the hearing.

**7. At the E-hearing held on 16 November, 2021**

- 7.1 Advocate of the MSEDCL stated that they were seeking rebate / interest free deferment / reduced rate of late payment surcharge based on Ministry of Power's advisory to the Central Generating Stations and Power Grid Company for providing rebate during the Covid-19 pandemic period.
- 7.2 In reply to Commission's query whether similar advisory has been issued by the State Government or whether MSEDCL has approached State Disaster Management Committee for such relief, MSEDCL requested 4 weeks' period for approaching the State Government on this issue and requested the Commission to keep present matter pending till then. The Commission also enquired whether MSEDCL has requested similar rebate from MSPGCL and MSETCL.
- 7.3 Advocates of Respondents stated that the present Petition is not based on any Law or provision of PPA. MoP's guidelines are for the Central Government owned Power plants and could not be applied to IPPs. They suggested that instead of keeping the present petition pending till MSEDCL approached the State Government, MSEDCL could withdraw this Petition and may file fresh Petition subsequently with all desired compliances.
- 7.4 Considering request made by MSEDCL, the Commission allowed 4 weeks' time to MSEDCL for taking appropriate action and submitting its say and serving copies to all the parties.

**8. MSEDCL vide its letter dated 9 December, 2021 in reply to the queries raised by the Commission at the time of hearing dated 16 November, 2021 has stated as follows:**

- 8.1 There are no notifications which have been issued by the Government of Maharashtra on the lines similar to the Central Government Notifications dated 15 May, 2020 and 16 May, 2020.
- 8.2 MSEDCL vide letter dated 3 December 2021 has requested Government of Maharashtra to issue necessary directions to State generating/ transmission companies to allow rebate on the fixed cost to DISCOMs in line with Central Government Notifications dated 15 May, 2020 and 16 May, 2020.
- 8.3 MSEDCL vide its letter dated 25 September, 2020 addressed to MSEB Holding Company Ltd requested to pass on rebate from Maharashtra State Power Generation

Company Ltd (MSPGCL) and Maharashtra State Electricity Transmission Company Ltd (MSETCL) in line with the Central Government Notifications dated 15 May, 2020 and 16 May, 2020. Till dated MSPGCL has not granted any rebate to MSEDCL.

**9. At the E-hearing held on 11 January, 2022**

- 9.1 Advocate of Petitioner stated that their arguing Counsel could not attend the e-hearing due to personal health issues and hence requested for two weeks adjournment in the matter. Respondents APML/ RPL/JSW did not object to such request.
- 9.2 Considering the difficulty of arguing Counsel of the Petitioner, the Commission adjourned the hearing.

**10. At the E-hearing held on 12 April, 2022**

- 10.1 Advocate of MSEDCL stated that MSEDCL has approached the State Government for guidelines or dispensation on the similar lines as that of MoP under disaster Management rules but till date MSEDCL has not received any approval. He further requested the Commission to decide the matter within the legal framework and allow MSEDCL to file fresh Petition as and when State Government approves the proposal.
- 10.2 Advocate of APML/ RPL and JSW stated that the notifications issued by MoP are for the CPSU and are not binding on the private power producers.

**Commission's Analysis and Ruling**

11. MSEDCL in the present Petition has sought directions to IPPs for passing on rebate in the fixed charges, interest free deferment of capacity charges and reduced LPS as per various MoP notifications and CERC Order dated 3 April, 2020. Further MSEDCL is seeking directions for payment of LPS at reduced rate from 24 March, 2020 to 31 March, 2021 or till situation gets normalized.
12. Respondents (APML, RPL and JSW) have objected to such request, stating that the notifications issued by MoP are for the power plants governed by the Central Government and not binding on the IPPs. The directives were issued under Section 107 of EA, 2003 and not under Section 108 of EA, 2003. Rate of LPS, tariff and rebate are all matters dealt with under PPA under Section 63 of EA, 2003. Inherent powers of the Commission cannot be invoked to change the explicit terms of the PPAs entered into under Section 63 of the EA, 2003. The Covid-19 pandemic cannot be claimed to be a Force Majeure event as IPP's continued to perform their obligations under the said PPAs and MSEDCL has failed to serve notice for such force majeure event as per provisions under PPA. Hence, they requested the Commission to dismiss this Petition.
13. The Commission notes that considering the background of COVID 19 pandemic, MoP has issued notification dated 15 May, 2020 wherein Central Generating and

Transmission Companies under MoP have been asked to provide rebate to DISCOMs during lockdown period. Relevant extract of the notification is as follows:

*“This is in light of the announcements made by Hon’ble Finance Minister on 13.05.2020 under the Atmanirbhar Bharat (आत्मनिर्भर भारत) special economic and comprehensive package including therein the liquidity infusion by PFC/REC of Rs 90000 Crore to DISCOMS against receivables and loans to be given against State Guarantees for exclusive purpose of discharging liabilities of DISCOMS to Power Generating Companies (Gencos) and also giving rebate to DISCOMS by Central Public Sector Generation Companies for passing on to the final consumers.*

*In view of the above, it has been decided that all Central Public Sector Generation Companies under Ministry of Power including their Joint Ventures and Subsidiaries and Central Public Sector Transmission Company, may consider to offer following rebate to the Distribution Companies (Discoms) for passing on to the end consumers for the lockdown period on account of Covid-19 pandemic*

- i. Deferment of capacity charges for the power not scheduled to be payable without interest after the end of lockdown period in three equal monthly installments*
- ii. Rebate of about 20-25% on power supply billed to discoms and interstate transmission charges levied by PGCIL ”*

*(Emphasis added)*

Further vide notification dated 16 May, 2020, MoP has clarified that the rebate of about 20-25% on power supply billed is to be given in the fixed cost to DISCOMs and interstate transmission charges levied by PGCIL.

14. Above notifications of MoP clearly stated that such scheme has been introduced for the DISCOMs enrolled under Atmanirbhar Bharat Scheme and rebate is to be offered by generation and transmission companies of the Central Government. Above notification does not mandate IPPs to offer any such rebate.
15. The Commission further notes that another notification was issued by MoP on 20 August, 2020 relating to rate of LPS for reducing financial stress on Discom. Relevant extract of the same is as follows

*“03 Discussions in this regard were held with the representatives of Generating Companies and Transmission Companies. It is noted that interest rates in the country has softened over the last few years while rates of LPS in many cases have not reduced. Under Liquidity infusion scheme launched as a part of AtmanirbharBharat , on advice of Ministry, PFC and REC are funding DISCOMs to pay dues of IPP, CPSU Gencos and Transco. This will have a salutary effect on*

*the financial health of beneficiaries Gencos and Transco. **In order to alleviate financial stress on Discoms, the generating companies and transmission companies are advised to charge LPS at a rate not exceeding 1% per month for all payments made under Liquidity Infusion Scheme of PFC and REC under Atmanirbhar Bharat***”.

*(Emphasis Added)*

Further vide notification dated 20 November, 2020, MoP clarified that *Generating companies and transmission companies are advised to charge LPS at a rate not exceeding 1% per month on the principal dues (excluding LPS) for all payments which are due either from the project developed under Section 62 or Section 63 of Electricity Act, 2003 made by DISCOMs under the liquidity Infusion Scheme of PFC and REC under Atmanirbhar Bharat.*

Thus, this notification is also applicable to Discom who has participated in liquidity infusion scheme under Atmanirbhar Bharat.

16. The Commission notes that MSEDCL has not submitted or revealed the details of funds received under Atmanirbhar Bharat scheme and payments made to Respondents from the funds received under this scheme. This fact has been recorded by the Commission in its Order in Case No 24 of 2017 dated 28 July, 2021. Relevant extract of the same is as follows:

*“20.12 On perusal of all the above-mentioned communications from MoP and CERC Order, it is very clear that for project under Section 63, Distribution Licensee has to claim such relief of lower LPS rate under Force Majeure provision of the PPA. Admittedly, MSEDCL has not followed such provision under the PPA while deducting amount of LPS by relying on MoP notifications. Also, as stated under MoP notification dated 20 November 2020, generators are required to offer reduced rate of LPS on payment made by Distribution Licensee through liquidity infusion scheme of PFC and REC under Atmanirbhar Bharat program. **MSEDCL in present petition has not revealed whether it is making payment to generators under that scheme or otherwise. Therefore, MSEDCL’s action of considering LPS computation at reduced rate as per MoP notifications is premature and hence cannot be allowed. MSEDCL is free to claim relief under above said MoP notifications separately by following due process of law envisaged therein.**”*

*[emphasis added]*

As MSEDCL has not availed the funds under liquidity infusion scheme, above quoted notifications of MoP which specifically has considered allowing benefit of rebate in tariff and lower rate of LPS to Discom participating in that scheme, is not applicable to MSEDCL.

17. The Commission further notes that MoP vide notification dated 28 March, 2020 directed CERC under Section 107 of EA, 2003 regarding reduction in LPS on the background of the financial stress in DISCOMs. Relevant extract of the same is as follows:

*“In view of above, using powers under section 107 of Electricity Act, 2003, following directions are issued to Central Electricity Regulatory Commission in public interest*

- i. The Commission may specify reduced rate of Late Payment Surcharge (LPS) for payments which become delayed beyond a period of 45 days (from the date of presentation of the bill) during the period from 24th March, 2020 to 30th June, 2020 to generating companies and Licensees treating the restrictions placed by the central government vide its order dated 24.03.2020 to contain COVID-19 as an event of force majeure. The reduced LPS shall be applicable for such delayed payments till 30 June, 2020. The LPS should not be more than the cost that the generating companies or transmission licensees would have to bear because of the delayed payment*
- ii. For generating companies and transmission licensees whose tariff was determined under section 63 by the Central Commission, discoms may claim relief from its obligations regarding the rate at which LPS to be paid, as per force majeure provisions given in respective power purchase agreements”*

*(Emphasis Added)*

Accordingly, CERC vide its Order in *Suo-Moto* Petition No 6/ SM/ 2020 dated 3 April, 2020 issued following directives in respect of generating companies whose tariff has been determined by CERC under section 63 of the EA, 2003:

*16. As per the directions issued under Section 107 of the Act, the generating companies whose tariff has been determined under Section 63 of the Act by this Commission, relief on the Late Payment Surcharge for payment which become delayed beyond 45 days (from the date of presentation of the bill) during the period from 24.03.2020 to 30.06.2020 may be claimed in terms of the force majeure provisions of the respective power purchase agreements (PPAs).*

Thus, as per above Order of the CERC, relief in respect of Late Payment Surcharge has to be claimed as per terms of Force Majeure provisions of the respective PPA.

18. Force Majeure provisions of PPAs under consideration in present case mandates the effected party to issue notice related to occurrence of Force Majeure. Admittedly, MSEDCL has not issued Force Majeure notice to its IPP on account of Covid-19. Hence, MSEDCL is not entitled for claiming any relief under Force Majeure. Further, during Covid-19 pandemic, IPPs were performing their obligation by providing power supply to MSEDCL and MSEDCL has used such energy to supply its consumers. Now after

utilizing such energy, one cannot take shelter of Force Majeure clause for avoiding legitimate payment dues of IPPs.

19. The Commission notes that the Respondents IPPs have executed the PPAs with MSEDCL pursuant to the competitive bidding process under Section 63 of EA, 2003. There are explicit provisions under these PPAs for the components such as payment of capacity charges, rebate and LPS. Provisions of these PPAs cannot be altered by this Commission by using inherent powers under MYT Regulations or Conduct of Business Regulations.
20. It is also important to note that while MSEDCL has prayed for rebate in tariff from IPPs, it is not able to avail such rebate from its sister concerns i.e. MSPGCL and MSETCL. Further, MSEDCL has not provided status as to whether it has approached CERC for similar relief from IPPs governed by CERC. Therefore, in the opinion of the Commission it is not fair and just to seek direction from this Commission against only respondent IPPs for providing rebate in tariff or reduced rate of LPS.
21. In view of above legal provisions, no relief can be granted to MSEDCL in the present matter.
22. Having ruled as above, the Commission notes that during the e-hearing in the matter, MSEDCL has stated that it has approached the Government of Maharashtra for issuing directions to IPPs similar to that issued by MoP for reducing financial stress of MSEDCL. Thereafter MSEDCL has further requested the Commission to grant liberty to approach afresh once such directives are issued by the GoM. In this regard, the Commission notes that such directives, if any, issued by the GoM would be fresh cause of action and MSEDCL is free to file any proceeding as per applicable law.
23. Hence the following Order.

### **ORDER**

**Case No 84 of 2021 is dismissed.**

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

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

**Sd/-  
(Sanjay Kumar)  
Chairperson**

  
**(Abhijit Deshpande)  
Secretary**

