

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005 Tel. 022
22163964/65/69
Email: mercindia@merc.gov.in
Website: www.merc.gov.in

Case No. 74 of 2023

Petition of SJVN Limited seeking directions to MSEDCL for payment of outstanding amounts in terms of energy purchase agreements executed between the parties and seeking action against MSEDCL under Section 142,146 & 149 of the Electricity Act, 2003.

M/s. SJVN Limited (SJVNL)...

Petitioner

Maharashtra State Electricity Distribution Company Limited (MSEDCL)...

Respondent

Coram

Sanjay Kumar, Chairperson

Anand M. Limaye, Member

Surendra. J. Biyani, Member

Appearance:

For the Petitioners :

Mr. Pavan Uttarwar (Adv.)

For the Respondent :

Mr. Rahul Sinha (Adv.)

ORDER

Date: 31 July, 2024

1. M/s. SJVN Limited (SJVNL) has filed the present Petition on 31 March 2023 under Section 86 (1) (e) and 86 (1) (f) of the Electricity Act, 2003 for adjudication of dispute seeking payment of Late Payment Surcharge (LPS) on belated payments of energy bills and also seeking action against MSEDCL under Section 142,146 & 149 of the Electricity Act, 2003. For sufficing the claim Petitioner SJVNL relied upon Article 11.04 of the Energy Purchase Agreement (EPA).

2. **Main prayers are as follows:**

- “
- a) *The Respondent MSEDCL be directed to pay Petitioner Rs.22,17,36,151 (Rupees twenty two Crores seventeen lakh thirty six thousand and One hundred fifty one) towards Delayed Payment charges (i.e. late Payment Charges) till period of Feb 2023 along with applicable interest .*
 - b) *The Respondent MSEDCL be directed to continue to make payments as provided in EPA in timely manner and comply with the terms of EPAs.*
 - c) *The Respondent MSEDCL be directed to make payments along with Delayed Payment Charges in case of any delay in making payment.*
 - d) *The MSEDCL be penalized as per section 142,146 and 149 of the Electricity Act, 2003 for noncompliance of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022.*
 - e) *The respondent MSEDCL be directed to pay penal interest on the delayed payment at rate of 12% per annum.*
 - f) *The Cost of litigation be allowed.*
 - g) *Any other relief in the interest of Justice, which this Hon 'ble Commission deems appropriate.”*

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

3.1. The present Petition is being filed by SJVNL seeking directions against MSEDCL for recovery of outstanding dues as well as Late Payment Surcharge (LPS) / Delayed Payment Charges (DPC), against invoices generated under the Wind Energy Purchase Agreement (WPPA).

3.2. SJVNL is engaged in the business of power generation and operating Wind Turbine Generator (WTG), commissioned in the state of Maharashtra with the following installed capacity:

| Sr. No. | Location | Capacity | EPA Date |
|---------|--|--|------------|
| 1 | Village Khirvire and Kombhalne, Taluka Akole District Ahmednagar in 2014 | 14.45 Megawatt in (17 No x 850 kwh) | 01.08.2014 |
| 2 | Village Khirvire and Kombhalne Taluka Akole District Ahmednagar , | 5.10 MW (6 No x 850 kwh Gamesa make) | 06.08.2014 |
| 3 | Village Khirvire and Kombhalne Taluka Akole District Ahmednagar, | 1.70 MW (2 No x 850 kwh Gamesa make) | 06.08.2014 |
| 4 | Village Khirvire and Kombhalne Taluka Akole District Ahmednagar | 2.55 MW (3 No x 850 kwh Gamesa make) | 05.08.2014 |
| 5 | Village Khirvire and Kombhalne Taluka Akole District Ahmednagar | 21.25 MW (25 No x 850 kwh Gamesa make) | 01.08.2014 |
| 6 | village Khirvire and Kombhalne Taluka Akole District Ahmednagar | 1.7 MW (2 No x 850 kwh Gamesa make) | 20.03.2017 |
| 7 | village Khirvire and Kombhalne Taluka Akole District Ahmednagar, | for 0.85 MW (1 No x 850 kwh Gamesa make) | 20.03.2017 |

- 3.3. SJVNL has been regularly generating and sending invoices for the power generated and supplied to MSEDCL as per the terms and conditions of WEPA. However, there has always been a delay on part of MSEDCL in making legitimate payments.
- 3.4. The Clause 11.04 of the EPAs signed in 2014 and Clause 10.05 (d) of the EPAs signed in 2017 with respect to Delayed Payment Charges reads as under:
- “The due date of payment shall be 60 days from receipt of Seller monthly energy bills by the MSEDCL and will be paid by account Payee’s cheque in the name of Seller or authorized 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 a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company. The MSEDCL, however, shall be entitled to make adjustments 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 the MSEDCL.”*
- 3.5. SJVNL had been raising the Energy bills towards supply of energy from SJVNL’s Khirvire wind generation station and timely payment has been issued since long. SJVNL had been regularly raising the issue of nonpayment with MSEDCL.
- 3.6. SJVNL vide its letter dated 22 April 2022 communicated MSEDCL in regard with energy bills towards the supply of energy from SJVN’s Khirvire Wind Power Station, that since February 2021 SJVNL has not received any major payment and there is outstanding principal amount of Rs 28.67 Crores and Rs. 19.41 crores as Late Payment Surcharge. SJVNL requested MSEDCL to make payment.
- 3.7. SJVNL further vide its letter dated 22 June, 2022 communicated MSEDCL that there is nonpayment of gross amount of Rs.36,45,57,258/- and requested to pay the same. SJVNL vide subsequent letters dated 15 July 2022 and 4 August 2022 has reminded MSEDCL about nonpayment of dues.
- 3.8. SJVNL vide its letter dated 4 August 2022 also brought the attention of the MSEDCL towards the Notification dated 03 June, 2022 issued by the Ministry of Power named as Electricity (Late Payment Surcharge and related matters) Rules, 2022. As per the said Notification, the Distribution Companies are required to intimate payment plan for liquidation of arrears in 12 to 40 instalments within thirty days from the date of Notification.
- 3.9. SJVNL further vide its letter dated 07 October 2022 communicated MSEDCL that the gross outstanding has accumulated to Rs.47,00,51,604. The Overdue of payments status has been regularly updated at PRAAPTI portal. SJVNL offered Bill Discount Facility as it was availed earlier by MSEDCL for the mutual benefit.

- 3.10. SJVNL vide its letter dated 05 January 2023 submitted invoices of December 2022, a detail of percentage generation of each WTG of December 2022, Energy break up report of December 2022 to MSEDCL and further communicated that there is outstanding amount of Rs. 48,88,16,198.88/-.
- 3.11. SJVNL again vide its letter dated 06 February 2023 requested MSEDCL to make arrangements for the gross outstanding amount of Rs. 44,18,38,085.
- 3.12. SJVNL submitted that nonpayment of outstanding dues towards energy bills by MSEDCL and further nonpayment of the late payment surcharge is in gross violation contractual liability arising from EPA's wherein MSEDCL has agreed to make timely payment. MSEDCL has continuously defaulted the timely payments. MSEDCL do not have right to retain the amount duly payable to SJVNL.
- 3.13. SJVNL had been continuously making communications with MSEDCL to make payment of outstanding energy bills. MSEDCL has not even bothered to reply the communications of SJVNL and has acted reckless showing disrespect to the EPA's.
- 3.14. The Electricity (Late Payment Surcharge and Related Matters) Rules, 2022" provide a mechanism for settlement of outstanding dues of Generating Companies, Inter-State Transmission Licensees and Electricity Trading Licensees. The rules provide for clubbing of all outstanding dues (as on 03.06.2022) including Principal, Late Payment Surcharge etc. into a consolidated amount which can be paid in interest free Equated Monthly Instalments (EMI). The maximum number of such EMIs can be forty-eight (48) based on the quantum of the total outstanding dues. The Rules also indicate modalities for implementation and also penalties for not making payments, in line with the Re-determined Payment Schedule. MSEDCL is in noncompliance of these rules under the provisions of Electricity Act, 2003.
- 3.15. MSEDCL shall be penalised as per Section 142, 146 and 149 of the Electricity Act, 2003 for non-compliance of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022.
- 3.16. In past Case No. 124,125,126,148,156,173,184,185,185 and 234 of 2020 the Commission in several cases has directed MSEDCL to pay the due amount of the Generators and even directed to pay penal interest for not paying the due amount in stipulated time.
4. **MSEDCL in its submissions dated 21 September 2023 stated as follows:**
- 4.1. SJVNL has filed the present Petition on 31 March 2023 and claim for the period between January, 2014 to November, 2022 (Due up to 28 February, 2023) is barred by law of limitation.

- 4.2. MSEDCL has referred Judgment dated 16 October 2015 in the matter of *Ardhra Pradesh Power Coordination Committee and others v Lanco Kondapalli Power Ltd and Other*. In said Judgement it has been categorially stated that principles underlying the Limitation Act, 1963 are applicable to State Commissions when it functions as Statutory adjudicatory quasi-judicial /judicial authority in determining all claims or disputes, including those arising out of contract between licenses and generating companies. Hence, wherever any claim/dispute is raised before the Commission under Section 86(1)(f) then Limitation Act strictly applies, and any claim barred by limitation i.e. a period of (3) years cannot be adjudicated unless the principles underlying Section 5 and Section 14 of the limitation Act 1963 are satisfied.
- 4.3. It is a settled position of law that mere representation or correspondence does not extend the period of limitation it is only the filing and /or commencing a legal proceeding that stops the period of limitation from running. The reference is made to Paragraphs 15 and 18 of *State of Tripura v. Arabinda Chakraborty reported in (2014) 6 SCC 460* and Paragraph 51 and 52 of *Allahabad Development Authority and Another Vs. M/s. Vidyawati Construction Company reported 2001 SCC Online All*.
- 4.4. In this Case the maxim "*Vigilantibus, non dormientibus, jura subveniunt*" (the law assists those who are vigilant, not those who sleep over their rights) clearly applies to the present case. This legal maxim refers to the legal diligence on part of the claimant, which in the present case is specifically not done and, on this ground, alone the claims of the Petitioner ought to be rejected.
- 4.5. It is pertinent to mention that the Commission in its Order dated 20 July, 2018 in Case No. 193 of 2017, relying upon the Judgement of Hon'ble the Supreme Court of India on the issue of 'Limitation' has upheld the objections of MSEDCL on the applicability of the Limitation against the time barred claims.
- 4.6. It is noteworthy that in the present matter, SJVNL has never raised any claim before any Court about DPC for the period of since 2014 till 2023 (being barred by limitation).
- 4.7. In view of the same, the Petition deserves to be dismissed (to the extent stated above) being barred by Law of Limitation.
- 4.8. The Details of the SJVNL's claim and MSEDCL's computations are as under:

| SJVNL's Claim as per the Annexure 'C' of the Petition | | | |
|--|--|--|----------------------|
| Sr. No. | Particulars | DPC Period | Amount in Rs. |
| 1 | DPC for the period of January, 2014 to November 2022 (Due up to 28 February, 2023) | January, 2014 to November 2022 (Due up to 28 February, 2023) | 22,17,36,151 |

| MSEDCL calculations of DPC payable | | | |
|---|---|---|-----------------------------|
| Sr. No. | Particulars | Date of Payment | Calculated DPC (Rs.) |
| 1 | DPC for the period of April, 2020 to November, 2022 | | 6,22,90,551 |
| 2 | Less: DPC paid as per MSEDCL Wind Payment Plan (January, 2021 to December, 2021) | 29 April, 2022 8 June, 2022 6 September, 2022 19 October, 2022 2 November, 2022 | 3,11,93,443 |
| 3 | Less: DPC paid as per PRAAPTI LPS Rule (Trigger dated 2 March, 2023) | 1 March, 2023 | 27,23,684 |
| 4 | Less: Interest paid by MSEDCL against Bill Discount Facility | | 1,31,94,164 |
| Balance DPC Payable | | | 1,51,79,260 |

- 4.9. SJVNL has not provided any details/ calculations of the claim amount in the present Petition and therefore, MSEDCL has done the calculation of DPC in terms of the documents available.
- 4.10. SJVNL has filed the present Petition on 31 March, 2023 therefore, SJVNL is entitled to raise its claim only three year back. The Limitation period is three years and hence SJVNL can only claim DPC amount from April 2020 to November 2022 which amounts to Rs.1,51,79,260/-.
- 4.11. SJVNL has also availed the ‘Bill Discounting Facility’ of Rs. 30 Crores from MSEDCL against their outstanding Invoice for which MSEDCL had to incur a cost of Interest on Bill Discounting of Rs. 1,31,94,164. Therefore, MSEDCL may be allowed to deduct the interest amount from DPC payable to SJVNL because MSEDCL has to bear the interest cost which will effectively means double loss to MSEDCL.
- 4.12. The Commission in its Order in Case No. 107 of 2021 dated 4 February 2022 and Case No. 160 of 2021 dated 15 April 2022 have made the position amply clear that the interest of 1.25% would only be applicable wherein MSEDCL fails to adhere to pay the DPC amount as directed by the Commission.
- 4.13. In this present matter, MSEDCL has comprehensively complied with the Commission’s Order and therefore the application of the penal provision of 1.25% of the DPC amount is not attracted in the present case.
- 4.14. MSEDCL has cleared outstanding dues with DPC for the period of January, 2021 to December, 2021 as per the Wind Payment Plan to SJVNL on 29 April, 2022, 8 June, 2022, 6 September, 2022, 19 October, 2022 and 2 November, 2022. DPC amount of Rs. 27,23,684 has also been paid under PRAAPTI on 1 March, 2023.

4.15. MSEDCL has adhered to the Wind payment plan and followed the new LPS Rules therefore, there is no case of non-compliance under Section 142, 146 and 149 of the Electricity Act, 2003.

5. **Petitioner in its Rejoinder dated 6 October 2023 stated as follows:**

5.1. Contractual Liability of MSEDCL: The Clause 11.04 of the EPA deals with the payment. The EPA clearly mandates the LPS at rate of 1.25% per month, therefore, MSEDCL is bound to pay the same if outstanding amount is not paid within period of 60 days. As such the MSEDCL is bound by the Contractual terms.

5.2. The LPS Rules: MSEDCL was bound to communicate the outstanding amount of LPS and should have pay to SJVNL in equal 12 instalments.

5.3. Claim is not Barred by the Limitation: SJVNL has been raising bills towards the generated energy feeder wise to the MSEDCL regularly and MSEDCL has never made timely and complete payment to SJVNL.

5.4. SJVNL relied on the Judgement of Hon'ble the Apex Court in *Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s AIR 1979 SC 1144* that in Morality and justice the plea of limitation should not be taken by public authorities.

5.5. It is pertinent to note that, the MSEDCL has always made part payments towards the raised bill and never paid entire outstanding bill. The MSEDCL has not disputed the quantum of energy generated or the bills raised by SJVNL. MSEDCL also never replied to the communication letters or reminders of the bills raised by SJVNL.

5.6. The making of part payment against the continuous liability of outstanding amount is acknowledgement of the outstanding amount.

5.7. Section 19 of the Indian Limitation Act, effect of payment on account of debt or of interest on legacy amounts to acknowledgment of debts and the claim would be well within limitation. As such the claim of SJVNL is well within limitation.

5.8. MSEDCL is misleading regarding the Bill Discounting Facility. MSEDCL was not able to pay even the energy bills on time, SJVNL offered Bill Discounting Facility amounting to Rs. 30 Crores which was a banking arrangement, where outstanding payment was paid to SJVNL by the Bank and MSEDCL had to pay back the discounted amount to bank after one year. The interest amount for this arrangement was paid upfront by MSEDCL at the rate of 4.36% per annum. The interest paid on bill discounting facility is not payment towards LPS/DPC.

5.9. MSEDCL has saved Rs. 3,18,05,836 because of Bill Discounting Facility transaction of Rs.

30 Crores on 8 February 2021 as shown in the table below:

| Sr. No. | Bill discounted amount | Interest/ Stamp Duty on Bill discounting | LPS rate | LPS amount for bill discounting period | Net saving to MSEDCL |
|---------|------------------------|--|----------|--|----------------------|
| 1 | 30,00,00,000 | 1,31,94,164 | 15% | 4,50,00,000 | 3,18,05,836 |

- 5.10. SJVNL vide communication letter dated 04 September 2023 along with bills communicated the MSEDCL that the Energy bills outstanding is of Rs. 16,54,10,226.00 and Late Payment surcharge accumulated by 31 August 2023 were Rs. 21,73,11,801.
- 5.11. Same was reminded on 04 September 2023 along with raised bills and on 19 September, 2023 seeking the payment of Outstanding amount and LPS.
- 5.12. Therefore, no claim in the Petition is barred by limitation.
6. During e-hearing held on 28 May, 2024, the advocate appearing on behalf the Petitioners and MSEDCL reiterated their submissions. Parties are allowed to file their submissions, if any, within seven days.
- 7. SJVNL in its additional submission dated 3 June 2024 stated as under:**
- 7.1. The Section 11.04 of the PPA deals with Payment clause. As per this clause, Due date for payment shall be 60 days from receipt of the sellers monthly Energy Bills by MSEDCL. In case of delay in payments beyond due date, the seller shall be entitled to a Late Payment Surcharge @ 1.25% per month which shall be levied by the generating company.
- 7.2. SJVNL raised the first Invoice for the period January, 2014 to September, 2014 on 24 September, 2014 against which the payment was received 14 January, 2015, 5 February, 2015 & 6 February, 2015. As per terms of PPA, this bill was due on 22 November, 2014. Subsequently, all other invoices issued were also paid beyond its due dates and timely reminders were issued and MSEDCL had never disputed the charge of LPS on overdue bills. MSEDCL has delayed the payments since the beginning of the project and SJVNL had started levying DPC/LPS.
- 7.3. SJVNL did not approach the Commission for recovery of DPC/LPS as MSEDCL never disputed nor raised any objection on the SJVNL claim.
- 7.4. MSEDCL stated that DPC payable by MSEDCL from April, 2020 to November, 2022 is Rs. 6,22,90,551. MSEDCL misleading by considering interest paid amounting to Rs. 1,31,94,164 for availing the bill discounting facility as DPC/LPS paid.
- 7.5. SJVNL is claiming LPS as a matter of legal right. SJVNL's claim of DPC is not time barred as MSEDCL had been paying part payment against the outstanding claims which has given

rise to a fresh cause of action every time. The part payment made by MSEDCL against the outstanding bills gives effect of acknowledgement of their debt/ liability. MSEDCL never disputed on charge of LPS, but they have only given energy charges and not LPS.

- 7.6. The claim of SJVNL is well within limitation in view of the Section 19 and 22 of the Limitation Act on account of continuous breach of contract by MSEDCL
- 7.7. The Commission in Case No. 75 of 2021 had allowed levy of DPC/LPS event though no such specific clause was mentioned in the short-term EPA.
- 7.8. Therefore, SJVNL is entitled for the LPS on the delayed payment of Rs. 22,51,83,974 for the period January 2014 to April 2024 along with penal interest.

Commission's Analysis and Rulings:

8. The Petitioner, SJVNL, has filed the present Petition under 86 (1) (e) & (f) of the Electricity Act 2003 read with Article 11.04 of the EPAs executed between the parties. SJVNL is seeking payment of LPS on energy bills paid belatedly by MSEDCL.
9. The Commission notes that the EPAs executed between MSEDCL and SJVNL contain the provision of LPS. The Clause 11.04 of the EPAs signed in 2014 and Clause 10.05 (d) of the EPAs signed in 2017 with respect to Delayed Payment Charges reads as under:

“The due date of payment shall be 60 days from receipt of Seller monthly energy bills by the MSEDCL and will be paid by account Payee's cheque in the name of Seller or authorized 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 a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company. The MSEDCL, however, shall be entitled to make adjustments 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 the MSEDCL.”

The Commission notes that MSEDCL has also agreed the liability of LPS in accordance with the EPAs, however raised the issue of Limitation for the period earlier than April 2020.

10. Based on documents on record, the Commission frames following issues for its consideration:
 - a) Whether the claims made by SJVNL is barred by the law of limitation?
 - b) If applicable, quantification of claim amount?

The Commission is dealing with the above two issues in the following paragraphs:

11. Issue (A): Whether the claim made by SJVNL is barred by the law of limitation?

- 11.1. The Commission notes submission of MSEDCL wherein it has stated that SJVNL has filed the present Petition on 31 March 2023 for the claims of period between January 2014 to November, 2022 (Due up to 28 February, 2023) which is barred by law of limitation. MSEDCL in its submission has provided its computation on LPS liability within Law of Limitation.
- 11.2. SJVNL in its submission has emphasised that SJVNL has been raising bills towards the generated energy feeder wise to the MSEDCL regularly and MSEDCL has never made timely and complete payment to SJVNL. Hence, Law of Limitation is not applicable.
- 11.3. The Commission notes that Hon'ble Supreme Court vide its Judgment dated 16 October 2015 in the case of *AP Power Coordination Committee vs. M/s Lanco Kondapalli Power Ltd.* has held that the provisions of the Limitation Act, 1963 shall be applicable to the State Commission where it executes its judicial powers under Section 86(1)(f) of the Electricity Act-2003. Taking the cues from above Judgement, the Commission deems it fit to apply principles encompassed in Law of Limitation while evaluating the claims statement in present matter.
- 11.4. It is a settled position of law that mere representation or correspondence does not extend the period of limitation, it is only the filing and /or commencing of a legal proceeding that stops the period of limitation from running. This principle is underscored in '*State of Tripura v. Arabinda Chakraborty reported in (2014) 6 SCC 460*'. Based on above principle, any claim prior to three years from date of filing of Petition is barred by limitation. In present Cases, the Petition has been filed on 31 March 2023. Accordingly, claims prior to March 2020 should have been barred by limitation.
- 11.5. However, the Commission notes that Hon'ble the Supreme Court Judgment in its Judgement dated 10 January 2022 excluded the period between 15 March 2020 till 28 February 2022 for the purpose of limitation. Relevant part of the said Supreme Court Judgment is reproduced below:

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”

Thus, in the above Order, the Supreme Court has excluded period from 15 March 2020 till 28 February 2022 for the purpose of limitation in respect of all judicial or quasi-judicial proceedings. Consequent to such exclusion, balance period of limitation remaining as on 15 March 2020 (although above order stated that balance period as on 3 October 2021, it needs to be read as 15 March 2020 as Supreme Court vide Order dated 29 September 2021 has ruled that balance period as on 15 March 2020 shall be available from 3 October 2021), if any, shall be available from 1 March 2022. However, in para III above, Supreme Court have further ruled that irrespective of such balance period, if period of limitation would have expired between 15 March 2020 to 28 February 2022, then such persons have limitation period of only 90 days from 1 March 2022 i.e. till 30 May 2022.

11.6. In present Cases, dispute is regarding non-payment of DPC/LPS. Rights to institute a suit or proceedings triggers after expiry of due date for payment mentioned in the bill invoice. In normal course period of limitation to institute suite or proceeding for such non-payment is three years. Therefore, the limitation period for bill invoices whose due dates fall between 15 March 2017 to 28 February 2019 would have expired between 15 March 2020 to 28 February 2022. However, in view of the above quoted Supreme Court Order, although limitation has expired during above stated period, opportunity have been given to initiate suite or proceeding in extended limitation period i.e. till 30 May 2022. Any suit or proceeding initiated post 30 May 2022 for bill invoice having due date between 15 March 2017 to 28 February 2019 is time barred. In present cases, some of the claims are pertaining to invoices whose due date is between 15 March 2017 to 28 February 2019. As the Petition has been filed on 31 March 2023 i.e. beyond the extended period of limitation (30 May 2022), all the claims whose due date for payment is prior to 28 February 2019 is barred by law of limitation and hence cannot be allowed.

11.7. Limitation period for invoices whose due date for payment is 1 March 2019 and beyond is not expired between 15 March 2020 to 28 February 2022 and hence in view of above quoted Supreme Court Order, for such invoices, balance period of limitation remaining as on 15 March 2020 shall be available from 1 March 2022. Based on such principles, in present cases, claims for invoices whose due date for payment is 1 March 2019 or beyond are within the limitation period.

12. Issue (B): If applicable, quantification of claim amount.

12.1. The Commission notes that while dealing with non-payment issues, the Hon'ble APTEL in its

Judgment dated 6 October 2022 in Appeal No.13 of 2019 has rules that it is responsibility of adjudicating authority to give clear finding on the amount due, if any. Therefore, it is important to quantify the claim amounts in the present cases.

- 12.2. SJVNL has claimed LPS amounts of Rs. 22,17,36,151/- computed @ 1.25% monthly interest rate on principal outstanding for the period of January 2014 to November 2022. Whereas MSEDCL in its submission has submitted that outstanding LPS is only Rs. 1,51,79,260/- for the period of April 2020 to November 2022 after adjusting for Rs. 3,39,17,127/- (31193443+2723684) DPC already paid during April 2022 to March 2023 and Rs. 1,31,94,164/- towards interest paid by MSEDCL for Bill Discounting Facility.
- 12.3. The Commission notes that two aspects are necessary for computing LPS i.e. time delay in principal payment and applicable interest rate. The Commission has worked out LPS based on documents on record and legal precedence. After perusal of EPA of SJVNL with MSEDCL, it is observed that Article (14.02) stipulates provision related to LPS, which reads as below

“The due date of payment shall be 60 days from receipt of Seller monthly energy bills by the MSEDCL and will be paid by account Payee’s cheque in the name of Seller or authorized 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 a late payment surcharge at the rate of 1.25% per month shall be levied by the generating company. The MSEDCL, however, shall be entitled to make adjustments 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 the MSEDCL.”

Accordingly for computing LPS claim in respect of SJVNL, the Commission has considered rate of interest as 1.25% per month.

- 12.4. The Commission notes the submission of SJVNL that it had offered Bill Discounting Facility amounting to Rs. 30 Crores which was a banking arrangement, where outstanding payment was paid to SJVNL by the Bank and MSEDCL had to pay back the discounted amount to bank after one year. The interest amount for this arrangement was paid upfront by MSEDCL at the rate of 4.36% per annum which is much lower than DPC rate of 15% per annum and hence saving to MSEDCL. Therefore, such interest payment by MSEDCL towards bill discounting should not be considered as payment against LPS due to SJVNL. The Commission accepts this submission of SJVNL as in case MSEDCL had not opted for Bill Discounting and delayed the payment then it would have to pay LPS at rate of 15% per annum. By opting Bill Discounting at interest rate of 4.36% per annum, it has saved expenses on LPS. Accordingly, the Commission has not considered such interest paid by MSEDCL for bill discounting for adjustment against outstanding LPS claim of SJVNL.

12.5. The Commission also note that SJVNL in its computation of outstanding LPS has not considered already paid DPC amount of Rs. 3,39,17,127/- (31193443+2723684) paid by MSEDCL to SJVNL during April 2022 to March 2023. The Commission has considered the same while quantifying LPS amount.

12.6. Accordingly, the Commission quantifies LPS payable to the Petitioner by applying Law of Limitation. In the Petition filed, SJVNL has claimed LPS for the period of January 2014 to November 2022, but considering Law limitation, the Commission has computed LPS for the period of December 2018 to November 2022 as below:

| Sr. No | Petitioner | LPS as per Petitioner (Rs.) | LPS computed by the Commission (Rs.) | Rationale for variation |
|--------|------------|-----------------------------|--------------------------------------|--|
| 1 | SJVNL | 22,17,36,151 | 6,81,25,529 | The LPS for Period of December 2018 to November 2022 after adjusting already paid LPS of Rs. 3,39,17,127/- |

12.7. The Commission notes that SJVNL has also claimed penal interest @ 12% per month on delayed LPS payment.

12.8. The Commission notes that interest rate for the delayed payment LPS is not provided in the EPA. MSEDCL's practice of paying DPC/LPS after substantial time delay reduces time value of money. In past the Commission has allowed interest of 1.25% on unpaid DPC/LPS to various wind generators for compensating time value of money. However, SJVNL has prayed for lower interest rate at the rate of 12% per annum. Hence, the Commission allows interest of 12% per annum on delayed payment of LPS as prayed by SJVNL.

12.9. Such interest is computed post payment of principal amount for the period between date of principal payment and date of LPS payment. LPS amount is yet to be paid, hence for purpose of computation, end date is considered as 31 July, 2024. Accordingly, interest on LPS is computed as follows:

| Generators | LPS Amount (Rs.) | Interest Rate | Interest on Delayed Payment of LPS (Rs.) |
|------------|------------------|---------------|--|
| SJVNL | 6,81,25,529 | 12% per annum | 3,50,75,440 |

13. The Commission directs SJVNL to raise invoice for above approved amounts of LPS and Interest on delayed payment of LPS on MSEDCL with due date as stipulated in respective EPA. MSEDCL is directed to pay such amount within a due date. In case of failure to pay within the due date, SJVNL may take recourse to mechanism stipulated in recently notified the Electricity (Late Payment Surcharge and related matters) Rules 2022 for recovering its due amount.

14. In view of above ruling, the Commission is not inclined to initiate any action against MSEDCL under Section 142, 146 and 149 of the Electricity Act 2003.

15. Hence, the following Order.

ORDER

1. The Petition in Case Nos. 74 of 2023 is partly allowed.
2. The Petitioner, SJVNL is eligible for LPS and interest on delayed payment of LPS as follows:


| Late payment Surcharge (Rs.) | Interest on Delayed payment of LPS (Rs.) | Total (Rs.) |
|------------------------------|--|--------------|
| 6,81,25,529 | 3,50,75,440 | 10,32,00,969 |

MSEDCL to pay above claims within timelines stipulated in respective EPAs after receipt of supplementary bill.

Sd/-
(Surendra J. Biyani)
Member

Sd/-
(Anand M. Limaye)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Dr. Rajendra G. Ambekar)
Secretary

