

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 206 of 2023

Petition of M/s. ICC Reality India Pvt. Ltd. for refund of excess wheeling and transmission charges collected by MSEDCL for the period September 2020 till May 2023 with interest

And

Case No. 207 of 2023

Petition of EON Hinjewadi Infrastructure Pvt. Ltd. for refund of excess wheeling and transmission charges collected by MSEDCL for the period September 2020 till May 2023 with interest

And

Case No. 208 of 2023

Petition of Panchshil Infrastructure Holdings Pvt. Ltd. for refund of excess wheeling and transmission charges collected by MSEDCL for the period September 2020 till May 2023 with interest

And

Case No. 211 of 2023

Petition of Panchshil Corporate Park Pvt. Ltd. seeking refund of excess wheeling and transmission charges collected by MSEDCL for the period September 2020 till May 2023 with interest

M/s. ICC Reality India Pvt. Ltd.....Petitioner in Case No. 206 of 2023

EON Hinjewadi Infrastructure Pvt. Ltd.....Petitioner in Case No. 207 of 2023

Panchshil Infrastructure Holdings Pvt. Ltd.....Petitioner in Case No. 208 of 2023

Panchshil Corporate Park Pvt Ltd.....Petitioner in Case No. 211 of 2023

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) ...Respondent in all four Cases

Coram

Sanjay Kumar, Chairperson

Anand M. Limaye, Member

Surendra J. Biyani, Member

Appearance:

For all the four Petitioners

: Shri Avijeet Lala (Adv.)

For MSEDCL

: Shri Kiran Gandhi (Adv.)

COMMON ORDER

Dated 18 June 2024

1. M/s. ICC Reality India Pvt. Ltd. (**the Petitioner**) has filed this Petition on 30 October 2023, being Case No. 206 of 2023, seeking refund of excess wheeling and transmission charges levied and collected by Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**) for the period September 2020 till May 2023 along with interest.
2. On the same issue, three other Open Access consumers viz. EON Hinjewadi Infrastructure Pvt. Ltd., Panchshil Infrastructure Holdings Pvt. Ltd. and Panchshil Corporate Park Pvt. Ltd. have filed their Petitions in Case No. 207 of 2023, Case No. 208 of 2023 and Case No. 211 of 2023 respectively seeking similar relief for the same period. The Petitions in Case No. 207 of 2023 and Case No. 208 of 2023 have been filed on 30 October 2023 and Case No. 211 of 2023 has been filed on 1 November 2023.
3. **Prayers of the Petitioner in Case No. 206 of 2023 are as follows:**
 - i. *initiate necessary action against the Respondent under Section 142 of the Electricity Act, 2003 by holding and directing the Respondent / MSEDCL to strictly abide by Regulation 14.6 of the MERC (Distribution Open Access) Regulations 2016 and the Practice Directions dated 08.03.2017 for computing and levying wheeling and transmission charges on open access consumers;*
 - ii. *direct the Respondent to refund the excess Wheeling Charges of Rs. 20,55,577/- (Rupees Twenty Lakh Fifty Five Thousand Five Hundred Seventy Seven Only) that it*

has collected from the Petitioner during the period September 2020 up to May 2023, with interest, within one (1) month;

- iii. *direct the Respondent to refund the excess Transmission Charges of Rs.22,62,863/- (Rupees Twenty Two Lakh Sixty Two Thousand Eight Hundred Sixty Three Only) that it has collected from the Petitioner during the period September 2020 up to May 2023, with interest, within one (1) month;*

4. Prayers of the Petitioner in Case No. 207 of 2023 are as follows:

- i. *initiate necessary action against the Respondent under Section 142 of the Electricity Act, 2003 by holding and directing the Respondent / MSEDCL to strictly abide by Regulation 14.6 of the MERC (Distribution Open Access) Regulations 2016 and the Practice Directions dated 08.03.2017 for computing and levying wheeling and transmission charges on open access consumers;*
- ii. *direct the Respondent to refund the excess Wheeling Charges of Rs. 10,92,152 (Rupees Ten Lakh Ninety Two Thousand One Hundred Fifty Two Only) that it has collected from the Petitioner during the period September 2020 up to May 2023, with interest, within one (1) month;*
- iii. *direct the Respondent to refund the excess Transmission Charges of Rs. 12,41,044/- (Rupees Twelve Lakh Forty One Thousand Forty Four Only) that it has collected from the Petitioner during the period September 2020 up to May 2023, with interest, within one (1) month;*

5. Prayers of the Petitioner in Case No. 208 of 2023 are as follows:

- i. *initiate necessary action against the Respondent under Section 142 of the Electricity Act, 2003 by holding and directing the Respondent / MSEDCL to strictly abide by Regulation 14.6 of the MERC (Distribution Open Access) Regulations 2016 and the Practice Directions dated 08.03.2017 for computing and levying wheeling and transmission charges on open access consumers;*
- ii. *direct the Respondent to refund the excess Wheeling Charges of Rs. 5,61,998/- (Rupees Five Lakh Sixty One Thousand Nine Hundred Ninety Eight Only) that it has collected from the Petitioner during the period September 2020 up to May 2023, with interest, within one (1) month;*
- iii. *direct the Respondent to refund the excess Transmission Charges of Rs. 4,20,190/- (Rupees Four Lakh Twenty Thousand One Hundred Ninety Only) that it has collected from the Petitioner during the period September 2020 up to May 2023, with interest, within one (1) month;*

6. Prayers of the Petitioner in Case No. 211 of 2023 are as follows:

- i. *initiate necessary action against the Respondent under Section 142 of the Electricity Act, 2003 by holding and directing the Respondent / MSEDCL to strictly abide by Regulation 14.6 of the MERC (Distribution Open Access) Regulations 2016 and the*

Practice Directions dated 08.03.2017 for computing and levying wheeling and transmission charges on open access consumers;

- ii. *direct the Respondent to refund the excess Wheeling Charges of Rs.9,36,278/- (Rupees Nine Lakh Thirty Six Thousand Two Hundred Seventy Eight Only) that it has collected from the Petitioner during the period September 2020 up to May 2023, with interest, within one (1) month;*
 - iii. *direct the Respondent to refund the excess Transmission Charges of Rs. 6,49,397/- (Rupees Six Lakh Forty Nine Thousand Three Hundred Ninety Seven Only) that it has collected from the Petitioner during the period September 2020 up to May 2023, with interest, within one (1) month;*
7. All these Petitions have been filed under Section 142, Section 42 and Section 86 (1)(f) of the Electricity Act 2003 (**EA**) read along with Regulations 14.6 and 14.1 (v) of the MERC (Distribution Open Access) Regulations 2016 (**DOA Regulations**) and the Practice Directions dated 8 March 2017 issued thereunder (**Practice Directions**). All these Petitions are identical in nature with identical prayers, identical grounds, and identical submissions, the only difference being in the refund amounts claimed by the Petitioners. Also, all these cases were heard together during the E-Hearing held on 22 March 2024 with the consent of the Parties. Accordingly, all these Cases are being dealt with by the Commission in a combined manner and these Cases are being disposed through a common Order.
8. **The Petitioner, in its Petition in Case No. 206 of 2023, has stated that:**
- 8.1 The Petitioner is an electricity consumer of MSEDCL and in order to meet its day-to-day power requirements, the Petitioner, in addition to taking supply from MSEDCL, has availed power through Open Access (**OA**) during the subject period i.e. between September 2020 and May 2023 from captive as well as non-captive Renewable Energy sources.
 - 8.2 MSEDCL has issued monthly bills to the Petitioner for the period from September 2020 to May 2023 and in those bills, credit has been given in respect of the energy supplied via OA. However, MSEDCL has levied and recovered the wheeling and transmission charges from the Petitioner based on actual gross injection whereas as per the Regulation 14.6 of the DOA Regulations and the Practice Directions issued by the Commission, the wheeling and transmission charges should be levied based on adjusted units, i.e., on the actual energy drawn at the consumption end and not on the entire generation.
 - 8.3 The relevant extract of Regulation 14.6 of the DOA Regulations, 2016 is reproduced below:
“14.6 Wheeling Charges:
 - a) *An Open Access Consumer, Generating Station or Licensee, as the case may be, using a Distribution System shall pay to the Distribution Licensee such Wheeling Charges, on the basis of actual energy drawal at consumption end, as may be determined under the Regulations of the Commission governing Multi-Year Tariff.*
...”
 - 8.4 The relevant extract of the Practice Directions is reproduced below:

“1. A STOA Consumer, Generating Station or Licensee using a Distribution System shall pay Wheeling Charges or Transmission Charges, as the case may be, on the basis of the actual energy drawal at the consumption end on Rs/kWh basis. The Distribution Licensee shall refund any amounts recovered in excess of these stipulations within a month, with applicable interest, without requiring such refund to be applied for.”

- 8.5 Therefore, it is the case of the Petitioner that MSEDCL has levied and recovered the wheeling and transmission charges in a manner which is at variance with the methodology prescribed under Regulation 14.6 of the DOA Regulations, 2016 and the Practice Directions issued thereunder.
- 8.6 Being aggrieved by the wrongful manner of computing wheeling and transmission charges on the OA consumption, the Petitioner, on 26 September 2023, wrote to MSEDCL highlighting its objections and requesting MSEDCL to refund the excess amount levied towards wheeling and transmission charges. However, MSEDCL has neither responded to the Petitioner’s above representation nor has it taken any steps to refund the excess wheeling and transmission charges collected from the Petitioner.
- 8.7 For the subject period of September 2020 till May 2023, MSEDCL has collected a total sum of Rs. 22,62,863/- (Rupees Twenty-Two Lakh Sixty Two Thousand Eight Hundred Sixty Three Only) towards excess transmission charges and Rs.20,55,577/- (Rupees Twenty Lakh Fifty Five Thousand Five Hundred Seventy Seven Only) towards excess wheeling charges.
- 8.8 The issue raised in the present Petition is no longer *res integra*. The Commission had the occasion to consider and adjudicate upon this very same issue in Case No. 206 of 2017 *Sridevi Trading Company Pvt. Ltd. V. MSEDCL* vide its Order dated 20 January 2023. The facts of the present Case are similar to those in Case No. 206 of 2017. The relevant extracts of the Order dated 20 January 2023 are set out here below:

“

14. *The Hon’ble ATE Order dated 6 October 2022 in Appeal No. 20 of 2019 has observed that the wheeling charge cannot be levied beyond what is calculated as the actual energy drawal at the consumption end for which computation will necessarily have to take into account wheeling losses. Therefore, the Commission is of the view that the Petitioner is entitled to refund of wheeling charges levied by MSEDCL bills in terms of the aforesaid Hon’ble ATE Order.*
15. *In view of the above, the Commission directs MSEDCL to refund wheeling charges recovered from the Petitioner in terms of the Hon’ble ATE Order dated 6 October 2022 in Appeal No. 20 of 2019.*
16. *Further, the Commission notes that the Petitioner has raised the issue of refunding wheeling charges levied along with applicable interest as per DOA Regulations 2016. In this context, the Commission notes that:*
- a. *The 2nd proviso to Regulation 4.5 of the DOA Regulations, 2016 provide that the Distribution Licensee shall pay interest at a rate equivalent to the Bank Rate of the Reserve Bank of India.*

- b. *Further, based on the provisions of the DOA Regulations, 2016, the Commission, in the similar matter vide its Order dated 11 March 2022 in Case No. 131 of 2021 (Ghodawat energy Vs MSEDCL) has addressed the issue of interest and directed MSEDCL to pay the applicable interest to the Petitioner therein. The relevant rulings of the Commission's Order are as follows:*

“63. Further, DOA Regulations 2014 (3rd proviso to Regulation 4.2.6) and DOA Regulations 2016 (2nd Provision to Regulation 4.5) have similar provisions for payment of interest amount. The Commission, in the past vide its Order dated 22 December 2017 in Case No 76 of 2016 (BFL Vs MSEDCL) has allowed the payment towards surplus over-injected units with applicable interest. The relevant para of the Commission's Order is as under:

“9.

6)In view of the above, the Commission directs MSEDCL to pay BFL for the surplus energy injected in FY 2015-16, along with applicable interest, within 60 days if it has not already done so.

64. It is settled position of the law that payment of dues that accrued without any fault of the party, need to be effected with the applicable interest. Further, the Commission's applicable DOA Regulations and the aforesaid Order provided for the payment with the applicable interest. In view of the above background MSEDCL is liable for payment of claim of the Petitioners, as ruled in this Order, with applicable interest. Hence, the Commission directs MSEDCL for payment towards the purchase of the surplus over injected Units for the period FY 2016-17 to FY 2019-20 along with applicable rate of interest, within three months from the date of this Order.”

17. *The above ruling is squarely applicable to the present case.*
18. *In view of the foregoing discussion and the Hon'ble ATE's Order, the Commission directs MSEDCL to refund wheeling charges recovered from the Petitioner with interest within one month from the date of this Order.”*

8.9 The above ruling is applicable to the present case as well. Further, the Order dated 20 January 2023 pertains to the interpretation and application of Regulation 14.6 of the DOA Regulations. It is therefore an Order *in rem* and as such, MSEDCL is legally required to extend the benefit of the said Order to all similarly placed OA consumers/generating companies.

8.10 By failing to act in accordance with the directions of the Commission given in the Order dated 20 March 2023 in respect of all similarly placed OA consumers/generating companies, MSEDCL has fallen foul of Section 142 of the EA. In view of the above, the Commission needs to direct MSEDCL to act strictly in accordance with its directions contained in the

Order dated 20 March 2023 with respect to all OA consumers/generating, and to refund the excess wheeling and transmission charges recovered from them, including to the Petitioner herein in the energy bills along with interest.

8.11 The present Petition has been filed within the limitation period.

9. The rest of the Petitioners have made identical submissions in their respective Petitions which are not being repeated here for the sake of brevity. Only the amount claimed by the Petitioners for refund of transmission charges and wheeling charges differ for these Petitioners which have been tabulated below:

Case No.	Petitioner	Transmission charges (Rs.)	Wheeling charges (Rs.)
207 of 2023	EON Hinjewadi Infrastructure Pvt. Ltd.	12,41,044	10,92,152
208 of 2023	Panchshil Infrastructure Holdings	4,20,190	5,61,998
211 of 2023	Panchshil Corporate Park Pvt Ltd.	6,94,397	9,36,278

10. **MSEDCL, vide its reply dated 22 March 2024 to the Case No. 206 of 2023, stated that:**

10.1 As per Regulation 14.5 of the DOA Regulations, the transmission charges collected from the OA consumers are required to pay the Transmission Licensee/State Load Dispatch Centre (SLDC).

10.2 MSEDCL has already remitted transmission charges for FY 2017-18 and FY 2018-19 to MSETCL/State Transmission Utility (STU) as per the Commission's Order dated 13 March 2020 passed in Case No. 322 of 2019. Further, the transmission charges levied and collected for the period from September 2020 to March 2022 are also being remitted to MSETCL/STU. Thus, the transmission charges recovered from the Petitioner by MSEDCL have been paid to the Transmission Licensee/SLDC.

10.3 Therefore, the Transmission Licensee/SLDC are necessary party to the present proceeding. The Petition should be dismissed on the sole ground of non-joinder of Transmission Licensee/SLDC as party Respondents in the Petition.

10.4 The present Petition is barred by limitation. The Petitioner is relying upon the Order dated 20 January 2023 passed by the Commission and has filed the present Petition for its claim for the period from September 2020 to May 2023. Thus, the Petitioner waited till the outcome of the Order dated 20 January 2023 and after a long delay from the cause of action, has filed its claim. The Petitioner is a fence sitter and the claim is barred by delay and laches.

10.5 The Order dated 20 January 2023 passed in Case No. 206 of 2017 relied upon by the Petitioner is not applicable in the present case as Case No. 206 of 2017 had been filed in the year 2017 i.e. after applicability of DOA Regulation 2016 and thereafter lots of water has flowed under the bridge.

10.6 Pursuant to the Order dated 20 January 2023 passed in Case No. 206 of 2017, MSEDCL implemented the process of levy of wheeling and transmission charges only on the units adjusted under Open Access from June 2023.

10.7 The relevant Regulations of the DOA Regulations are reproduced below:

“14.1 The bill for use of the Distribution System for wheeling of electricity in its network shall be raised by the Distribution Licensee on the entity to whom the Open Access is granted, and shall indicate the following:

(i) Wheeling Charges;

.....

(v) Transmission Charges:

Provided that a Partial Open Access Consumer, Generating Station or Licensee, as the case may be, shall pay the Transmission Charges to the Distribution Licensee instead of the Transmission Licensee for using a transmission network;

14.5 The Distribution Licensee shall pay the Transmission Licensee, MSLDC and any other entity all the charges collected on their behalf from the Open Access Consumer, Generating Station or Licensee within seven days:

14.6. Wheeling Charge

a. An Open Access Consumer, Generating Station or Licensee, as the case may be, using a Distribution System shall pay to the Distribution Licensee such Wheeling Charges, on the basis of actual energy drawal at the consumption end, as may be determined under the Regulations of the Commission governing Multi-Year Tariff;

.....

18.1.2. Intra-State transmission losses:

The buyer of electricity shall bear the approved Intra-State transmission losses as may be determined by the Commission from time to time:

Provided that the energy settlement shall be based on the normative loss in the Intra-State Transmission System.

18.2. Distribution System losses:

The buyer of electricity shall bear the approved wheeling losses of the Distribution System and not any part of the commercial losses as may be determined by the Commission from time to time. ”

10.8 The liability to pay wheeling charges and transmission charges arises when the distribution system and associated facilities of a Transmission Licensee and Distribution Licensees are used by the Petitioner for conveyance of electricity. Depending upon the system used as per

the prevalent practice under the Regulation, MSEDCL levied the charges accordingly and the same are paid by the end user including the Petitioner.

- 10.9 Prior to the issuance of the Commission's Order dated 20 January 2023 clarifying the methodology for levy of transmission and wheeling charges, these charges were being recovered from the Petitioner as per the provisions of the DOA Regulations, 2016 and as per the amended by MERC (Distribution Open Access) (First Amendment) Regulations, 2019.
- 10.10 MSEDCL's earlier methodology was also accepted by the Commission till the issuance of Judgement dated 6 October 2022 passed by the Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal No. 20 of 2019 wherein the Hon'ble ATE observed that the wheeling charges cannot be levied beyond what is calculated as the actual energy drawal at the consumption and for which computation will necessarily have to take into account wheeling losses. The said methodology for the calculation of losses was accepted by the Commission in its Order dated 20 January 2023. Thus, the MSEDCL recovered the losses from the Petitioner before 20 January 2023 as per the accepted methodology and has not deviated from any provision of the Act and Regulations framed thereunder.
- 10.11 The Order dated 20 January 2023 is a subsequent Order which amended the methodology for recovery of the losses and therefore can be applied prospectively and not retrospectively as claimed by the Petitioner.
- 10.12 It is settled law that clarification must not have the effect of saddling any party with an unanticipated burden or withdrawing from any party an anticipated benefit. Therefore, permitting retrospective application of the methodology prescribed in the Order dated 20 January 2023 would result in the refund of the amount which is taken into account while determining Tariff of MSEDCL and also the amounts which have already been transferred to SLDC as per the prevalent procedure.
- 10.13 The Order dated 20 January 2023 was not merely clarificatory but was a substantial amendment in the methodology and therefore such clarification/amendment cannot be given retrospective effect.
- 10.14 MSEDCL would like to place on record that in its Order dated 28 August 2013 passed in Case No.117 of 2012, the Commission inter alia held that:

“128. The Commission has analyzed the data provided by the Petitioner for consumption. The Commission has considered the submission of the Petitioner regarding grossing up the consumption at the consumer end for applicable transmission and distribution losses. Further, as explained above for the purpose of estimating the consumption of energy by Captive Users from the Generating Power Plant, the Commission has grossed up the monthly consumption by Captive Users by the monthly weighted average auxiliary consumption of both Units. The summary of the consumption by the Captive Users during FY 2012-13 in the Gross Generation of Unit 3 & 4 is shown in the Table and the same has been considered for verification purposes as discussed in later paragraphs of this Order..”

Consumption of the Captive Users

Captive Users	Consumption at Consumer end	At Generation Ex Bus after grossing up applicable Transmission & Distribution Losses	For Gross Generation after grossing up applicable Auxiliary Energy Consumption
	a	$b=a/(1-T_x)/(1-D_t)$	$c=b/(1-Aux)$
	MU	MU	MU
Viraj Profiles Ltd.	264.96	285.44	315.49
Bebitz flanges Works Private Ltd.	7.59	8.44	9.33
Mahindra & Mahindra Ltd.	32.22	34.11	37.70
Mahindra Vehicles Manufacturers Ltd.	32.90	34.42	38.03
Mahindra Forgings Ltd.	26.42	27.64	30.56
Mahindra Hinoday Industries Ltd.	40.98	42.86	47.32
Mahindra Ugine Steel Company Ltd.	107.86	112.81	124.62
RL Steels & Energy Ltd.	56.79	59.64	65.89
Facor steels Ltd.	14.19	14.87	16.48
India Steel Works Ltd.	27.78	29.05	32.11
Sona Alloys Private Ltd.	24.98	26.10	28.86
Mahalakshmi TMT Private Ltd.	13.81	14.42	15.91
Graphite India Ltd.	0.00	0.00	0.00

10.15 The said Order dated 28 August 2013 was also recently followed by the Commission in its Order dated 16 March 2022 passed in Case No.175 of 2017 and 170 of 2018. The Commission has included losses in the energy consumption of the captive OA users. Thus, the consumption of energy by the OA Consumer is the energy transmitted through the grid from the generator to the consumer end. Considering the same methodology, MSEDCL submits that both the intra-state transmission losses and the approved wheeling losses of the Distribution System, are leviable and recoverable from OA consumers under Regulation 18 of DOA Regulations as amended by MERC (DOA) (First Amendment) Regulations, 2019.

10.16 In view of the above, the Petitioner is not entitled to any refund of the amount as prayed for and the Commission is requested to decide the claim of the Petitioner in light of the submissions made by MSEDCL in this Affidavit.

11. Identical replies have been filed by MSEDCL for the rest of the three Petitions and for the sake of brevity, the same is not repeated here.

12. At the E-Hearing held through video conferencing on 22 March 2024:

12.1. All the Four cases were heard together.

12.2. The Advocate appearing on behalf of the Petitioners reiterated its submissions as made out in these Petitions and further stated that:

- i. The Hon'ble ATE, vide its Judgement dated 6 October 2022 in Appeal No. 20 of 2019, has interpreted Regulation 14.6 of the DOA Regulations and held that the wheeling and transmission charges from an OA consumer have to be recovered based on actual energy drawl at the consumption end.
- ii. It is a settled legal principle that the interpretation of a provision of law relates back

to the date of the law itself and that it cannot be prospective from the date of the Judgment.

12.3. The Advocate appearing on behalf of MSEDCL reiterated its submission as made out in its reply to these Petitions and further stated that:

- i. Vide its Order dated 28 January 2023, the Commission clarified the methodology for levy of wheeling charges in the remand back matter and this Order cannot be applied retrospectively and its application would have to be on a prospective basis only.
- ii. The wrong methodology was applied in the year 2016 and the Petitioner has approached the Commission in the year 2023 seeking relief for the period September 2020 till May 2023. Thus, the Petitioner's claim is barred by delay and laches.

12.4. The Commission directed that the Parties may file their respective written submissions within seven days.

13. **On 28 March 2024, the Petitioners filed its common written submissions in all the four cases stating that:**

13.1 The case of the Petitioners is premised on the interpretation of Regulation 14.6 of the DOA Regulations rendered by Hon'ble ATE in its Judgement dated 6 October 2022 in Appeal No. 20 of 2019. Vide this Judgement, the Hon'ble ATE held that the wheeling and transmission charges from an OA customer have to be recovered based on actual energy drawl at the consumption end and not based on actual gross injection of energy. This Judgment of the Hon'ble ATE interpreting and laying down the correct methodology as envisaged in Regulation 14.6 of the DOA Regulations has admittedly been accepted by MSEDCL and therefore, attained finality.

13.2 Pursuant to the above decision of the Hon'ble ATE, the Commission, in its Order dated 20 January 2023 in Case No. 206 of 2017, has passed consequential Order holding that as per Regulation 14.6 of the DOA Regulations, wheeling charges cannot be levied beyond what is calculated as the actual energy drawl at the consumption end, which computation will necessarily have to take into account wheeling losses as well. Hence, the Commission directed MSEDCL to refund the excess wheeling charges collected from OA consumers with interest.

13.3 The Petitioners have restricted their claims to a period of three years prior to the date of filing of the Petitions, instead of claiming refund from the date of notification of Regulation 14.6 of the DOA Regulations i.e. 30 March 2016.

13.4 On the issue of the applicability of the Judgement dated 6 October 2022 passed by the Hon'ble ATE, it is a settled legal principle that the interpretation of a provision of law relates back to the date of the law itself and that it cannot be prospective from the date of the Judgment. This is because the Court does not legislate but only gives an interpretation to an existing law. In the following Judgments, the aforesaid legal position has been expressly explained:

(a) **Lily Thomas v. Union of India, (2000) 6 SCC 224:**

“59. We are not impressed by the arguments to accept the contention that the law declared in *Sarla Mudgal case* cannot be applied to persons who have solemnised marriages in violation of the mandate of law prior to the date of judgment. This Court had not laid down any new law but only interpreted the existing law which was in force. It is a settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the court does not legislate but only gives an interpretation to an existing law. We do not agree with the arguments that the second marriage by a convert male Muslim has been made an offence only by judicial pronouncement. The judgment has only interpreted the existing law after taking into consideration various aspects argued at length before the Bench which pronounced the judgment. The review petition alleging violation of Article 20(1) of the Constitution is without any substance and is liable to be dismissed on this ground alone.” (Emphasis added)

(b) Sarwan Kumar v. Madan Lal Aggarwal, (2003) 4 SCC 147:

“20. This Court in *Gian Devi Anand case* [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] did not lay down any new law but only interpreted the existing law which was in force. As was observed by this Court in *Lily Thomas case* [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] the interpretation of a provision relates back to the date of the law itself and cannot be prospective of the judgment. When the court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood right from the beginning as per its decision. The interpretation given by this Court declaring that the commercial tenancies heritable would be the law as it stood from the beginning as per the interpretation put by this Court. It would be deemed that the law was never otherwise.”

(c) Employees’ State Insurance Corporation v. Birla Jute & Industries Ltd., 2008 SCC OnLine Cal 342:

24. In this context, it is to be kept in mind that retrospectivity or prospectivity differs in the field of legislation and the judgment of a Court interpreting the said legislation. In the case of legislation of an Act, in general rule however Statute is due to be prospective unless by express or necessary implication it is to have retrospective effect and it depends on its interpretation having regard to well settled rule of construction. In the case of an enactment of Act, retrospection is not to be presumed. A new law should ordinarily effect future transactions and not past ones. While a judgment of the Court interpreting an Act is always retrospective from the date of enactment of such Act and it should not be treated as prospective from the date of passing of such a judgment by a Court. However, a judgment can be treated as a prospective judgment, if the Court passing such judgment has clearly directs that the decision of the said judgment should be prospective as in the case of prospective overruling. The mere principle that the Court does not legislate but only gives an interpretation to an existing law, is to be kept in mind while following the said judgment of acting upon such interpretation of the existing law.”

13.5 In view of the above, the benefit of law as settled by the Hon’ble ATE vide its Judgement

dated 6 October 2022 about the interpretation and application of Regulation 14.6 of the DOA Regulations, shall take effect from the date of notification of the Regulation i.e. 30 March 2016, and this benefit shall accrue to all those OA consumers who have been made to pay excess wheeling and transmission charges by MSEDCL due to erroneous interpretation of the said Regulation 14.6. The claims for refund of excess wheeling and transmission charges are of course subject to the law of limitation for bringing the claims for such refund.

- 13.6 MSEDCL, admittedly, has been applying the wrong methodology under Regulation 14.6 for wheeling and transmission charges up till June 2023, i.e., even after the declaration of correct legal position by the Hon'ble ATE on 6 October 2022 and passing of the consequential Order by the Commission on 20 January 2023. Such a conduct of a public utility cannot be countenanced in law. Furthermore, and even otherwise, calculating and levying of wheeling and transmission charges by applying wrong methodology affords a continuous cause of action to the affected OA consumers such as the Petitioners herein, because every invoice for wheeling and transmission charges issued by MSEDCL based on an erroneous application of Regulation 14.6 gives rise to a fresh cause of action. Hence, the Petitioners cannot be faulted for being a fence sitter or guilty of delay and latches as long as their claim is made within the statutorily permitted time period, which is three years from the date of cause of action.
- 13.7 Further, under the DOA Regulations, the transmission charges from an OA consumer are collected by the Distribution Licensee which is subsequently passed on to the Transmission Licensee later.
- 13.8 There is no privity between an OA consumer and a Transmission Licensee as the transmission charges are calculated, levied, and collected by the Distribution Licensee from an OA consumer for and on behalf of the Transmission Licensee and then it is inter-se settled between the Distribution Licensee and Transmission Licensee / STU in the manner as provided under Regulation 14.5 of the DOA Regulations.
- 13.9 Therefore, it is no defense for MSEDCL to claim that the transmission charges collected by it from the Petitioners have been remitted to MSETCL/STU, so it is also a necessary party to the present Petition.
- 13.10 As a matter of fact, by MSEDCL's own admission, the transmission charges for the subject period from September 2020 to May 2023 have still not been remitted to MSETCL/ STU. Even otherwise, the underlying issue in the present Petitions is with respect to erroneous calculation of charges, which was admittedly done by MSEDCL. Therefore, MSEDCL cannot absolve itself from the consequences of such wrongful calculation that would result in refund of the excess amount so recovered, by taking a technical plea that the amount has already been remitted (which it has not in the case of the Petitioners as yet) and can now only be recovered by making the MSETCL/ STU as a necessary party.
- 13.11 It is the principal obligation of MSEDCL to refund the same if it has collected charges over and above than what is authorized under law. It is always open to MSEDCL to reconcile and settle the same with the MSETCL / STU in the manner as prescribed under Regulation

14.5 of the DOA Regulations.

- 13.12 The Commission's Orders dated 28 August 2013 passed in Case No. 117 of 2012 and Order dated 16 March 2022 passed in Case Nos. 175 of 2017 and 170 of 2018 relied upon by MSEDCL have no bearing to the issue at hand. These Orders relate to the declaration of captive status and do not concern itself with application of Regulation 14.6 of the DOA Regulations.
- 13.13 In view of the foregoing submissions, the Petitioners are entitled to the refund of excess wheeling and transmission charges collected by MSEDCL for the period from September 2020 to May 2023 with interest within one month from the date of Order, as provided under Para 1 of the Practice Directions dated 8 March 2017 issued under the DOA Regulations.

Commission's Analysis and Ruling

14. The key issue raised in the present Petitions is about the refund, along with interest, of the excess wheeling and transmission charges levied and recovered by MSEDCL from the Petitioners for the period September 2020 till May 2023 under Open Access billing.
15. In support of its Petitions, the Petitioners have stated that:
- i.* The recovery of wheeling and transmission charges by MSEDCL is in contravention of Regulation 14.6 of the DOA Regulations and the Practice Directions issued by the Commission.
 - ii.* Vide its Order dated 20 January 2023 in Case No. 206 of 2017, the Commission has already adjudicated this very same issue and since the facts of the present cases are similar to that Case, the Petitioners are entitled to get the refund of the wheeling charges.
 - iii.* The Hon'ble ATE, vide its Judgement dated 6 October 2022 in Appeal No. 20 of 2019, has interpreted Regulation 14.6 of the DOA Regulations and held that the wheeling and transmission charges from an OA consumer have to be recovered based on actual energy drawl at the consumption end.
 - iv.* The interpretation of a provision of law relates back to the date of the law itself and it cannot be prospective from the date of the Judgment. Hence, the Petitioners should get relief from the date of the issuance of the DOA Regulations itself in 2016, however, the Petitioners have restricted their claims for refund of wheeling and transmission charges for the previous three years only, as permissible under the law of limitation.
 - v.* It is MSEDCL who has incorrectly levied the transmission charges and it would be a matter of inter-se settlement between MSEDCL and Transmission Licensee/STU. Hence, MSEDCL cannot take a defense that the transmission charges recovered by it, have already been paid to STU and therefore STU/Transmission Licensee are the necessary Parties in the present proceedings.
 - vi.* The Commission's Orders dated 28 August 2013 passed in Case No. 117 of 2012 and 16 March 2022 passed in Case Nos. 175 of 2017 and 170 of 2018 relied upon by MSEDCL, have no bearing on the issue at hand.

16. Per contra, MSEDCL has stated that:
- i. Transmission Licensee/SLDC are necessary parties to the present proceeding as the transmission charges recovered by MSEDCL from the partial OA consumers are paid/being paid to the transmission licensees/SLDC. The Petitions should be dismissed on the sole ground of non-joinder of necessary Parties.
 - ii. MSEDCL recovered the losses from the Petitioner before 20 January 2023 as per the then accepted methodology, however, pursuant to the Order dated 20 January 2023 passed in Case No. 206 of 2017, MSEDCL, from June 2023 onwards, has implemented the process of levy of wheeling and transmission charges only on the units adjusted under OA.
 - iii. The Order dated 20 January 2023 is a subsequent Order and amended the methodology for recovery of the losses and therefore can be applied prospectively and not retrospectively as claimed by the Petitioners.
 - iv. Both the intra-state transmission losses and the approved wheeling losses of the Distribution System, are leviable and recoverable from OA consumers under Regulation 18 of DOA Regulations as amended by MERC (DOA) (First Amendment) Regulations, 2019.
 - v. Vide its Order dated 28 August 2013 passed in Case No. 117 of 2012, the Commission has included losses in the energy consumption of the captive OA users. The said Order dated 28 August 2013 was also recently followed by the Commission in its Order dated 16 March 2022 passed in Case No.175 of 2017 and 170 of 2018.
17. The Commission notes that the Petitioners' grievance is regarding contravention of Regulation 14.6 of the DOA Regulations and Practice Directions dated 8 March 2017 issued by the Commission. It is therefore imperative to examine the relevant provisions cited by the Petitioners.
18. Regulation 14.6 of the DOA Regulations reads as under:
- "14.6 Wheeling Charges:*
- b) An Open Access Consumer, Generating Station or Licensee, as the case may be, using a Distribution System shall pay to the Distribution Licensee such Wheeling Charges, on the basis of actual energy drawal at consumption end, as may be determined under the Regulations of the Commission governing Multi-Year Tariff.
..."
19. The relevant extract of the practice Directions reads as under:
- "1. A STOA Consumer, Generating Station or Licensee using a Distribution System shall pay Wheeling Charges or Transmission Charges, as the case may be, on the basis of the actual energy drawal at the consumption end on Rs/kWh basis. The Distribution Licensee shall refund any amounts recovered in excess of these stipulations within a month, with applicable interest, without requiring such refund to be applied for."*
20. The Petitioners are also seeking parity with the dispensation/direction issued by the

Commission vide its Order dated 20 January 2023 in Case No. 206 of 2017. Hence, it is important to examine the proceedings of Case No. 206 of 2017 and the directions issued thereunder.

21. The Commission notes that Sridevi Trading Company Pvt. Ltd. had filed a Petition in Case No. 206 of 2017 seeking directions to MSEDCL for the refund of the wrongly recovered excess wheeling charges.
22. The Commission, vide its Order dated 20 July 2018 in Case No. 206 of 2017, held that it did not find any infirmity in the methodology followed by MSEDCL for the levy of wheeling charges, and therefore, the Commission did not think it appropriate to accept the prayer of Sridevi Trading. The Commission further noted that Regulation 14.6 of the DOA Regulations, 2016 stipulated that wheeling charges shall be levied based on actual energy drawal at consumption end and MSEDCL was levying wheeling charges after deducting transmission loss i.e., units available for consumption by the consumer.
23. Being aggrieved by the aforesaid Order, Sridevi Trading had filed Appeal No. 20 of 2019 before the Hon'ble ATE. The Hon'ble ATE vide Judgement dated 6 October 2022 has not upheld the approach taken in the Order dated 20 July 2018 and accordingly set aside the Order. The Hon'ble ATE remitted the claim of Sridevi Trading back to the Commission for passing consequential Order.
24. The relevant extract of the Hon'ble ATE's Judgement is as under:

“11. In our considered view, the Open Access Wheeling illustration given for 2010-2011 by the State Commission may not be correct view of the matter particularly in the context of Regulations of 2016, as quoted above. The wheeling charge cannot be levied beyond what is calculated as the actual energy drawal at the consumption end which computation will necessarily have to take into account wheeling losses as well.

12. In above view, we cannot uphold the approach taken by the State Commission by the impugned order which is accordingly set aside. We remit the claim of the appellant to the State Commission for passing of the consequential orders in light of these observations.”
25. Vide its Order dated 20 January 2023, the Commission passed a consequential Order implementing the aforesaid Judgment of the Hon'ble ATE and directing MSEDCL to refund wheeling charges recovered from the Petitioner. Thus, the Commission has directed that the wheeling charges shall be levied on the OA consumers only on the basis of actual energy drawal at the consumption end and MSEDCL has to refund the excess wheeling charges recovered from Sridevi Trading.
26. Further, based on the above Order dated 20 January 2023, the Commission also passed subsequent Orders on the same issue wherein other OA consumers viz. AMJ Land Holdings Ltd. and Shree Tatyasaheb Kore Warana Sahakari Navshakti Nirman Sanshtha Ltd. have been granted similar relief.
27. AMJ Land Holdings Ltd. had filed Case No. 109 of 2022 before the Commission seeking refund wheeling and transmission charges levied in the energy bills along with interest. Vide

its Order dated 23 January 2023 in Case No. 109 of 2022, the Commission directed MSEDCL to refund wheeling and transmission charges recovered from AMJ Land Holdings Ltd. with interest within one month from the date of that Order. The relevant extract of the aforesaid Order reads as under:

“ 12.12. Hence, the Commission in its consequential Order dated 20 January, 2023 in Case No. 206 of 2017 as per directives of Hon’ble ATE in Appeal No. 20 of 2019 has ruled as under:

.....

12.13. Hence, the above ruling is applicable to the present case as well.

12.14 In view of the above, the Commission needs to direct MSEDCL for refund of wheeling and transmission charges recovered from the Petitioner in the energy bills along with interest as prayed. This needs to be completed within one month from the date of this Order.

....

2. As ruled at Para 12.14 of this Order, Maharashtra State Electricity Distribution Co. Ltd. is directed to refund wheeling and transmission charges recovered from the Petitioner in the energy bills with interest within one month from the date of this Order.”

28. Further, Shree Tatyasaheb Kore Warana Sahakari Navshakti Nirman Sanshtha Ltd. had filed its Case No. 72 of 2023 on 28 March 2023 for refund of excess wheeling and transmission charges levied by MSEDCL and seeking compliance of the DOA Regulations 2016. The Commission granted the relief to the said Petitioner in light of the Order dated 20 January 2023 in the following terms:

“ 9.10. In line with the Hon’ble APTEL Order in Appeal No. 20 of 2019, the Commission vide its Order dated 20 January 2023 in Case No. 206 of 2017 (Implementation of ATE Judgment in Appeal No. 20 of 2019 filed by Sridevi Trading Company Pvt. Ltd.) has held that wheeling charges are payable on the basis of actual energy drawal at consumption end.

...

9.13. In view of the foregoing discussion, the Hon’ble APTEL’s Order and provision of Regulation 4.5 of DOA Regulations 2016, the Commission directs MSEDCL to refund the excess wheeling and transmission charges recovered from the Petitioner with interest within two months from the date of this Order.”

29. In light of the above, the Commission is of the view that same relief i.e. refund of excess transmission and wheeling charges to the Petitioners is required to be considered for the Petitioners in present Cases in light of the Order dated 20 January 2023.
30. The Commission also notes that while the Petitioners have sought an identical relief as granted by the Commission in its Order dated 20 January 2023, MSEDCL has stated that pursuant to the Order dated 20 January 2023 passed in Case No. 206 of 2017, MSEDCL,

from June 2023 onwards, has implemented the process of levy of wheeling and transmission charges only on the units adjusted under OA. Thus, there is no dispute amongst the Parties about the implementation of the Order dated 20 January 2023 passed by the Commission.

31. MSEDCL, however, has objected to the applicability of the Order dated 20 January 2023 for the Petitioners' prior period claims from September 2020 till May 2023. MSEDCL has stated that the Order dated 20 January 2023 is a subsequent Order which amended the methodology for recovery of the losses and therefore can be applied only prospectively and not retrospectively.
32. In this context, the Commission notes that, while passing the consequential Order dated 20 January 2023 as per directions of the Hon'ble ATE, the Commission held that the Petitioner therein i.e. Sridevi Trading was entitled to refund of wheeling charges levied by MSEDCL bills in terms of the aforesaid Hon'ble ATE Order. Thus, the Commission deemed it appropriate to grant relief to Sridevi Trading on a retrospective basis. Further, the Commission did not direct prospective implementation of the said Order. Retrospective application of the Order for Sridevi Trading and prospective application for the present Petitioners would lead to differentiation amongst the OA consumers which would not be appropriate. Hence, the Commission does not find merit in MSEDCL's submission regarding the prospective application of the Order dated 20 January 2023.
33. The Commission notes that MSEDCL, in terms of the Commission's Order dated 20 January 2023, has been levying the wheeling and transmission charges only on the units adjusted under OA. However, MSEDCL, in present proceedings, has raised its concerns about such levy of wheeling and transmission charges. MSEDCL has stated that the consumption of energy of the OA consumer is the energy transmitted through the grid from the Generator to the Consumer end. Hence, both the intra-state transmission losses and the approved wheeling losses of the Distribution System, are leviable and recoverable from OA consumers under Regulation 18 of DOA Regulations as amended by the DOA (First Amendment) Regulations, 2019.
34. In this context, the Commission notes that Regulation 18 of the DOA Regulations as amended vide the DOA (First Amendment) Regulations, 2019 reads as under:

“ 18.1. Transmission losses:

.....

18.1.2. Intra-State transmission losses: The buyer of electricity shall bear the approved Intra-State transmission losses as may be determined by the Commission from time to time:

Provided that the energy settlement shall be based on the approved loss in the Intra-State Transmission System.

18.2. Distribution System losses: The buyer of electricity shall bear the approved wheeling losses of the Distribution System and not any part of the commercial losses as may be determined by the Commission from time to time.”

35. The Commission notes that while allowing credit to the OA consumers, the transmission

losses and wheeling losses are being taken into account by MSEDCL, thereby reducing the OA units to that extent, for adjustment against the energy injected by its OA generator. Thus, OA consumers are bearing the transmission and wheeling loss to that extent. Further, as far as the levy of wheeling and transmission charges are concerned, the Commission notes that in terms of the Judgment dated 6 October 2022 passed by the Hon'ble ATE in Appeal No. 20 of 2019, Order dated 20 January 2023 passed by the Commission in Case No. 206 of 2017 and subsequent Orders passed by the Commission in Case No. 109 of 2022 and in Case No. 72 of 2023 as mentioned above, the levy of wheeling and transmission charges has to be based on the actual energy drawal at consumption end i.e. units adjusted against OA. Hence, the Commission does not find any merit in the aforesaid submissions of MSEDCL.

36. **In view of the aforesaid discussions, MSEDCL is directed to refund the excess wheeling and transmission charges recovered from the Petitioners during the period September 2020 up to May 2023, in the energy bills, with applicable interest, within one month from the date of this Order, in line with the direction issued in Order dated 20 January 2023 in Case No. 206 of 2017.** MSEDCL shall verify the claims made by the Petitioners before making the payment.
37. As regards the Petitioner's prayer regarding the initiation of necessary action against MSEDCL under Section 142 of the EA, the Commission notes that pursuant to the Order dated 20 January 2023 in Case No. 206 of 2017, MSEDCL has been implementing the said Order for levy of transmission and wheeling charges from June 2023 onwards. Hence, the Commission is not inclined to initiate action against MSEDCL under Section 142 of the EA.
38. As regards MSEDCL's submission regarding impleadment of transmission licensee/SLDC in the present proceedings, the Commission notes that the Petitioners have not sought any relief against transmission licensees or STU or SLDC. Further, as per the DOA Regulations, MSEDCL is authorized to collect transmission charges on behalf of transmission licensees/SLDC and it is MSEDCL which needs to take corrective steps towards the levy of transmission and wheeling charges. MSEDCL is at liberty to adjust such excess transmission charges paid to MSETCL/STU/SLDC in their future transmission charges billing as per Regulation 14.5 of DOA Regulations. Hence, the Commission does not find any merit in the submission of MSEDCL that transmission Licensees/SLDC are necessary parties to the present proceedings and the present Petitions should be dismissed on the ground of non-joinder of transmission Licensees/SLDC.
39. **Hence the following Order.**

ORDER


1. **The Petitions in Case No. 206 of 2023, 207 of 2023, 208 of 2023 and 211 of 2023 are partly allowed.**
2. **Maharashtra State Electricity Distribution Co. Ltd. is directed to refund excess wheeling and transmission charges recovered from the Petitioners during the period**

September 2020 up to May 2023, in the energy bills with applicable interest within one month from the date of this Order, in line with the direction issued in Order dated 20 January 2023 in Case No. 206 of 2017. MSEDCL shall verify the claims made by the Petitioners before making the refund payment.

**Sd/-
(Surendra J. Biyani)
Member**

**Sd/-
(Anand M. Limaye)
Member**

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


**(Dr. Rajendra G. Ambekar)
Secretary**

