

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 34 of 2024**

**Petition of Manas Agro Industries and Infrastructure Limited, Wardha for payment of Late Payment Surcharge (LPS) on energy bills paid belatedly by MSEDCL after the due date.**

M/s. Manas Agro Industries and Infrastructure Limited (MAIL) ..Petitioner

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

**&**

**Case No. 35 of 2024**

**Petition of Manas Agro Industries and Infrastructure Limited, Nagpur for payment of Late Payment Surcharge (LPS) on energy bills paid belatedly by MSEDCL after the due date.**

M/s. Manas Agro Industries and Infrastructure Limited (MAIL) ..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. Ashish Singh (Adv.)  
For the Respondent : Mr. Anup Jain (Adv.)

**ORDER**

**Date: 22 January 2025**

1. Petitioners have filed the present Petition on 20 February 2024 seeking payment of Late Payment Surcharge (LPS) on belated payments of energy bills. For sufficing the claim MAIL, Wardha has relied upon 8.3 of the EPA and Regulation 20.1 of MERC (Terms and Conditions for determination of RE Tariff) Regulations, 2010 (RE Tariff Regulations, 2010) and MAIL,

Nagpur has referred to Regulation 21 of MERC (Terms and Conditions for determination of RE Tariff) Regulations, 2015 (RE Tariff Regulations, 2015). Considering similar nature of relief sought and arguments on record, the Commission decided to club the matters and pass a common Order.

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

**Case No.34 of 2024:**

“

- a) *Direct MSEDCL to pay the Late Payment Surcharge (“LPS”) (As per Annexure- B) in accordance with Article 8.3 of the EPA read with Regulation 20.1 of the MERC (Terms and Conditions for determination of RE Tariff) Regulations, 2010;*
- b) *Hold and declare in accordance with the Hon’ble Commission’s earlier rulings, that MSEDCL is liable to pay an interest @ 1.25% per month on the Late Payment Surcharge (“LPS”) till final payment is made;*
- c) *Pass such further orders as this Hon’ble Commission deems fit and proper in the interest of justice and good conscience.”*

**Case No.35 of 2024:**

“

- a) *Direct MSEDCL to pay the Late Payment Surcharge (“LPS”) (As per Annexure- B) in accordance with Regulation 21 of the MERC (Terms and Conditions for determination of RE Tariff) Regulations, 2015;*
- b) *Hold and declare in accordance with the Hon’ble Commission’s earlier rulings, that MSEDCL is liable to pay an interest @ 1.25% per month on the Late Payment Surcharge (“LPS”) till final payment is made;*
- c) *Pass such further orders as this Hon’ble Commission deems fit and proper in the interest of justice and good conscience.”*

**3. Petitioners in its Case has stated as follows:**

- 3.1. The present Petition is being filed by MAAIL, Wardha and Nagpur seeking directions against MSEDCL for payment of outstanding LPS / Delayed Payment Charges (**DPC**).
- 3.2. MAAIL, Wardha and Nagpur are Biomass Generators who owns and operates a generating facility in the State of Maharashtra with an installed capacity of 15 MW at Village- Jamni,

Tahasil- Seloo, District- Wardha and 10 MW at Village- Sawarkhanda, Tal- Kuhi, District- Nagpur. Details of installed capacity and Energy Purchase Agreement (EPA) are as below:

Sr.No.	Generators	EPA Date	Installed Capacity	Area
1	MAILL, Wardha	30 April, 2013	15 MW	At Village- Jamni, Tahasil-Seloo, District- Wardha.
2	MAILL, Nagpur	31 March, 2016	10 MW	At Village- Sawarkhanda, Tal- Kuhi, District- Nagpur.

3.3. The Petitioners have been regularly generating and sending invoices for the power generated and supplied to MSEDCL as per the terms and conditions of EPA. However, there has always been a delay on part of MSEDCL in making legitimate payments.

3.4. It is pertinent to note that the Clause 8.3 of EPA, MAILL Wardha executed in accordance with the MERC RE Tariff Regulations, 2010 has the LPS Clause. Both the EPA's which were executed in accordance with MERC RE Tariff Regulations, 2010/15 has identical clause w.r.t due dates/timelines for payments of invoices/bills i.e., due date for payment being after 60 days from bills being raised. As per Regulations, LPS is payable on bills which are paid after their due date i.e., after 60 days from bills being raised. MSEDCL, has chosen not to incorporate the provision of LPS in the EPA of the MAILL, Nagpur.

3.5. Payment Liability worked out by the Petitioners is as below:

Sr. No	Generators	Rate of Interest per Month	2018-19	2019-20	2022-23	2023-24	Total (Rs)
1	MAILL, Wardha (15MW)	1.25%	12,08,737	24,22,194	25,16,553	-	61,47,484
2	MAILL, Nagpur (10MW)		27,82,366.54	34,30,567.07	24,79,739.54	4,83,763.57	91,76,436.72

3.6. The reference has been made to the Commission's Order dated 13 October 2021 in Case No. 53, 62, 68, 74, 75, 79, 135, 136 and 144 of 2016 and Miscellaneous Application No 22 of 2016 in Case No 53 of 2016 dated 16 March, 2017, in which the Commission had directed MSEDCL to pay the DPC amounts due within 30 days. Thereafter, interest will accrue at 1.25% per month on any DPC amount remaining to be paid.

3.7. Petitioners have stated that MSEDCL has not disputed the liability towards LPS, hence MSEDCL cannot escape its liability by citing alleged difficult cash flow situation arising out of regulatory issues in its ARR or otherwise. It is the responsibility of MSEDCL to arrange funds and to make timely payments to the generators based on binding Regulations of the Commission.

- 3.8. It is a settled proposition of law that once Regulations govern the field then the matter ceases to be contractual. Hence, MSEDCL is bound to pay the LPS in accordance with the MERC (Terms and Conditions for determination of RE Tariff) Regulations, 2010.
- 3.9. Article 20.1 (in case of MAAIL, Nagpur) of EPA categorically stipulates the rights and duties of the parties shall be governed by RE Tariff Regulations, 2015. The LPS is part of tariff and, therefore, regulatory in nature – not a matter for the parties to PPA (generator and procurer) to negotiate and provide in, or control by, contractual terms as per the Article 20.1 of the MERC (Terms and Conditions for determination of RE Tariff) Regulations, 2010. It is also a settled principle of law that LPS being essentially one for enforcement of Regulations and, therefore, regulatory in nature and consequently beyond the pale of limitation bar.
- 3.10. The Petitioners have relied on the Commission's Order dated 15 June 2018 in Case of 102 of 2018 in which it has directed MSEDCL to pay the (i) Principal amount(ii) LPS/DPC amount and (iii) Penal Interest @ 1.25% per month on the outstanding DPC/LPS. Considering the same, Petitioners prayed to compensated them with penal interest @ 1.25% per month on the outstanding LPS amount. In line with the above Orders and directions, the MAAIL, Wardha and Nagpur needs to be compensated with penal interest @ 1.25% per month on the outstanding DPC amount in accordance with the Commission's past Orders.
- 3.11. The Petitioners has stated that the Commission has the sole jurisdiction to adjudicate the present Petition. No part of the claim herein is barred by limitation as the present Petition has been filed invoking the Regulatory Powers of the Commission seeking enforcement of the MERC (Terms and Conditions for determination of RE Tariff) Regulations, 2010. There is no contractual dispute between parties leading to any claim for recovery arising out of PPA.
- 3.12. Further, as held by the Hon'ble APTEL vide its judgment dated 02 November, 2020 in Appeal No. 10 of 2020, it is also a settled principle of law that LPS being essentially one for enforcement of Regulations and, therefore, regulatory in nature and consequently beyond the pale of limitation bar. Hence limitation, if any, is inapplicable to the present proceedings.
- 3.13. Further, no part of the claim is barred by limitation in view of Order dated 10 January, 2022 in Suo Moto Writ Petition (c) No. 03/2020 passed by the Hon'ble Supreme Court wherein the period between 15 March, 2020 to 28 February, 2022 has been excluded for the purposes of counting the period of limitation. The said proposition has been accepted by the Hon'ble Commission in various cases such as Order dated 11 March, 2022 in Case No. 131/2021, Order dated 04 May, 2022 in Case No. 157/2021, Order dated 29 August, 2022 in Case No. 70/2022 and Order dated 26 December, 2022 in Case No. 118/2022.

4. **MSEDCL in its submissions dated 20 June 2024 stated as follows:**

- 4.1. MSEDCL raised the objection as to the maintainability of the present Petitions. The reliefs

sought by the Petitioners does not fall within the ambit of the Sections under which the present Petition has been filed. The Section 86 (1) (e) does not empower the Commission to adjudicate on any dispute with respect to a Generator and a Licensee and as such the reliefs as prayed in the Petitions under reply cannot be granted by invoking Section 86 (1)(e) of the Electricity Act, 2003.

- 4.2. The present claims are barred by the *Doctrine of Delay and latches*. The Petitioners are raising the claim for the first time directly by way of the present Petitions without approaching MSEDCL. Petitioners allegedly seeking LPS for the period of December-2018 to March-2023 and claiming an amount of Rs. 61,47,484. In MAILL, Nagpur Case, it is claiming LPS of Rs. 91,76,436.72 for the period of August, 2018 to May, 2023. However, it is pertinent to note that the claim as for the period's pre-20 February, 2021 considering the 3-year period of limitation from the date of filing of the present Petition i.e., 20 February, 2024 (registered on 5 March, 2024) cannot be considered for any interference in the present Petition owing to be barred by the law of limitation.
- 4.3. Pertinently, in the present Petition even the benefit of the order pronounced by the Hon'ble Supreme Court with respect to exclusion of period of limitation due to 'Covid', in the facts of the present case cannot be applied as the said order itself specifically stated that in order to seek the benefit of exclusion of the period from 15 March, 2020 to 28 February, 2022 the Petitioner in the present case ought to have filed the present Petition within 90 days from 01 March, 2022 i.e., on or before 31 May, 2022. However, the present Petition came to be filed by the Petitioner belatedly and without any justification for the delay only on 20 February, 2024 {630 days delay} and as such would not be entitled for seeking exclusion of the period of 2 years with respect to consideration of its claim in the present Petition for the period starting from April-2022 (as per Claim period). As such, the period for consideration by the Commission in the present Petition in terms of the law of limitation ought to be the preceding three years from the date of filing the present Petition.
- 4.4. Petitioners have not made any attempt by stating any single fact explaining the delay in approaching the Commission at this belated stage for the past periods in question. Therefore, the said careless approach on the part of the Petitioners disentitles them to lay any claim, more particularly when in the undisputed set of facts, the same is barred by the Limitation Act. Petitioners has claimed the LPS/DPC, which is reproduced below:

Name	DPC Claim period	Amount
MAILL, Wardha	December-2018 to June-2019/December, 2019 to March-2020/April-2022 to July-2022 & December-2022 to March-2023	61,47,484
MAILL, Nagpur	August - 2018 to May - 2023	91,76,436.72

- 4.5. However, the details provided by the Petitioners in the present Petitions are denied and the

obligation would be limited only to the amount as per MSEDCL's calculation as stated below in terms of the applicability of the Limitation Act.

Name	DPC Period	DPC amount @15% p.a as per EPA (Rs.)	DPC as per MSEDCL Paid on
MAILL, Wardha	April-22 to July-22 & December-22 to March -23	23,39,831	30 May, 2024

- 4.6. The calculations of the above-mentioned table, MSEDCL has only considered the DPC/LPS outstanding amount to the Petitioner ranging from April - 22 to July -2022 & December - 2022 to March - 2023, i.e. Rs 23,39,831 instead of the claim averred by the Petitioner in the present Petition as the alleged claimed amount in the present Petition is partially barred by the Limitation Act.
- 4.7. Further, the Commission has imposed the penalty of 1.25% on DPC in the relied matters as a condition subsequent to non-adherence of the timeline specified therein, which is absent in the case at hand. Accordingly, in view of the above, the said prayer regarding grant of 1.25% per month on DPC in the present case is unfounded and thus, may not be allowed. It is pertinent to note that the Commission had taken a similar view in Case No. 107 of 2021, dated 04 February, 2022.
- 4.8. Therefore, the Commission vide above Orders 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 in a case where so directed by the Commission. The belated approach for demanding claim to the Commission should not be allowed and as such question of interest on DPC does not arise. Further, MSEDCL has already paid DPC amount of Rs.23,39,831 to the Petitioner on 30 May 2024. Hence, pray to not to levy any Penal interest on DPC.
- 4.9. The Petitioner's claim of interest @ 1.25% per month on the LPS till final payment on outstanding DPC amount is not maintainable as no provision exist in the EPA in this regard. Furthermore, the liability with respect to penal interest of 1.25% per month would only be attracted, in case the timeline for payment of principal amount as well as DPC is given by the Commission and has not been adhered to by MSEDCL, which since evidently is not the case as the order providing the timeline for payment of DPC is yet to be passed in the present matter.
- 4.10. The prayers of the Petitioner are not maintainable and deserves to be dismissed. It is also pertinent to note that 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. Further, MSEDCL is taking

its best efforts to make the payment to generators by borrowing loans from banks.

- 4.11. MSEDCL in MAILL, Nagpur has stated that it is a settled position of law that *Doctrine of Waiver of Rights* is based on the premise that a person is his best judge and that he has the liberty to waive the enjoyment of such rights as are conferred on him by the State. However, the person must have knowledge of his rights and that the waiver should be voluntary. Pertinently, in the present case, the Petitioner was well aware that there is no entitlement of LPS in the BEPA since 2016. As such, the Petitioner consciously chooses to waive the same by not making a provision of LPS/DPC in the EPA entered with the Respondent herein. There is no DPC payment clause in the MAILL, Nagpur EPA, and consciously the MAILL Nagpur had waived *their* right to claim LPS/DPC. In this regard MSEDCL has referred the Hon'ble Supreme Court Judgement in *Basheshar Nath v. CIT, 1959 Supp (1) SCR 528*
- 4.12. Also, it is a settled position of law that the Courts cannot rewrite a contract which was mutually executed by the parties to the Contract rather the Courts have to simply apply the terms and conditions of the agreement as agreed between the parties. MSEDCL relied on judgement of Supreme Court of India in *Maharashtra Electricity Distribution Company Ltd Vs Maharashtra ERC, 2021 SSC online 913* stated that the provisions of PPA which has been mutually and consciously agreed by parties are binding between the parties.
- 4.13. MSEDCL has also referred Supreme Court Judgement in the matter of *Shri Ambica Medical stores and others v Surat people's Cooperative Bank Ltd and Others (2020) 13 SSC 564* in which Court or forum cannot go beyond what has been between the parties. It is mandate under law that any court has to simply apply the terms and conditions of the agreement as agreed between parties.
5. During e-hearing held on 19 July 2024, the Advocate of the Petitioners vide email dated 17 July 2024 requested adjournment of the hearing citing unavoidable personal difficulty. Considering the request, the Commission adjourned the hearing.
6. During e-hearing held on 12 November 2024, the advocate appearing on behalf the Petitioners and MSEDCL reiterated their submissions.
7. **MSEDCL in its submissions dated 11 December 2024 stated as follows:**
  - 7.1. MSEDCL in its additional submissions dated 11 December 2024 reiterated its submissions on maintainability of the Petitions and stated that the claims prior to 20 February 2021 are barred by the limitation period. Further, MSEDCL has stated that mere correspondence does not extend the limitation period. Also stated that the petitioner has not provided any justification for the delay in filing the petition, therefore it denies the claims made by the petitioner. MSEDCL also submitted that it has already paid a certain portion of the DPC amount to the petitioner.

- 7.2. MSEDCL has referred Judgement *Band TAG Versus Ministry of Defence; 2023 SCC On-line SC 657*, this Judgment regarding the limitation period for claims, it highlights that mere correspondence between parties does not extend the limitation period for filing claims.
- 7.3. MSEDCL has also cited Judgement of *Tarun Bharat Sangh vs. Union of India, 1994 Supp (2) SCC 342*, it is a well-established principle of law that if a party was not vigilant and had slept over its right and had failed to take steps at the appropriate time, then it has to blame itself if it has suffered any prejudice on the account of in its action.
- 7.4. In case of MAILL, Nagpur MSEDCL reiterated its submissions and stated that as per Doctrine of Waiver, the Petitioner has waived the right to claim LPS as it was not included in the EPA. Also, as per Court's Rule, the courts cannot rewrite contracts and must apply the terms mutually agreed upon by the parties.

### **Commission's Analysis and Rulings**

8. The Petitioners have filed the present Petition under 86 (1) (e) of the Electricity Act 2003 read with Regulation 39 of the MERC (Transaction of Fees and Charges) Regulation 2022. The Petitioners are seeking payment of LPS on energy bills paid belatedly by MSEDCL.
9. The Commission notes that the EPAs executed with MAILL, Wardha has provision of LPS and as per Clause 8.3 of the EPA, a credit period of sixty (60) days from the date of receipt of the invoice is available to MSEDCL for releasing the payments. Also, it provides that DPC at the rate of 1.25% per month will be levied in the event of delay of payment by MSEDCL beyond a period of sixty (60) days from the date of receipt of invoice. The relevant extract of the Clause 8.3 of the EPA is reproduced below:

#### ***“8.3 Late payment surcharge***

*In case the payment of any bill for charges payable is delayed beyond a period of Sixty (60) days from the date of billing, a late payment surcharge at the rate of 1.25% per month shall be paid by MSEDCL. If the Due Date of Payment falls on Sunday or holiday, the next business day shall be the last day on which payment can be made without interest charges have been assessed.*

MSEDCL has not disputed regarding LPS Clause in Case of MAILL, Wardha. It has submitted that it has paid certain DPC amount to the MAILL, Wardha.

10. The EPA of MAILL, Nagpur do not contain provision of LPS. The Regulations 2015 do provide for payment of LPS upon payment default. The Petitioners averred that once Regulations governs field then the matter ceases to be contractual. Hence, MSEDCL is bound to pay the LPS in



accordance with governing regulatory framework. While opposing such contentions, MSEDCL has submitted that provisions incorporated in EPAs are with mutual consent. Hence, now Court can't rewrite the same.

11. Based on documents on record, the Commission frames following issues for its consideration:

- a) Whether Petitioner (MAILL, Nagpur) are eligible for LPS in absence of explicit provision in EPA?
- b) If yes, whether the claims made by the Petitioners are barred by the law of limitation?
- c) If applicable, quantification of claim amount?

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

**12. Issue (A): Whether Petitioner (MAILL, Nagpur) are eligible for LPS in absence of explicit provision in EPA?**

12.1. The Petitioner MAILL, Nagpur submitted that their EPA with MSEDCL have been executed in accordance with the MERC RE Tariff Regulations, 2015. EPA do contain identical clauses w.r.t due dates/timelines for payments of invoices/bills. Due date for payment is after 60 days from bill date. However, provision of LPS is not incorporated in EPA. MAILL, Nagpur contended that regulatory framework governs the modalities of power sell. EPA executed between parties cannot override the binding terms of MERC RE Tariff Regulations, 2015. There cannot be any deviation in the EPA from what has been specifically provided under the MERC RE Tariff Regulations, 2015.

12.2. MSEDCL argued that the Petitioner is raising the claim for the first time by way of the present Petitions which is barred by the *Doctrine of Delay and Latches*. The Petitioners have not been vigilant about their rights. Further, it is a settled position of law that the Courts cannot rewrite a contract which was mutually executed by the parties. Petitioners have voluntarily chosen not to include the LPS payment terms within the said EPA, which amounts to waiver i.e., waiving of right to have the benefit of LPS through a contract.

12.3. The Commission noted that EPA executed by MAILL Nagpur does not contain provision with respect to LPS payment. However, said EPA has provision related to Governing Law. The Commission notes that the governing law in the EPA covers the Electricity Act, 2003 and the MERC (Terms and Conditions for Determination of RE Tariff) Regulations, 2015. The relevant extract of the Governing Law in EPA dated is reproduced below:

***“ 20.1 Governing Law***

*This agreement and the rights and duties of the parties hereunder shall be governed by and contract enforced and performed in accordance with the laws of India. Electricity*

*Act, 2003, MERC (Terms and Conditions for Determination of RE Tariff) Regulations, 2015, Suo moto RE Tariff Order dated 25.01.2016 and relevant orders of MERC issued from time to time.”*

As per above provisions of the EPA, rights of the parties will be governed by the contract as per provisions of RE Tariff Regulations 2015.

12.4. Although, EPA of MAAIL Nagpur do not have any provision of LPS, RE Tariff Regulations 2015 has it. In RE Tariff Regulations, 2015, LPS provision reads as below:

“

***21. Late Payment Surcharge***

*In case the payment of any bill for charges payable under these Regulations is delayed beyond a period of sixty days from the date of billing, a late payment surcharge at the rate of 1.25% per month shall be levied by the Project Entity.”*

12.5. It is pertinent to note that present case is peculiar in nature wherein Regulatory framework provides for certain dispensation (on LPS applicability), but the contract signed between the parties is silent on said aspect. In this regard, it is necessary to understand that RE Tariff Regulations, 2015 are governing frameworks for procurement of RE power. The EPA entered between MAAIL Nagpur and MSEDCL is at the tariff determined in RE Tariff Order dated 25 January 2016 which is based on various parameters stipulated under RE Tariff Regulations 2015. LPS is one of the such parameter stipulated in the Regulations and hence it cannot be overlooked.

12.6. As far as MSEDCL’s contention that by signing the EPA without LPS clause, MAAIL Nagpur has waived its rights to claim LPS is concerned, it is necessary to peruse the Article 23.4 of EPA (refer MAAIL, Nagpur and MSEDCL), which reads as below:

“

***23.4 Waiver***

*Failure to enforce any right or obligations by any party with request to any matter arising in connection with this agreement shall not constitute a waiver as to that matter or any other matter. **Any waiver by any party of its rights** with respect to a default under this agreement or **with respect to any other matters arising in connection with this agreement must be in writing.** Such waiver shall not be deemed a waiver with respect to a subsequent default or other matter.”*

MSEDCL has not able to produce any written document showing parties have specifically agreed to waive off LPS claims. Hence, the argument of MSEDCL that LPS is waived off by the Petitioners is unsubstantiated.

12.7. In view of above analysis, the Commission rules that as EPA has been signed based on RE Tariff Regulations 2015, provision of LPS stipulated in said RE Tariff Regulations 2015 shall be applicable to EPA of MAAIL, Nagpur.

12.8. As far as MAAIL, Wardha is concerned, LPS clause has been included in the EPA itself and hence there is no dispute on applicability of LPS in respect of MAAIL, Wardha.

**13. Issue (B): Whether the claims made by the Petitioners are barred by the law of limitation?**

14.1. MSEDCL contended that LPS liability needs to be within Law of Limitation.

14.2. The present Petition has been filed invoking the Regulatory Powers of the Commission seeking enforcement of the MERC (Terms and Conditions for Determination of RE Tariff) Regulations, 2010/2015. Petitioners are requesting directions regarding the payment of LPS due to MSEDCL's delayed payments as per the EPA dated 30 April 2013 and 31 March, 2016. Petitioners have contended that as there is no contractual dispute and the claim for LPS is regulatory in nature, these are not subject to Law of limitation.

14.3. The Commission notes that the provisions of the Section 86(1) (f) of the EA 2003 are as follows:

“

*Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -*

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*(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;---*”

In the present case, relief sought is LPS amount from MSEDCL for alleged delay in payment of monthly due amount. Although, the Petitions are filed under Section 86 (1) (e) of the Electricity Act, 2003, nature of the issues agitated in the Petitions are in the nature of dispute between the Generating Company (the Petitioners) and Distribution Licensee (MSEDCL).

14.4. The Petitioners have not mentioned Section 86 (1) (f) of the Electricity Act, 2003. Rather, it has filed petition mentioning Section 86 (1) (e) of the Electricity Act, 2003. It is pertinent to note that the Hon'ble Supreme Court in its Judgement dated 12 February 2009 in Civil Appeal No. 943-944 (*J. Kumaradasan Nair v. Iric Sohan*, [(2009) 12 SCC 175]) has ruled as follows:

*“18. It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not. The court will not apply the beneficent*

*provisions like Sections 5 and 14 of the Limitation Act in a pedantic manner. When the provisions are meant to apply and in fact found to be applicable to the facts and circumstances of a case, in our opinion, there is no reason as to why the court will refuse to apply the same only because a wrong provision has been mentioned. In a case of this nature, sub-section (2) of Section 14 of the Limitation Act per se may not be applicable, but, as indicated hereinbefore, the principles thereof would be applicable for the purpose of condonation of delay in terms of Section 5 thereof.”*

***[Emphasis added]***

- 14.5. The Hon'ble Supreme Court in the aforesaid Judgment has held that mentioning of a wrong provision or non-mentioning of any provision of law would not be the criteria to decide applicability of the law and jurisdiction of the court. In view of the above judgment of the Supreme Court (though the ruling is in respect of applicability of Limitation Act) and considering nature of reliefs sought in the present Petitions, the Commission is of the opinion that present Petitions needs to be considered as Petitions filed under Section 86 (1) (f) of the Electricity Act, 2003 and accordingly all applicable laws need to be considered while deciding the relief sought.
- 14.6. 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 the above Judgement, the Commission deems it fit to apply principles encompassed in the Law of Limitation while evaluating the claims statement in present matter.
- 14.7. 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. This principle is underscored in '*State of Tripura v. Arabinda Chakraborty reported in (2014) 6 SCC 460*'. Based on the above principle, any claim prior to three years from date of filing of Petition is barred by limitation. In present Cases, the Petitions have been filed on 20 February 2024. Accordingly, claim prior to February 2021 should have been barred by limitation.
- 14.8. The Petitioners have relied upon Hon'ble Supreme Court Judgment dated 10 January 2022 and averred that the period between 15 March 2020 till 28 February 2022 needs to be excluded for the purpose of limitation. Relevant part of the said Supreme Court Judgment is reproduced below:

***“1. 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 quasijudicial 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.”***

***(Emphasis Added)***

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.

14.9. In present Cases, dispute is regarding non-payment of dues. 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 August 2018 to May 2023. As these Petitions have been filed on 20 February 2024 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.

14.10. Limitation period for invoices whose due date for payment is beyond 1 March 2019 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 shall be

available from 1 March, 2022. Based on such principles, in these cases, claims for invoices whose due date for payment is beyond 1 March 2019 are within the limitation period.

**14. Issue (C): If applicable, quantification of claim amount.**

14.1. 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 ruled that it is the responsibility of the adjudicating authority to give clear findings on the amount due, if any. Therefore, it is important to quantify the claim amounts in the present cases.

14.2. The Commission notes that two aspects are necessary for computing LPS i.e. time delay in principal payment and applicable interest rate. The Petitioners have claimed the following LPS amounts computed @ 1.25% monthly interest rate on principal outstanding:

Sr. No	Generators	Date	Interest Rate (%)	LPS (Rs.)
1	MAAIL, Wardha	30 April, 2013	1.25 %	61,47,484
2	MAAIL, Nagpur	31 March, 2016		91,76,436.72

14.3. MSEDCL has provided its computation of LPS liability in respect of MAAIL, Wardha for the period April-22 to July-2022 & December-2022 to March -2023, which works out to be Rs 23,39,831. This LPS liability has been calculated considering the law of limitation as perceived by MSEDCL. MSEDCL also stated that it has already paid such amount to MAAIL, Wardha on 31 May 2024. In respect of MAAIL, Nagpur, MSEDCL has not provided any computation of LPS as it has contended that MAAIL Nagpur has waived its rights of LPS.

14.4. In the earlier part of the Order, the Commission has already ruled on the issue of law of limitation and applicability of LPS to MAAIL Nagpur. Considering these rulings, the Commission has worked out LPS based on documents on record and legal precedence.

14.5. For computing LPS claim, the Commission has considered LPS rate of 1.25% per month. Regarding MAAIL, Wardha the Commission notes that the MSEDCL has paid Rs 23,39,831 on 31 May, 2024, therefore after deducting the amount paid by MSEDCL the balance LPS amount has been worked out. Therefore, in the below table, the Commission quantifies LPS payable to the Petitioners by applying Law of Limitation, which works out to be as below:

Sr. No	Petitioner	LPS as per Petitioner (Rs.)	LPS Amount Paid by MSEDCL (Rs)	LPS computed by the Commission (Rs.)
1	MAAIL, Wardha	61,47,484	23,39,831	32,98,810.06
2	MAAIL, Nagpur	91,76,436.72	-	88,02,863.50

14.6. The Commission notes that the Petitioners have also claimed penal interest @ 1.25% per month on delayed LPS payment. The Petitioners have relied upon the Commission's Order dated 15 June 2018 in Case No.102 of 2018 and 10 August 2016 in Case No.150 of 2015 for sufficing claim of penal interest.

14.7. The Commission notes that in Case No. 150 of 2015 in the matter of *Hindustan Zinc Limited v. Maharashtra State Electricity Distribution Company Limited*, the Commission vide its Order dated 10 August 2016 upheld that MSEDCL is liable to pay DPC/LPS on the outstanding payments. The relevant portion of the aforesaid Order is reproduced herein below:

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

14.8. It is pertinent to note that MSEDCL had appealed against the abovementioned Order dated 10 August 2016 before the Hon'ble APTEL and the Hon'ble APTEL vide its Judgement dated 24 April 2018 in Appeal No.75 of 2017 in the matter of *MSEDCL v. Maharashtra Electricity Regulatory Commission & Anr.* has upheld the decision of the Commission.

14.9. Further, APTEL in its Judgement dated 20 September 2021 in Appeal No. 386 of 2019 held that Respondent wind generator is entitled to receive interest of DPC/LPS in case of late payment by MSEDCL. The relevant extract has been reproduced below for ready reference:

“40.

...

*The present case is a perfect illustration of the importance of awarding interest on LPD / DPC, as the appellant has, year after year, caused massive delay in payments and compelled the respondent to initiate legal proceedings before the State Commission for recovery of its legitimate dues.”*

14.10. The Commission notes that interest of 1.25% per month on 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. Now claims have been made by Biomass generators. Circumstances in present matters are identical to Wind matters. Hence, the Commission allows interest of 1.25% per month on delayed payment of LPS.

14.11. 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 December 2024. Accordingly, interest on LPS is computed as follows:

Generators	LPS Amount (Rs.)	Interest Rate (%)	Interest on Delayed Payment of LPS (Rs. )
MAIL, Wardha	32,98,810.06	1.25% per month	27,64,129.09
MAIL, Nagpur	88,02,863.50		51,98,147.32

15. The Commission directs the Petitioners to raise invoices as per the above approved amounts 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, the Petitioners may take recourse to mechanism stipulated in recently notified the Electricity (Late Payment Surcharge and related matters) Rules 2022 for recovering its due amount.
16. Having ruled as above, the Commission notes that it has undertaken computation on LPS and interest on delayed payment of LPS based on the information submitted by the Petitioners as MSEDCL has not provided details for above period. To avoid, any undue benefits to the Petitioners on account of non-availability of crucial information, the Commission allows MSEDCL to reconcile the above claims amounts based on the principals stipulated in this Order. For any difference in amount, parties may reconcile the computation and pay/recover such differential amount. In case of dispute on differential amount, parties may approach the Commission for adjudication. This process of scrutiny/re-computation shall be completed within a month from date of this Order.
17. Hence, the following Order.

### ORDER

- Case Nos. 34 and 35 of 2024 are partly allowed.
- The Petitioners are eligible for LPS and Penal interest as follows:


Petitioner	Late payment Surcharge (Rs.)	Interest on Delayed payment of LPS (Rs.)	Total (Rs.)
MAIL, Wardha	32,98,810.06	27,64,129.09	60,62,939.15
MAIL, Nagpur	88,02,863.50	51,98,147.32	1,40,01,010.82

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

Sd/-  
(Surenndra J. Biyani)  
Member

Sd/-  
(Anand M. Limaye)  
Member

Sd/-  
(Sanjay Kumar)  
Chairperson

  
(Dr. Rajendra G. Ambekar)  
Secretary

