

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 35 of 2023

Case of M/s Sun-N-Sand Hotels Ltd. seeking directions against Maharashtra State Electricity Distribution Co. Ltd. for recovery of outstanding amounts dues against Delayed Payment Charges (DPC) and interest on DPC, against invoices generated under various Wind Energy Purchase Agreements and various Orders of the Commission.

Coram

Sanjay Kumar, Chairperson
Anand M. Limaye, Member
Surendra J. Biyani, Member

M/s. Sun-N-Sand Hotels Pvt. Ltd. (SNS) : Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) : Respondent

Appearance

For the Petitioner : Mr. N.M. Kumar (Rep.)

For the Respondent : Mr. Rahul Sinha (Adv.)

ORDER

Date: 08 April 2024

1. The Petitioner, M/s Sun-N-Sand Hotels Ltd. (SNS), Juhu, Mumbai, has filed petition on 18 January 2023 under Sections 86(1)(e) and 86(1)(f) of the Electricity Act, 2003 (EA, 2003) being a Case No. 35 of 2023 against Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) seeking directions for recovery of outstanding amounts dues against Delayed Payment Charges (DPC) and interest on DPC, against invoices generated under various Wind Energy Purchase Agreements and various Orders of the Commission.

2. **Main Prayers of SNS are as follows:**

a. *To pay balance DPC for the period 1st January 2019 to 31st December 2020 amounting to Rs. 1,31,37,024 immediately.*

b. *To pay balance DPC for the period 1st January 2021 to 31st December 2021 for Rs. 16,20,213 immediately.*

c. *To pay balance DPC for the period 1st January 2022 to 31st March 2022 for Rs.55,657.*

d. *To pay interest on DPC amount to be quantified after the receipt of DPC.*

....”

Additional prayers of SNS made in its submission dated 25 January 2024:

- a. To give directives to the Respondent to pay the difference the balance DPS of Rs. 95,25,878/- (Rupees Ninety Five Lac Twenty Five Thousand Eight Hundred Eighty Eight only) as per our calculations.
- b. To pay interest on delayed DPS payment @ 1.25% p.m.

3. The petitioner, SNS, in its petition has stated as follows:

- a) The Petitioner, SNS, is a company engaged in the business of generation of electricity having established and operating 18 Wind Turbines (18 x 0.8 MW= 14.4 MW), commissioned on different dates at different locations in Maharashtra, viz, at Sangali, Satara & Nasik, having different Wind Energy Power Purchase Agreement with the MSEDCL dated 31 July 2006 (3 nos.), 11 October 2006, 20 December 2008 and 20 April 2009 for 13 years.
- b) Through this petition, SNS is seeking directions against MSEDCL for recovery of outstanding amounts dues against Delayed Payment Charges (DPC) and interest on DPC. Further, SNS seeks compliance with various Orders of the Commission. SNS had been regularly generating and sending monthly invoices for the power generated and supplied to MSEDCL as per the terms and conditions of WEPA. However, MSEDCL has failed to pay outstanding principal amounts within the agreed time and therefore, DPC was charged as per WEPA from Project.
- c) A DPC amount of Rs.1,31,37,024 is due for the period from January 2019 to December 2020. Details are as under:

Invoice Period	Capacity	Date of Receipt	Amount Due towards DPS from MSEDCL	Amount received as DPS from MSEDCL	Short DPS amount Received from MSEDCL
Jan-2019 to Dec-19	9.6MW	27-05-2021 & 12/08/22	53,53,175	32,53,718	(20,99,457)
Jan-2019 to Dec-19	4.0MW	27-05-2021	75,02,153	35,73,757	(39,28,396)
Jan-2019 to Dec-19	0.8MW	27-05-2021	13,85,857	7,07,995	(6,77,862)
			1,42,41,185	75,35,470	(67,05,715)*
Jan-20 to Dec-20	4.0MW		55,64,461	-	(55,64,461)
Jan-20 to Dec-20	0.8MW		8,66,848	-	(8,66,848)
			64,31,309		(64,31,309)*
		Total		(*6,705,715+*6,431,309)	(1,31,37,024)

- d) MSEDCL has paid outstanding principal amounts and part of DPC. A DPC amount of Rs.16,20,213 for the period from January 2021 to December 2021 is still pending as per table given below:

Invoice Period	Capacity	Date of payment Receipt	Amount Due towards DPS from MSEDCL	Amt received as DPS from MSEDCL	Short DPS amount Received from MSEDCL
Jan-21 to Dec-21	4.0MW	29-04-2022	4,36,632	4,35,374	-1,258
		08-06-2022	10,17,582	5,35,111	-4,82,471
		06-09-2022	20,75,961	13,80,572	-6,95,389
		02-11-2022	3,53,648	2,61,343	-92,305
Jan-21 to Dec-21	0.8MW	29-04-2022	97,112	96,839	-273
		08-06-2022	1,84,910	1,84,911	1
		06-09-2022	2,43,366	-	-2,43,366
		02-11-2022	1,05,152	-	-1,05,152
			45,14,363	28,94,150	(16,20,213)

- e) SNS submits and acknowledges the receipt of the principal payments for January 2022 to March 2022 and the partial DPS payment. As amount of Rs. 55,657/- is pending towards DPS for the period January-2022 to March-2022.
- f) SNS had submitted a letter to MSEDCL dated 23 December 2022 requesting the balance dues and suggested reconciliation of accounts, however there was no response from MSEDCL, hence this petition is filed.

4. MSEDCL in its reply dated 25 August 2023 has stated as follows:

- a) SNS has filed various petitions before the Commission on the issue of DPC and penal interest for the period from year 2016 to 2020. One of the recent petitions filed by SNS against MSEDCL is Case No.173 of 2020. Considering this Case No 173 of 2020 and other similar petitions, the Commission issued a Common Order dated 07 September 2021. In this order with respect to SNS, MSEDCL had submitted a comparative table. As per the said table, DPC amount claimed under EPA was Rs. 89,67,182 /- for the period of October 2018 to April 2020, out of which MSEDCL had already paid an amount of Rs.12,66,208/- on 26 April 2021 towards DPC for the period of October 2018 to December 2018. Further, the balance DPC amounting to Rs.75, 35,471/- was paid on 28 December 2021 and Interest on DPC of Rs. 6,331/- as per Wind payment Plan dated 25 June 2021.
- b) SNS has received the total Principal payment amounting to Rs.6,79,812/- for the invoice period commencing from January 2022 to March 2022 and the partial DPC payment amounting to Rs. 38,103/- for the period of January 2022 to March 2022 on 30 November 2022 and 10 January 2023.
- c) SNS is seeking payment of the DPC amount of Rs.1,48,12,894/- for generation month January 2019 to March 2022. However, DPC amounts is Rs.52,56,449.83/-

for generation month January 2019 to March 2022, MSEDCL has paid this DPC amount on 27 July 2023 to SNS.

- d) MSEDCL have calculated the DPC as per MCLR rate as per Clause 12.02 of EPA i.e. MCLR plus 2%. However, SNS has calculated the DPC at the rate of 15%. Thus, there is a huge difference between the DPC amount due to the method of calculation of DPC by SNS and MSEDCL.
- e) As per MSEDCL's calculations, the balance DPC payable was Rs.52,56,449.83/- for the period January 2019 to March ,2022. This was paid by MSEDCL on 27 July 2023. Hence there is no any outstanding liability towards DPC from MSEDCL end.

Name	Invoice Period	Calculated DPC amount as per MSEDCL	DPC paid by MSEDCL	Date of Payment of DPC	Balance DPC Calculated and Paid on 27 July 2023
Sun-N-Sand Hotels Pvt Ltd	Jan-19 to Mar-22	157,24,173.83	104,67,724	28-12-2021/30-11-2022/ 10-01-2023/29-04-2022/ 08-06-2022/6-09-2022/ 02-11-2022	52,56,449.83

- f) The delay in making payment is neither deliberate nor intentional and is solely attributable to the financial constraints of MSEDCL which have arisen due to increase in revenue gap and shortfall in collection as per ARR. MSEDCL has never willingly delayed payment of any generator.

5. SNS in its Rejoinder dated 13 December 2023 has stated as follows:

- a) The issues litigated in the present petition are for partially paid/unpaid DPS amounts and interests on delayed DPS and attached project wise, date wise and bill wise of outstanding statements in excel format. Instead of replying to these excel statements MSEDCL is providing some figures. The receipt of such payments was always acknowledged in time by email and reflected in our excel statements. SNS acknowledges the receipt of part DPS payment of Rs. 52,56,449.83/-, however its contention is that DPS should have been paid by MSEDCL along with the principal amount. MSEDCL paid the part DPS amount on 27 July 2023 and thus it is evident that MSEDCL has paid the outstanding bills after almost 18 Months but delayed another 15 months to clear the DPS that too partly without furnishing any details.
- b) In the past, whenever SNS moved a petition before the Commission seeking directives against MSEDCL to make payments, the Commission had directed both the parties to sit together first, to reconcile and arrive at an agreement and only then a directive was given. The last such reconciliation was done on 15 December 2020

for the periods up to October 2020 for the pending bills. MSEDCL and SNS signed an agreed upon the outstanding Principal and DPS payments in this statement.

- c) The Commission vide combined Order dated 02 August 2022 in Case No. 170 of 2021(M/s. Hercules Hoists Limited) and Case No. 171 of 2021 (Case of M/s. Morries Energy Limited ruled that;

“15. Further, the Commission notes that any delay in payment of principal amount under the PPA attracts LPS which is around 15% per annum.”

In SNS’s case, all the earlier MSEDCL’s delayed outstanding payments were made with an LPS payment of 15% p.a. from the date of overdue. Wherever the DPS/LPS payments were delayed an additional 1.25% was paid.

- d) SNS reiterated that a sum of Rs. 1,48,12,894 towards the pending DPS and after the receipt of all these payments SNS will raise its claims for “interest on delayed payment of the DPS”.
- e) If SNS is not compensated for the interest paid to arrange for additional funds for its working capital due to inordinate delayed payments and it would tantamount MSEDCL is gaining unduly in this process. In the eyes of Natural Justice, the DPS is to be seen as a deterrent for the purchaser and neither of the parties can take advantage at the cost of the other.

6. SNS in its additional submission dated 25 January 2024 has stated as follows:

- a) On 16 January 2024, MSEDCL submitted the working and had informed it to come for a reconciliation meeting on the 19 January 2024. The meeting was held but the reconciled statement was not signed as MSEDCL refused to sign. It is observed that both the parties agree on the basic data such as the bill submission dates, the number of days the payments were delayed etc. The only difference was that MSEDCL used various % of interest for DPS calculations whereas SNS had used a standard 15% per annum for working as per the Commissions directives in Case No. 62 of 2016.
- b) SNS is contested that there is unilateral changing of DPS interest clause no. 12.02 of the PPA by MSEDCL. The Commission had a fixed LPS rate of 1.25% which the MSEDCL fixed for the earlier orders and accepted. A PPA is a legal document binding on both parties and can only be changed mutually by both the parties. There are legal redressals available to both parties to cure and / or scrap the PPA by giving 3 months’ notice. MSEDCL should have resorted to curing or altogether scrap the PPA in the case of its inability to comply with contractual obligations.

- c) SNS sought directives against MSEDCL for payment of the difference the balance DPS of Rs. 95,25,878/- as per their calculations and further requested payment of interest on delayed DPS payment @ 1.25% p.m.
7. At the E-hearing held on 09 February 2024, SNS reiterated its claim about DPC and interest on DPC as stated in its petition and stated that it has made additional prayers and claimed the revised DPC amount of Rs. 95,25,878/- instead of initial DPC amount of Rs.1,48,12,894/-. MSEDCL denied the petitioner's claim. As per MSEDCL's calculations, the balance DPC payable was Rs. 52,56,449.83/- for the period from January 2019 to March , 2022 which was paid by MSEDCL on 27 July 2023. Therefore, MSEDCL stated that there is not any outstanding liability towards DPC from MSEDCL end.

Commission's Analysis and Ruling:

8. The Commission notes that the Petitioner, SNS, has different Wind Energy Power Purchase Agreements with the MSEDCL for 13 years. SNS has filed the present petition, seeking directions against MSEDCL for making payment of DPS and interest on DPS as per the provisions of the EPAs. Initially SNS was seeking payment of the DPC amount of Rs.1,48,12,894/- from MSEDCL for generation month January 2019 to March 2022. However, subsequently SNS vide its additional submission dated 25 January 2024 has prayed for payment of the balance DPC of Rs. 95,25,878/- and further requested payment of interest on delayed DPC payment @ 1.25% p.m. On the contrary, MSEDCL denied petitioner's claims of DPC. As per MSEDCL's calculations, the balance DPC payable was Rs.52,56,449.83/- for the period January 2019 to March 2022. This was paid by MSEDCL on 27 July 2023 and hence there is not any outstanding liability.
9. It is important to note that SNS in its additional submission dated 25 January 2024 has stated that during the reconciliation of claims amount only dispute remains between parties is the rate of interest to be made applicable for DPC. SNS is claiming 15% per annum whereas MSEDCL has computed DPC based on MCLR + 2%. Hence, the Commission needs to adjudicate on this aspect of interest for DPC in this matter.
10. The Commission notes that clause 12.02 of EPA between parties provide for the following:

“Under the EPAs, the payments are to be made by MSEDCL within 45 days from receipt of SNSHL's monthly energy bills, failing which the latter shall be entitled to charge DPC at the rate of 2% per annum above the State Bank of India (SBI)'s short term lending rates.”

Above clause of EPA requires SBI short term lending rate which has been discontinued by the SBI. On similar issue, the Commission in its Order dated 12 January 2023 in Case No.199 of 2018 and Ors. (SIL & others VS MSEDCL) ruled following on DPC interest Rate:

“18.2.5 From excel sheet computation, it is evident that dues under consideration are pertaining to project capacity of 7.2 MW located at Ahmednagar. As per WEPA stipulations, Article 12.02 provides for payment of DPC at the rate of 2% per annum above SBI short term lending rate. The relevant Article reads as below:

“Section 12.02 Payments-

The due date of payment shall be 45 days from the receipt of the Seller’s monthly energy bills by the MSEDCL and will be paid by account payee’s cheque in the name of seller or authorised representative, in whose name power of attorney is given by the seller. In case of delay in payment beyond the due date, the Seller shall be entitled to interest on such delayed payment at the rate of 2% per annum above State Bank of India short term lending rates. The MSEDCL however, shall be entitled to make adjustment in the Seller’s Invoices for any charges / costs incurred on behalf of the Seller and payable by the Seller under this Agreement. This shall be shown in the audited statement issued by MSEDCL.”

*WEPA does not define any specific benchmark rate as short term lending rate of SBI. Over the period, SBI has been using various benchmark rates such as Prime Lending Rate, Base Rate and Marginal Cost of Funds Based Lending Rate (MCLR) for deciding its short-term lending rate from time to time. Although, SBI continued to declare all such benchmark rate for reference, but while granting new loans, it is using only the recent applicable benchmark rate. As WEPA does not specify any specific benchmark rate, for deciding applicable interest rate for DPC, benchmark rate being used by SBI for deciding its short-term lending rate for relevant period needs to be considered. In the present case, DPC needs to be computed from 20 October 2017 onwards. Since 1 April 2016 onwards, SBI has been using MCLR for deciding its short-term lending rate. **Hence, the Commission has used SBI’s 1-year MCLR for relevant period to arrive at weighted average rate of interest for that period and thereafter added 2% as stipulated in PPA for arriving at rate of interest for computing DPC against each bill.** DPC is computed for the period between bill due date and date on which MSEDCL has paid principal amount. Rate of interest is worked out for each bill, which may vary from bill to bill depending upon period involved.” [Emphasis added]*

Above dispensation is righteously applicable in present case. Accordingly for computing LPS claim in respect of SNS, interest rate of SBI MCLR +2% needs to be considered.

11. In view of the above ruling on interest rate for DPC, the Commission notes that MSEDCL’s computation which has used interest rate of SBI MCLR + 2% for computation of DPC is correct. Further as stated earlier in the Order, SNS has stated that there was no other difference in computation of both parties. Therefore, the Commission notes that MSEDCL’s DPC computation is correct and as per said computation, MSEDCL has

already paid balance DPC of Rs.52,56,449.83/- to SNS on 27 July 2023. Therefore, there is no outstanding DPC liability for the period under consideration.

12. Having decided on the issue of DPC, the Commission notes that SNS in its additional submission dated 25 January 2024 has added prayer for interest on delayed payment of DPC without providing any computation for the same. MSEDCL has not filed any reply on such additional prayer. However, the Commission notes that MSEDCL in its reply dated 25 August 2023 has stated that it has paid interest of Rs 6331/- towards delayed payment of DPC. From SNS's additional submission, it is not clear whether it has factored in such payment of interest on DPC paid by MSEDCL. Further, as ruled above, there is no outstanding DPC payment to be made. In view of the above, as complete details are not available, the Commission cannot quantify the claims for interest on delayed payment of DPC. However, the Commission point out that SNS's eligibility to claim interest on delayed payment of DPC has already been recognized by the Commission in Order dated 7 September 2021 wherein SNS is one of the Petitioner. Relevant part of the Order is reproduced below:

“61. The Commission notes that MSEDCL has paid Principal amount till December 2019. However, some of the Petitioners have submitted that their dues for certain months, before December 2019, are still pending. The Commission directs MSEDCL to reconcile the due amounts with these Petitioners and clear their dues within 30 days from the date of this Order. Any delay in payment of such dues will attract the DPC and penal interest at the rate of 1.25% per month on the outstanding DPC.”

In view of the above rulings, SNS shall raise invoice on MSEDCL for applicable interest at the rate of 1.25% per month for delayed payment of DPC. MSEDCL shall verify and pay the admissible amount within the due date as per EPA. Parties are free to approach the Commission if the dispute exists on quantification of claim.

13. Hence, the following Order:


ORDER

- 1. The Petition in Case No. 35 of 2023 is partly allowed.**
- 2. The Petitioner shall raise the invoice on MSEDCL with applicable interest at the rate of 1.25% per month for delayed payment of DPC. MSEDCL shall verify and pay the admissible amount within the due date as per EPA.**

Sd/-
(Surendra J Biyani)
Member

Sd/-
(Anand M. Limaye)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Dr. Rajendra G. Ambekar)
Secretary

