

**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. 79 of 2024 & IA 22 of 2024

And

Case No. 80 of 2024 & IA 23 of 2024

Case No. 79 of 2024 & IA 22 of 2024

**Case of Maharashtra State Electricity Distribution Company Limited (MSEDCL)
for Review of the Common Order dated 27 December 2023 in Case Nos. 151, 177,
186, 187 and 196 of 2023**

And

IA for condonation of delay in filing its review Petition

And

Case No. 80 of 2024 & IA 23 of 2024

**Case of MSEDCL for Review of the Common Order dated 01 February 2024 in
Case Nos. 162, 163 & 166 of 2023**

And

IA for condonation of delay in filing its review Petition

Maharashtra State Electricity Distribution Company Limited (MSEDCL)

.. Petitioner in Case No.79 of 2024 and 80 of 2024 & IAs

V/s

1. Jubilant Ingrevia Ltd.
2. AMP Energy Green Fifteen Pvt. Ltd.
3. Infosys Ltd.(SEZ)
4. Radiance MH Sunrise Seventeen Pvt. Ltd.
5. Ultratech Cement Ltd.
6. ReNew Surya Spark Pvt. Ltd.
7. Saarloha Advanced Materials Pvt. Ltd.
8. Renew Bhanu Shakti Pvt. Ltd.
9. Huoban Energy 1 Pvt. Ltd.

Respondents in Case Nos. 79 of 2024

1. CIE Automotive India Ltd.
2. Sunbarn Renewables Pvt. Ltd.
3. Strongsun Solar Pvt. Ltd.

4. Bekaert Industries Pvt. Ltd.
5. Greenzest Sun Park Pvt. Ltd.

Respondents in Case Nos. 80 of 2024

Coram

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

Appearance

For Petitioner in

Case No. 79 of 2024&IA

Case No. 80 of 2024&IA

}

Mr. Harinder Toor (Adv.)

For Respondents in

Case No. 79 of 2024

Case No. 80 of 2024

}

Mr. Vishrov Mukerjee (Adv.)

COMMON ORDER

Date: 10 March 2025

1. The Commission has passed the Common Order dated 27 December 2023 in Case Nos. 151, 177, 186, 187 and 196 of 2023 (*Jubilant & Others VS MSEDCL*) (**Common Order dated 27 December 2023 / Order under review**) and 01 February 2024 in Case Nos. 162, 163 and 166 of 2023 (*CIE Automotive & Others VS MSEDCL*) (**Common Order dated 1 February 2024/ Order under review**) (**Impugned Orders**). Both these Orders address the challenge of MSEDCL levying wheeling charges on its Captive Open Access transactions when the Distribution system is not used.
2. Aggrieved by the above Impugned Orders, Maharashtra State Electricity Distribution Company Limited (**Petitioner/ MSEDCL**) has filed two review Petitions, i.e. Petition in Case No. 79 of 2024 on 7 May 2024 for Review of the Common Order dated 27 December 2023 and Petition in Case No. 80 of 2024 on 7 May 2024 for Review of the Common Order dated 01 February 2024 under inter alia Section 94 (1) (f) of the Electricity Act, 2003 (**EA, 2003**).
3. Notably, MSEDCL submitted that it had registered the Review Petitions on 19 April 2024. However, on perusal of the E-filing Portal of the Commission's Website, it is imperative to note that there were certain deficiencies raised by the legal Section, such

as non-submission of authority letters, details fees payments, condonation of delay applications, etc. These deficiencies were cleared by the MSEDCL on 7 May 2024. Therefore, after replying to deficiencies in filing the Petition, it appears that MSEDCL filed the Review Petitions on 7 May 2024.

4. MSEDCL has also filed interlocutory applications (IAs) for the condonation of delay in filing both the review Petitions.

5. Details of the Prayers of these two Petitions and their IAs:

- 5.1. The Prayers of the Petition in Case No. 79 of 2024 are as follows:

“(a) That MERC be pleased to Review the Common Order dated 27.12.2013 passed by MERC in the Case No. 151, 177, 186, 187 and 196 of 2023 (including, reviewing said Common Order dated 27.12.2013 on the grounds / reasons set out by MSEDCL in present Petition / Case);

(b) That MERC be pleased to condone the delay by MSEDCL in lodging / filing of present Petition / Case;”

The Prayers of IA No.22 of 2024 filed in Case No. 79 of 2024 are as follows:

“(a) to allow the present application:

(b) Condone the delay of 69 days in filing the Review;

- 5.2. The Prayers of the Petition in Case No. 80 of 2024 are as follows:

“(a) That MERC be pleased to Review the Common Order dated 01.02.2024 passed by MERC in the Case Nos. 162, 163 and 166 of 2023 as well as (including, reviewing said Common Order dated 01.02.2024 on the grounds / reasons set out by MSEDCL in present Petition / Case);

(b) That MERC be pleased to condone the delay of _____ days by MSEDCL in lodging / filing of present Petition / Case;”

The Prayers of IA No.23 of 2024 filed in Case No. 80 of 2024 are as follows:

“(a) To allow the present application:

(b) Condone the delay of 34 days in filing the Review”

6. **The Commission notes that the submissions and prayers in these two Cases are similar in nature. MSEDCL is seeking Review of the Common Orders dated 27 December 2023 and 1 February 2024 (Impugned Orders) and condonation of delay for filing these review Petitions. Since the grounds raised and issues involved are similar in nature, these two Cases are being dealt with by the Commission in a**

combined manner, and these Cases are being disposed of through a common Order.

7. Further, on examination of the pleading of the parties, the Commission notes that submissions of the Parties are common in nature and hence, to avoid the repetition of the submission, issue-wise submissions of the Parties and the Commission rulings are prepared in the subsequent part of the Order. The details of the submissions of the parties are as under:

Table No.1: Details of submission of Parties in Case Nos. 79 and 80 of 2024

Sr. No.	Party	Details of submission
1	Petitioner	a. Affidavit dated 7 May 2024 b. IA filed by MSEDCL 7 May 2024 & again uploaded on 27 January 2025
2	Respondents	a. Respondents Reply dated 5 November 2024

Details of Proceedings / Hearings

8. **At the E-hearing / Proceedings in both the cases held on 11 October 2024:**

- 8.1. As consented by the Parties, Both the Cases, i.e. Case Nos. 79 of 2024 and 80 of 2024 were heard together.
- 8.2. Advocate of MSEDCL re-iterated its submissions as made out in both the Petitions and further stated that:
- (i) According to Section 2 (19) of the EA, 2003, a "distribution system" is defined as including associated facilities in addition to the system of wires (or network) (i.e., providing functions of services other than said system of wires).
 - (ii) MSEDCL provides auxiliary power supply, energy metering of such auxiliary power supply, and banking facility, which are associated facilities under Section 2 (19) of EA, 2003.
 - (iii) As a result, the Open Access Consumers and/or Solar Power Projects use MSEDCL's distribution system, in particular, the associated facilities connected to its distribution network, for the conveyance of electricity.
 - (iv) Thus, the Commission erred in failing to appreciate that the associated facilities are being used by Open Access Consumers and/or Solar Power Generators.
 - (v) The Commission erred by failing to consider the legal position that banking facilities are accessible under Regulations 2.1(4) and 20 of the DOA Regulations, 2016 but not at all under the aforementioned TOA Regulations, 2016.

- (vi) The Commission erred in interpreting and relying upon the Judgement dated 24 May 2011 passed by Hon'ble APTEL in Appeal No. 166 of 2010 (*Chhattisgarh State Power Transmission Co. Ltd. Vs. Chhattisgarh ERC*) that Solar Power Generators in said cases were the consumers of MSEDCL under the EA, 2003 and DOA Regulations, 2016
 - (vii) OA Consumer is using the Distribution System of MSEDCL in law for the conveyance of electricity/renewable energy, and as such, is due and liable to pay the Wheeling Charges to MSEDCL under Regulation 14.6 (a) of DOA Regulations, 2016.
 - (viii) The Generating Station or the Consumer in the OA transaction are both not directly connected to the transmission system.
 - (ix) There is an inadvertent delay in filing the present review Petition. This delay inadvertently occurred due to not receiving the appropriate sanction to file the current review petition from its higher management and for consulting the lawyers. As such, due to such unforeseen delays, MSEDCL could not file the review petition within 45 days. The Commission should allow this delay since it is honest and unintentional. This would be in the interests of Justice and facilitate complete and due adjudication of the matter on merits.
- 8.3. Advocate of Respondents in both Cases re-iterated its submissions as made-out replies and further stated that:
- (i) MSEDCL's explanation/justification for the delay is grossly inadequate since MSEDCL has failed to show sufficient cause for filing the Review Petition.
 - (ii) MSEDCL has neither pointed out any error apparent in the Order dated 27 December 2023 nor provided any new evidence/document to substantiate its case for review of the Order.
 - (iii) MSEDCL is re-agitating its entire case basis the same arguments which have already been considered and rejected by the Commission in the Order dated 27 December 2023 and 1 February 2024 (**Impugned Orders**).
 - (iv) Thus, the present Review Petition is an Appeal in disguise and ought to be dismissed.
 - (v) MSEDCL's contention regarding the banking facility being provided through the said 33 kV Dedicated Transmission Line (**DTL**) is an associated facility of MSEDCL is misplaced. The aforesaid submission was neither argued nor pleaded by MSEDCL during the proceedings of the original petition, and therefore, it is a new argument being raised by MSEDCL for the first time at the review stage, which is not permissible.

8.4. The Commission directed Respondents in both Cases to file their replies within seven (7) days and MSEDCL to file Rejoinder, if any, within seven (7) days, thereafter.

9. **With the above background, the Commission now deals with the issues raised in the aforesaid submissions of the Parties. The Commission has identified the following issues for its consideration:**

- (i) Condonation of delay in filing the Review Petitions.
- (ii) The definition of 'distribution system' is not limited to the system of wires (or network) but also includes associated facilities.
- (iii) The Banking Facility is Applicable to the Distribution System as per DOA Regulations 2016.
- (iv) Generating Station or the Consumer in the OA transaction are not directly connected to the transmission system.
- (v) Erred in interpreting and relying upon the Judgement dated 24 May 2011 passed by Hon'ble APTEL in Appeal No. 166 of 2010.
- (vi) Erred in interpreting and relying upon the Judgement dated 12 September 2014 passed by Hon'ble APTEL in Appeal No. 245 of 2012 & Batch.
- (vii) Conditions of Review of Common Order dated 27 December 2023 and 1 February 2024.

10. The Commission is dealing with the above issues raised by the Petitioner for review of impugned Orders in the following paragraphs:

11. **Issue (i): Condonation of delay in filing the Review Petitions**

MSEDCL's Submission:

11.1. The present Petitions are being preferred by MSEDCL seeking a review and/or clarification of the Common Order dated 27 December 2023 and 1 February 2024.

11.2. The Order under Review (i.e. common Order dated 27 December 2023 was uploaded on 28 December 2023 (Friday). However, the same was seen by MSEDCL on 30 December 2023.

11.3. Accordingly, MSEDCL was supposed to file the present Review of Order dated 27 December 2023 on or before 12 February 2024.

11.4. Around 15-20th of January 2024, MSEDCL received the inputs from their Counsel(s) and thereafter, MSEDCL immediately processed the same for approval from its authorities.

- 11.5. The said approval was received by the concerned department on 08 February 2024 and thereafter, advocates were instructed to prepare the draft.
- 11.6. On 17 February 2024, the advocates provided MSEDCL with the draft Review Petitions and accordingly, the same was filed by MSEDCL on 19 April 2024.
- 11.7. MSEDCL diligently pursued the filing of the present Review Petition. The present Review, to the extent of the common Order dated 27 December 2023, is concerned the same is delayed by 69 days.
- 11.8. There is no deliberate action on the part of MSEDCL to file the present Review with delay, but it inadvertently got delayed. The delay is neither intentional nor due to any negligence, and no prejudice shall be caused to the Appellant if the present application is allowed by the Commission. The Commission has all the power under Regulation 28 (d) of MERC (Transaction of Business and Fees and Charges) Regulations 2022 (**MERC Transaction of Business Regulations 2022**) to condone the delay.

Respondents's submission:

- 11.9. In terms of Regulation 28(a) of MERC Transaction of Business Regulations 2022, the period of limitation for filing a Review Petition against an Order of the Commission is 45 days.
- 11.10. The Commission passed the Order on 27 December 2023. In terms of Regulation 28(a), the period of limitation for filing the present Review Petition expired on 10 February 2024. However, the Review Petition was filed on 19 April 2024 with a delay of 69 days.
- 11.11. From the justifications provided by MSEDCL, it is borne out that except for the time taken for seeking opinion from its counsel, drafting of the Review Petition and delay in approval by appropriate authority, no reason has been put forth by MSEDCL to justify the delay.
- 11.12. On the contrary, the reasons provided by MSEDCL evince a deliberate lack of action, demonstrating a lackadaisical approach devoid of diligence and *bona fide* which is borne out from the following:
- (i) MSEDCL has incorrectly stated that the Order dated 27 December 2023 was uploaded on the Commission's website on 28 December 2023. On the contrary, the Order was uploaded on 27 December 2023. This evinces a lack of *bona fide* on MSEDCL's part.
 - (ii) MSEDCL stated that it became aware of the Order dated 27 December 2023 on 30 December 2023. Thus, there is a lack of diligence on MSEDCL's part.
 - (iii) After receiving inputs from the counsel in January 2024, the approval for filing of the Review Petition was granted on 08 February 2024.

(iv) Thereafter, despite receiving the draft Review Petition on 17 February 2024, the Review Petition was only filed on 19 April 2024 i.e., after 69 days. This delay has not been explained by MSEDCL.

11.13. It is a settled position of law that time taken for opinion and drafting of appeal is not a sufficient cause for condonation of delay. In this regard, reliance is placed on the Hon'ble Appellate Tribunal for Electricity (**APTEL**) Judgment dated 10 January 2014 in I.A. No. 416 of 2013 in DFR No. 2309 of 2013 titled *Rajasthan Vidyut Prasaran Nigam Ltd v. Rajasthan ERC*.

11.14. Further, it is a well-settled principle that no event or circumstance arising after the period of limitation can constitute a sufficient case. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in *Ajit Singh Thakur Singh and Anr. v. State of Gujarat AIR 1981 SC 733*

11.15. Recently, the Hon'ble Supreme Court in *Union of India & Anr. v. Jahangir Byramji Jeejeebhoy, through his LR* reported as 2024 SCC OnLine SC 489, reiterated that the vital test for the condoning delay is whether a party has been reasonably diligent in prosecuting the matter and that delay should not be excused as a matter of generosity.

11.16. In view of the foregoing legal position, the explanation provided by MSEDCL regarding the time taken to obtain legal opinion and drafting of the Review Petition does not constitute sufficient cause.

11.17. In the present case, the reasons provided by MSEDCL do not qualify as 'sufficient cause' to condone the delay.

11.18. The Hon'ble Supreme Court in *Postmaster General & Ors. v. Living Media India Ltd. & Anr.* (2012) 3 SCC 563 held that condonation of delay is not an exception, and it should not be used as an anticipated benefit for the government departments. Unless the Department has reasonable and acceptable reasons for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to a considerable degree of procedural red tape in the process cannot be accepted.

11.19. In view of the foregoing submissions, the present Review Petitions are a mere afterthought and an abuse of process by MSEDCL. Accordingly, there is no merit in these Review Petitions filed by MSEDCL and therefore, the Commission ought to dismiss the present Review Petitions in *limine* and impose costs.

Commission's Analysis and Ruling:

11.20. The Commission notes that the present Review Petitions have been filed by MSEDCL under Regulation 28 of MERC Transaction of Business Regulations 2022. The relevant extract of MERC Transaction of Business Regulations 2022 are as under:

“28. Review of decisions, directions, and orders:

- (a) Any person aggrieved by a direction, decision or order of the Commission, from which
 - (i) no appeal has been preferred or
 - (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a review of such order, within Forty-Five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.
- (b) An application for such review shall be filed in the same manner as a Petition under these Regulations.
- (c) Review application shall be decided, as far as practicable, by the same constitution of the Commission which passed the original order.
- (d) The Commission shall for the purposes of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.
- (e) When it appears to the Commission that there is no sufficient ground for review, the Commission may after giving such person an opportunity of being heard in the matter, reject such review application.
- (f) When the Commission is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for.”

[Emphasis Added]

Thus, the ambit of review is limited, and the Petitions filed have to be evaluated accordingly.

11.21. As per the above-mentioned Regulations, the Review Petition is required to be filed within forty-five (45) days from the date of Order of the Commission.

11.22. The Commission notes that as both Parties raised the issues of delay in filing these review Petitions and some discrepancies with the filing of the review Petitions, it is imperative

to analyse the details regarding the filing of these review Petitions which are tabulated in the table below:

Table No.2: Details of Review Petitions and delays in filing Review Petitions

S.N.	Review Petition in Case No.	Impugned Order issued on	Review Petitions filed on	Total Delay in filing Review Petitions worked out to (after clearing all discrepancies in filing Review Petition)
1	Case No. 79 of 2024	27 December 2023 in Case No. 151 Of 2023 & others	<ul style="list-style-type: none"> As per MSEDCL both the Review Petitions were filed on 19 April 2024. However, it is observed that MSEDCL has cleared all the legal discrepancies of the Petitions on 7 May 2024. Therefore, filing of Review Petitions date is 7 May 2024 	132 days delay
2	Case No. 80 of 2024	1 February 2024 in Case No. 162 of 2023 & others		97 days delay

11.23. From the above table and submissions of the Parties, it is observed that:

(i) Review Petition in Case No. 79 of 2024:

- (a) MSEDCL has filed the Petition for the review of the common Order dated 27 December 2023 on 19 April 2024. However, on perusal of the e-filing Portal from the Commission's Website, it is imperative to note that there were certain deficiencies raised by the legal Section, such as non-submission of authority letters, details fees payments, condonation of delay applications, etc. These deficiencies were cleared by the MSEDCL on 7 May 2024. Therefore, after replying to deficiencies in filing the Petition, it appears that MSEDCL's Review Petition was registered on 7 May 2024.
- (b) MSEDCL has also filed the condonation of delay of 69 days in filing its review Petition. However, it is not clear from MSEDCL's submission how it calculated a delay of 69 days in filing the Review Petition.
- (c) The Commission issued a common Order dated 27 December 2023 and MSEDCL has filed a Review Petition, i.e. 7 May 2024 (after clearing deficiencies). Therefore, the delay for filing a review Petition worked out to be 132 days.

(ii) Review Petition in Case No. 80 of 2024:

- (a) MSEDCL has filed review Petition for the review of the common Order dated 1 February 2024 on 19 April 2024. However, it is imperative to note that there were certain deficiencies raised by legal Section which were cleared by the MSEDCL on 7 May 2024. Therefore, after replying to deficiencies in filing the Petition, it appears that MSEDCL filed the Review Petition on 7 May 2024.
- (b) MSEDCL has also filed the condonation of delay of 34 days for filing its review Petition. It is unclear from MSEDCL's submission how the 34-day delay in submitting the review petition was determined.
- (c) The Commission issued the common Order dated 1 February 2024 and MSEDCL filed Review Petition on 7 May 2024 (after clearing deficiencies. Therefore, it appears that the delay in filing the review Petition worked out to be 97 days.

11.24. The Commission notes that submissions regarding the dates of Orders are as below:

- (a) The Order dated 27 December 2023 was uploaded on the Commission's website on 28 December 2023.
- (b) MSEDCL further stated that it became aware of the Order dated 27 December 2023 on 30 December 2023.

11.25. In this context, while checking internally regarding the uploading of the Orders, it appears that the Order was uploaded on 27 December 2023. Further, MSEDCL has not substantiated details regarding the delay in uploading of the Order on 28 December 2023. Under such circumstances, it appears that there is a lack of diligence and a careless, ineffectual approach on MSEDCL's part, which leads to delays in filing these review Petitions.

11.26. As such, the Commission hereby caution MSEDCL about this approach and going forward, MSEDCL should be careful before making any false submissions without substantiating before the Commission.

11.27. Further, MSEDCL has requested the condonation of a delay in filing the review Petitions, and these delays in filing were due to the approval of higher Authorities and the finalisation of the review Petitions.

11.28. Respondents have opposed the condonation of such delay and further stated that the Hon'ble Supreme Court in *Union of India & Anr. v. Jahangir Byramji Jeejeebhoy, through his LR* reported as 2024 SCC OnLine SC 489, reiterated that the vital test for the condoning delay is whether a party has been reasonably diligent in prosecuting the matter and that delay should not be excused as a matter of generosity and in the present case,

the reasons provided by MSEDCL do not qualify as ‘sufficient cause’ to condone the delay.

11.29. In this regard, it is imperative to note that the Hon’ble Supreme Court in its Judgment dated 13 September 2013 in the case of Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Others, (2013) 12 SCC 649, has made observations related to condonation of delay applications which reads as under:

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

22.1. (a) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

22.2. (b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

22.3. (c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

22.4. (d) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameter."*

[Emphasis Added]

11.30. The Hon'ble Supreme Court in the above Judgment provides the principles for consideration of condonation of delay and further ruled that there should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

11.31. The Commission further vide Order dated 17 November 2022 in Case No.132 of 2022 (*MSEDCL Vs Bhulani Steel*) has condoned the delay of 62 days for filing the Review Petition by MSEDCL. The relevant extract of the Order dated 17 November 2022 is as

under:

“8. The Commission notes the submission of MSEDCL that a delay of 62 days for filing the review Petition, which was due to delay by MSEDCL for deciding whether the appeal or review should be preferred on the Original Order dated 21 April, 2022. There was a further delay on account of drafting and filing the review Petition before the Commission, by their advocates. MSEDCL has prayed for the condonation of delay for filing the review Petition. The Commission notes the delay for filing the review Petition is inadvertent and thus, condones the same.”

11.32. The Commission notes that the justification cited by MSEDCL for condonation of delay in the instant case is very general, routine and vague and normally the same should have been the reason to reject the Review Petition, as contended by MSEDCL.

11.33. However, considering the submission advanced by the Petitioner and for advancing substantial justice on material aspect relating to levy of wheeling charges and losses, the Commission condones the delay in the interest of justice and hence going into the merits of the review petition of MSEDCL.

12. **Issue (ii): The definition of ‘distribution system’ is not limited to the system of wires (or network) but also includes associated facilities:**

MSEDCL’s submission:

12.1. MSEDCL’s argument is based on the definition and clear meaning of "distribution system," among other things, as stated in Section 2 (19) of the EA, 2003.

12.2. The said definition of ‘distribution system’ is not limited to the system of wires (or network), but also includes associated facilities (i.e., provision of additional functions or services other than said system of wires).

12.3. The underlying objective of both said system of wires and said associated facilities is to enable the distribution or supply of electricity.

12.4. MSEDCL is providing (i) auxiliary power supply, (ii) energy metering of such auxiliary power supply, and (iii) banking facility, which are associated facilities under Section 2 (19) of EA, 2003, and as such extend *de jure* [i.e., in law (whether in fact or not)] the distribution system of MSEDCL to the Point of Supply for provision of said auxiliary power and said banking facility.

12.5. Thus, in law, the distribution system of MSEDCL (particularly, the associated facilities of its distribution network) is used by the OA Consumer(s) and/or Solar Power Project(s) for the conveyance of electricity/renewable energy.

12.6. In view of the above, the OA Consumer(s) is due and liable to pay the Wheeling Charges under the Regulation 14.6 (a) of the MERC (Distribution Open Access) Regulations,

2016 (DOA Regulations 2016).

12.7. In support of its defence, MSEDCL relied on following definitions of EA, 2003:

“2. Definitions. – In this Act, unless the context otherwise requires, -

...

(19) “distribution system” means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;

...

(47) “open access” means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;

...

(76) “wheeling” means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62;”

12.8. Section 2 (19) of EA, 2003 envisages the distribution system:

- (a) comprising of system of wires as well as associated facilities thereof.
- (b) the associated facilities are relatable and/or allied to the system of wires.
- (c) the function or service of both system of wires and associated facilities is enabling the distribution or supply of electricity.
- (d) the system of wires and associated facilities are between the delivery point on the transmission lines and the point of connection to the installation of the consumers.
- (e) the system of wires and associated facilities are between the generation system connection and the point of connection to the installation of the consumers.

12.9. MSEDCL is providing auxiliary power supply on 33 kV level to groups of solar power projects situated in the relevant Solar Park. MSEDCL also provides energy metering specifications (through a special energy meter [SEM]) for (i) evacuation and (ii) auxiliary power supply at single-point connectivity to said groups of solar power projects.

12.10. Its Point of Supply for such auxiliary power supply is encompassed by the First Proviso to Regulation 2.2.2 (mm) of MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulation, 2021 (**Supply Code Regulations 2021**). The First Proviso to said Regulation 2.2.2 (mm) provides that in the case of HT and EHV Consumers, the Point of Supply means the point at the outgoing terminals of the Distribution Licensee’s metering cubicle placed before such HT and EHV Consumer’s apparatus.

- 12.11. The banking facility is being provided by MSEDCL to the Solar Power Project or CPP Project/Solar Power Generator, under Regulations 2.1 (4) and 20 of the DOA Regulations, 2016 and DOA First Amendment Regulations, 2019.
- 12.12. The Commission erred in the framing of “*Issue I: Whether the 33 kV lines in the present cases are part of MSEDCL’s distribution system?*”, in Para 29 of said Common Order. The Commission further erred in determining this erroneous Issue I in Paras 30 to 49 of the common Order dated 27 December 2023.
- 12.13. The Commission erred in failing to consider that the ownership of said 33 kV lines has not at all been claimed by MSEDCL.
- 12.14. The Commission erred in holding in Para 47 of the Common Order dated 27 December 2023 following: “*Hence, it will not be proper to state that just because a point of connection at consumer premises is interfaced with metering facilities of distribution licensee, the said 33 kV line would form part of Distribution System and in case it not forming part of MSEDCL’s distribution, RE Generators would not be entitled for banking facility.*”

Respondents’s submission:

- 12.15. Even in the Review Petition, MSEDCL has not claimed that its Distribution System is being used for the conveyance of electricity to Open Access consumers.
- 12.16. Rather, it is MSEDCL’s case that the associated facilities [*i.e., provision being provided by MSEDCL through the said 33 kV lines (i) auxiliary power supply, (ii) banking facility, and (iii) energy metering of auxiliary power*] are being used by the generating stations for conveyance of electricity to the Open Access Consumers.
- 12.17. The foregoing contention has been considered and rejected by the Commission in Order dated 27 December 2023.
- 12.18. Hence, MSEDCL is not permitted to re-agitate the same contention again on merits without specifically pointing out any error apparent in the Order dated 27 December 2023.
- 12.19. Further, while making such fallacious submission, MSEDCL has failed to establish how these alleged associated facilities (i.e., auxiliary power supply, banking facility, and energy metering): -
- (i) Qualify as associated facilities/distribution system of MSEDCL; and
 - (ii) Are being used by the generating stations for the conveyance of electricity to the open-access consumers.
- 12.20. It is well-established that the use of a distribution system is a prerequisite for the imposition of wheeling charges.

12.21. In terms of Section 2(19) of the Electricity Act, *"distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.*

12.22. Thus, in the present case, MSEDCL's Distribution System would only be between the delivery points on the transmission lines or the generating station connection, i.e., between MSETCL's GSS and the point of connection at the consumer's end. However, in the present case, the alleged associated facilities referred by MSEDCL are auxiliary power supply, banking facility and energy metering, all of which relate to the 33 kV line situated before the MSETCL's GSS.

12.23. Hence, even in terms of Section 2(19) of EA 2003, the provisions of auxiliary power supply, banking facility and energy metering being provided through the 33 kV line do not qualify as associated facility / Distribution System of MSEDCL.

12.24. The Hon'ble APTEL in Judgment dated 12 January 2024 in Appeal No. 276 of 2015 & Batch titled *West Bengal State Electricity Distribution Company Limited v. CERC & Ors* has dealt with the definition of Distribution System and *inter-alia* held that:-

"A distribution system, as noted hereinabove, is the system of wires and associated facilities, which is connected at one end to the end point of the transmission line or the generation station connection, and is connected at the other end to the point of connection to the installation of the consumer. A distribution installation, which does not end at the point of connection of the installation of the consumer, would not fall within the definition of a "distribution system" under Section 2(19). ...

[..]

...Mere establishment of a distribution installation would not suffice since a distribution system contemplates not just a system of wires and associated facilities, but for such a system to be connected to the installation of a consumer....

[..]

...The Electricity Act does not provide for a license to be granted merely for erection, operation, maintenance, and repair of a distribution installation which is capable of supplying electricity. A license is granted to a person to operate and maintain a distribution system as also to supply electricity to consumers in his area of supply, and not just the former....

[..]

...At the cost of repetition, it is reiterated that the "power supply and distribution installation", referred to in Section 2(31)(c) and Section 11(g) of the Railways Act, is not the "distribution system" as defined in Section 2(19) of the Electricity Act,

nor does Railways fall within the definition of “distribution Licensee” under Section 2(17) of the Electricity Act.”

- 12.25. Evidently, any system of wires that does not connect to the installation of the consumer will not qualify as a Distribution System. Therefore, the mere installation of a meter by MSETCL on the 33 kV DTL for the purpose of measuring auxiliary consumption will not qualify as a Distribution System or Associated facilities of MSEDCL.
- 12.26. In terms of the definition of “Distribution System” in Section 2(19) of the Electricity Act, “associated facilities” must necessarily relate to the system of wires of the distribution licensees.
- 12.27. In the present case, the “associated facilities” referred to by MSEDCL pertain to the 33 kV line which is owned and operated by the SPDs. It is an admitted position that the 33 kV line is not a part of the MSEDCL’s Distribution System. Hence, the provisions of auxiliary power supply, banking facility and energy metering being provided through the said 33 kV line do not qualify as associated facilities of MSEDCL.
- 12.28. The Commission in the common Order dated 27 December 2023 has held that connection with MSEDCL’s Distribution System is not the determining criteria for the levy of wheeling charges. The pre-requisite for the levy of wheeling charges is the use of MSEDCL’s Distribution System, which is not being used in the present cases. This finding has not been challenged by MSEDCL.
- 12.29. Further, in terms of Regulation 14.6(A) of the MERC (Distribution Open Access) (First Amendment) Regulations, 2019 (**DOA First Amendment Regulations 2019**) and Hon’ble APTEL Judgment dated 12 September 2014 in Appeal No. 245 of 2014 & Batch titled *Steel Furnace Association of India v. PSERC* (Para 36) (**Steel Furnace Judgment**), it is a settled position of law that the *sin qua non* for levy of wheeling charge is the use of the Distribution System and mere presence of Distribution System or connection with Distribution System is not sufficient for levy of wheeling charges.
- 12.30. In the present case, the provisions of auxiliary power supply, banking facility, and energy metering of auxiliary power are not being used by the generating station for the conveyance of electricity from their plant to the Open Access Consumers.
- 12.31. The electricity is being conveyed to the OA consumers through the 33 kV Dedicated Transmission Line and MSETCL’s Transmission System. Hence, wheeling charges cannot be levied.
- 12.32. In any case, merely because a point of connection at consumer premises / generating station is interfaced with the metering facilities of the distribution licensee, the 33 kV line would not form part of the Distribution System of MSEDCL.
- 12.33. MSEDCL has been taking contradictory stand with respect to the levy of wheeling

charges, since:

- (i) In the Notice dated 03 April 2023 issued to Jubilant and other Open Access consumers, MSEDCL had contended that wheeling charges are being levied since power is being injected from the Captive Generating Plants at 33 kV voltage level.
- (ii) In the proceeding before the Commission in Petition No. 151 of 2023 and Batch, MSEDCL had contended that the 33 kV / 132 kV line connecting the generating stations to the MSETCL's GSS is the associated distribution facility of MSEDCL and forms part of MSEDCL's Infrastructure.
- (iii) Now, in the Review Petition, MSEDCL while admitting that although the 33 kV lines are owned and operated by the Solar Park Developer, has contended that the provision through the said 33 kV lines being provided by MSEDCL i.e., (i) auxiliary power supply, (ii) banking facility, and (iii) energy metering of auxiliary power, are associated facilities of MSEDCL and thus forms part of its Distribution System.

12.34. From the foregoing, it is borne out that MSEDCL has consistently changed its stand with respect to the reason behind the levy of wheeling charges.

12.35. The contradictory stand of MSEDCL evinces lack of *bona fide*, its attempt to mislead the Commission and the fact that MSEDCL had arbitrarily levied wheeling charges without any basis in law.

12.36. It is settled law that public authorities cannot take stands that are diagonally opposite as held by the Hon'ble Supreme Court in *Central Warehousing Corporation v. Adani Ports Special Economic Zone Limited & Ors.* reported as 2022 SCC OnLine SC 1398.

Commission's Analysis and Ruling

12.37. The Commission notes that during the earlier proceedings in the original cases, MSEDCL has also argued similar submissions (which are also raised in the present Review Petitions) that the Distribution system includes associated facilities used by OA consumers and hence OA consumers are liable for payment of wheeling charges.

12.38. After recording the above submissions of MSEDCL, the Commission, in the impugned Order dated 27 December 2023, made the following observations:

“ 29. Based on the above background and considering the submissions of the Parties, arguments at the hearing, following issues need to be addressed before concluding the present Case.:

Issue I: Whether the 33 kV lines in the present cases are part of MSEDCL's distribution system?

Issue II: Whether MSEDCL is entitled for levy of wheeling charges in the present

cases?

Issue III: Whether the Petitioners / OA Consumers / Solar Generators applied for grant of OA to concerned Nodal Agencies as per DOA and TOA Regulations 2016?

The Commission has dealt with the above issues in the following part of the Order.

.....

34. Further, in order to understand whether 33 kV Lines are part of the MSEDCL Distribution System, it is imperative to examine the various provisions of the EA which are reproduced as below:

“2.

....

(18) "distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected;”

“(19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers;

....

“(61) "service-line" means any electric supply-line through which electricity is, or is intended to be, supplied - (a) to a single consumer either from a distributing main or immediately from the Distribution Licensee's premises; or (b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main;”

.....

“(76) Wheeling" means the operation whereby the distribution system and associated facilities of a transmission licensee or distribution licensee, as the case may be, are used by another person for the conveyance of electricity on payment of charges to be determined under section 62”

35. From the conjoint reading of the above provisions, the Commission notes the 33kV and 132kV power evacuation lines do not fall within either of these definitions as the 33 kV / 132 kV Power Evacuation Lines which are being used to transmit power up to MSETCL's GSS are owned by the SPDs and used by the Generating Stations in terms of the Right to Use Agreement executed with the SPDs, with exclusive usage rights. The Commission further notes that the Petitioners / Open Access Consumers/ Solar generators are not required to avail Open Access for the 33 kV line since the same is owned and operated by the SPDs and the Generating Stations already have exclusive rights to use the said dedicated lines.

36. As regards to the issue raised by MSEDCL that MSEDCL has granted permission for charging of SEM to Solar Generators installed at 33 kV level i.e., between generating station and PSS. Further, the said 33KV line was used by MSEDCL to provide start-up power and OA permission to the generator and the reading of which was recorded by SEM connected on the said line. As a result, said 33KV line was part of MSEDCL's distribution system. In this context, the Commission notes that the Hon'ble APTEL in the Judgment, dated 24 May 2011 in Appeal No. 166 of 2010 (Chhatisgarh State Power Transmission Co. Ltd Vs. Chhatisgarh ERC) held that a generating station requiring 'startup up power' from the grid cannot be termed as a consumer. The relevant para. of the APTEL Judgment are reproduced as under:

“44 Startup Power has not been defined in the Electricity Act 2003 or in the Rules and Regulations framed there under. It has also not been defined in the repealed Acts viz., Indian Electricity Act 1910, Electricity (Supply) Act 1948 and Electricity Regulatory Commission Act 1998. Thus we have to go by its general meaning. In general parlance, word 'Startup' means to start any machine or motor. In terms of electricity, Startup Power is power required to start any machine. Thus Startup Power is power required to start a generator. Next question is why it is required. Thermal generating units, (to some extent large hydro generating units also) have many auxiliaries, such as water feed pump, coal milling units, draft pumps etc.,. These auxiliaries operate on electrical power and are essentially required to run before generating unit starts producing power of its own. These auxiliaries would draw power from grid till unit start producing power and is synchronized with the grid. Once unit is synchronized, requirement of 'startup power' vanishes. Thus 'startup power' is required only when all the generating units in a generating station are under shutdown and first unit is required to startup. Once any one unit in a generating station is synchronized, power generated by the running unit is used to startup other units. Period of requirement of startup would vary from few minutes to few hours depending upon the size of unit.

45 Above discussion shows that requirement of startup power is essential for every generating station and is very limited both in quantum (MW) and duration terms....

.... 48 Further, consumer as defined in the Act is a person who is supplied with electricity for his own use. Here startup power is supplied to Respondent -1 to startup its generating unit. Once generating unit is synchronized with the grid, the power so generated is supplied to Appellant. Without startup power, generators cannot start and produce power. Thus, in way, startup power is supplied for the benefit of Appellant only. From this point of view, a generator taking startup power from distribution licensee and supply power to same licensee on startup, cannot be termed as a consumer.

49 In light of above discussions a generator requiring 'startup up power' from the grid cannot be termed as a consumer.”

37. From the above APTEL Judgment, the Commission notes that the requirement of

startup power is essential for every generating station and is very limited both in quantum (MW) and duration terms. Further, in terms of Section 2(15) of the Electricity Act, a 'consumer' means any person who is supplied with electricity by the licensee for his own use and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee. The Commission further notes that the Generating Stations cannot be considered "consumers" under the EA merely because they obtain start-up power from MSEDCL via the 33 kV distribution line. The Commission further notes that the wheeling charges should be based on the use of the system for conveyance of electricity to the consumer taking power under open access and same shall be in accordance with the Open Access Regulations specified by the Commission. Moreover, the connection with MSEDCL's Distribution System is not the determining criteria for levy of wheeling charges. The pre-requisite for levy of wheeling charges is the use of MSEDCL's Distribution System, which is not being used in the present cases.

.....

43. Further, Hon'ble APTEL's Judgment dated 12.09.2014 passed in Appeal No. 245 of 2012 & Batch (Steel Furnace Association of India Limited vs PSERC & Anr.) held that an EHT consumer directly connected to the transmission system for availing power supply through open access and who is physically not using the distribution system of the licensee is not liable to pay wheeling charges. The relevant para. of the Hon'ble APTEL Judgment dated 12.09.2014 are as under :

“36. In 2007 ELR (APTEL) 985, Kalyani Steels Limited vs. Karnataka Power Transmission Corporation Limited, this Tribunal held as under:

On careful analysis, it is clear that liability to pay wheeling charges arises only when distribution system and associated facilities of a transmission licensee or distribution licensee are used by another person for the conveyance of electricity on payment of charges to be determined under Section 62 and not when the consumer uses its dedicated lines of its own.

40. In the present case and on the admitted facts, no part of the distribution system and associated facilities of the first Respondent transmission licensee or the second Respondent distribution licensee is sought to be used by the appellant for the transmission of power from Grid Corporation, from injecting point (sub-station) to appellant's plant. Therefore, the definition as it stands, the appellant is not liable to pay wheeling charges and additional surcharge for the Open Access in respect of which it has applied for. In terms of Sub-section (4) of Section 42, the payment of additional surcharge on the charges of wheeling may not arise at all. Yet the appellant is liable to pay surcharge, whether he is liable to charges for wheeling or not and on the second point we hold that the appellant is liable

to pay surcharge and not additional surcharge which may be fixed by the third Respondent, State Regulatory Commission”.

37. In Kalyani Steel case, it was seen that the consumer was an EHT consumer directly connected to the transmission system for availing power supply. Even though it was a consumer of the distribution licensee it was physically not using the distribution system of the Distribution Licensee. The Tribunal held that the consumer was not liable to pay wheeling charges when it was availing power through open access. However, the consumer was liable to pay surcharge as determined by the State Commission as per Section 42(2) of the Electricity Act, 2003.

44. The above Hon’ble APTEL Judgment clarifies that the liability to pay wheeling charges arises only when distribution system and associated facilities of a transmission licensee or distribution licensee are used by another person for the conveyance of electricity. Hence, the provisions of the DOA and TOA Regulations 2016 and its 2019 First Amendment are consistent with above Hon’ble APTEL Judgement. In this context, the Commission further notes that in the present cases there is no MSEDCL’s distribution system used as the power evacuation lines up to 33kV/132 kV which are constructed, owned and operated by the SPD with right to use agreement for the Solar Generators.

45. The Commission further observes that before dwelling on issue of whether the said 33 kV lines form part of transmission system or distribution system, it is also important to consider whether consumer or user can access and avail supply only by way of connecting through distribution system or whether it is also free to avail supply by way of directly connecting to transmission system. Accordingly, it is important to refer to definitions of “consumer” 2(15) and “works of licensee” 2(77) as outlined under EA 2003. Relevant extracts are as under:

“ (15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

(77) "works" includes electric line, and any building, plant, machinery, apparatus and any other thing of whatever description required to transmit, distribute or supply electricity to the public and to carry into effect the objects of a licence or sanction granted under this Act or any other law for the time being in force.

46. Conjoint reading of both definitions clearly highlights that a consumer can avail supply from distribution licensee in its area or from generating station or from any

other person willing to supply and the point of connection of its premise for receiving such supply could be part of works of any licensee whether transmission licensee or distribution licensee, as the case may be which depends on the voltage which in turn depends upon the load requirement of the consumer.

47. On the contrary, a distribution licensee or generating company or any other person can supply power to consumer for delivery at its premises connected to transmission system (or distribution system, as the case may be) by way of wheeling (includes transmission) such power, subject to payment of applicable charges. Thus, it is not necessary for consumers to be connected only through distribution system for availing supply. In the instant case, Petitioners/ OA Consumers can avail supply from Generating station or trading licensee or distribution licensee by way of sourcing wheeled power through network of InSTS. In case a consumer connected to the transmission system is sourcing power from distribution licensee in its area of supply, it needs to be ascertained as to which components of the distribution system are being used for such supply by distribution licensee. i.e. At the point of interconnection with consumer, only the meter facilities would only form part of distribution system of distribution licensee, whereas transmission infrastructure upon interface point would form part of transmission system. Further, as provisions of the EA, the Distribution Licensee for supplying power to consumers are assigned the dual role of setting up of distribution wire facility and contract/purchase power from Generators or Trading Licensee or Power Exchanges. Hence, it will not be proper to state that just because a point of connection at consumer premises is interfaced with metering facilities of distribution licensee, the said 33 kV line would form part of Distribution System and in case it not forming part of MSEDCL's distribution, RE Generators would not be entitled for banking facility.

.....

64. Considering the foregoing, the Commission concludes that MSEDCL is not entitled for levy of wheeling Charges and wheeling losses on the power sourced through Open Access in the present cases. Accordingly, the Commission think it fit to direct MSEDCL to refund the wheeling charges recovered from Petitioners/OA Consumers as prayed in these Cases, along with applicable interest, within one month of this Order. Accordingly, the prayer of the Petitioners for setting aside the Impugned Invoices issued by MSEDCL to the extent of imposition of wheeling charges and wheeling losses are hereby set aside

.....

70. Considering above, the Commission is of the view that STU is not in conformity with the TOA Regulations 2016 and TOA First Amendment Regulations 2019. Therefore, the Commission think it fit to direct STU to submit the Report on the entire compliance of the TOA Regulations 2016 and TOA First Amendment Regulations

2019, within one month of this Order. Upon receipt of the compliance Report, the Commission would take appropriate steps/ actions in accordance with the provisions of the EA.

71. Hence, the following Order:

COMMON ORDER

1. Petition in Case Nos. 151 of 2023, 177 of 2023, 186 of 2023, 187 of 2023 and 196 of 2023 are partly allowed in terms of the Petitioners prayers as ruled at Para. 64 of this Order.
2. IA Nos. 45 of 2023, 55 of 2023, 57 of 2023 and 58 of 2023 are disposed of accordingly.
3. As ruled at para. 64 of this Order, Maharashtra State Electricity Distribution Co. Ltd. is directed not to levy Wheeling Charges and Wheeling losses on the power sourced through Open Access in the present cases.
4. As ruled at para. 64 of this Order, Maharashtra State Electricity Distribution Co. Ltd is directed to refund the Wheeling Charges recovered from Petitioners /Open Access Consumers, along with applicable interest, within one month from the date of this Order.
5. As ruled at para. 70 of this Order, State Transmission Utility to submit the Report on the entire compliances of the TOA Regulations 2016 and TOA First Amendment Regulations 2019 within one month of this Order. Upon receipt of the Report, the Commission would take appropriate steps/ actions in accordance with the provisions of the Electricity Act 2003.

[Emphasis Added]

12.39. The Commission in the impugned Order dated 1 February 2024, has also provided similar observations. The relevant extract of the impugned Order dated 1 February 2024 are as under :

“23.During the pendency of these matters, the Commission has disposed of the Petitions on the similar issues vide its common Order dated 27 December 2023 in Case No. 151 of 2023, 177 of 2023, 186 of 2023 , 187 of 2023 and 196 of 2023 of 2023. The relevant para. of the common Order dated 27 December 2023 are reads as under:

.....

25.The above dispensations in the Order dated 27 December 2023 in Case No. 151

of 2023, 177 of 2023, 186 of 2023, 187 2023,3 and 196 of 2023 of 2023, are squarely applicable in the present cases also.

26. In view of the above, the Commission concludes that MSEDCL is not entitled for levy of Wheeling Charges and Wheeling losses on the power sourced through Open Access in the present cases. Accordingly, the Commission think it fit to direct MSEDCL to refund the wheeling charges recovered from Petitioners/OA Consumers as prayed in these Cases, along with applicable interest, within one month from the date of this Order.

27. Hence, the following Order:

COMMON ORDER

1. The Petitions in Case Nos. 162 of 2023, 163 of 2023, and 166 of 2023 alongwith IA Nos. 62 of 2023, 63 of 2023 and 69 of 2023 are disposed of.
2. As ruled at Para. 26 of this Order, Maharashtra State Electricity Distribution Co. Ltd. is directed not to levy Wheeling Charges and Wheeling losses on the power sourced through Open Access in the present cases.
3. As ruled at Para. 26 of this Order, Maharashtra State Electricity Distribution Co. Ltd is directed to refund the Wheeling Charges recovered from Petitioners /Open Access Consumers, along with applicable interest, within one month from the date of this Order.

[Emphasis Added]

12.40. Thus, the impugned Orders have duly addressed MSEDCL's contention raised in the present review Petitions.

12.41. The contention of MSEDCL is that associated facilities mean the OA consumer using the system for auxiliary power and banking facilities and the Meter is installed for recording of power. In this context, the Commission notes that the wheeling charges should be based on the use of the system for the conveyance of electricity to the consumer taking power under open access, and the same shall be in accordance with the Open Access Regulations specified by the Commission. Moreover, the connection with MSEDCL's Distribution System is not the determining criteria for the levy of wheeling charges. The pre-requisite for the levy of wheeling charges is the use of MSEDCL's Distribution System, which is not being used in the present cases. Further, the OA consumers are liable for 8 % banking charges as per DOA Second Amendment Regulation 2023.

12.42. The Commission does not find any merit in MSEDCL's argument on the ground of error apparent in the impugned Order on this issue. MSEDCL neither substantiated its

contention with sufficient evidence nor added any new findings or important matters for entertaining this review case. Arguing on the earlier issues in the original matter or mere disagreement with the dispensation already provided by the Commission cannot be the grounds for invoking review jurisdiction. Thus, the Commission has duly recorded MSEDCL's contention and passed a reasoned Order based on the facts and circumstances of the Case. Thus, the Petitioner is re-agitating the issue that had already been raised by it in the original proceeding and hence, the same cannot fall under the scope of review.

12.43. Nevertheless, this issue cannot be considered as an error apparent on the face of the record. Hence, review of this issue is not sustainable.

13. **Issue (iii) : Banking Facility is Applicable to Distribution System i.e. Applicability of DOA Regulations 2016:**

MSEDCL's submission:

- 13.1. The Commission further erred in holding in Para 48 of the Common Order dated 27 December 2023 that the MERC (Transmission Open Access) Regulations, 2016 (**TOA Regulations 2016**) were applicable in aforesaid cases and that under the said Regulations, MSEDCL was not an appropriate nodal agency for the grant of Open Access transactions and for entering into Open Access agreement with the concerned parties.
- 13.2. The Commission erred in holding that the Open Access Consumers and/or Solar Power Generators would be entitled to banking facility, in teeth of or despite the applicability of said TOA Regulations, 2016.
- 13.3. The Commission has erred in overlooking the legal position that banking facility (i) is not at all available under said TOA Regulations, 2016, but (ii) is available under Regulations 2.1 (4) and 20 of DOA Regulations 2016.
- 13.4. Allowing banking facility in aforesaid cases, clarifies and entails the applicability of DOA Regulations 2016.
- 13.5. The Commission erred in failing to consider that TOA Regulations, 2016 would be applicable under Regulation 28 of the DOA Regulations, 2016, only if the Distribution System of the Distribution Licensee is not used.

Respondent's submissions:

- 13.6. MSEDCL's contention regarding the banking facility being provided through the said 33 kV DTL is an associated facility of MSEDCL is misplaced and out of context.
- 13.7. The aforesaid submission was neither argued nor pleaded by MSEDCL during the proceedings of the original petition and therefore it is a new argument being raised by MSEDCL for the first time at the review stage, which is not permissible.

- 13.8. Banking of power is not an issue related to the dispute raised in the present proceeding i.e., levy of wheeling charges for conveyance of power through the 33 kV line and MSETCL's Transmission System.
- 13.9. Banking is governed under different provisions of the Distribution Open Access Regulation and grant of open access to the Transmission System is governed as per the provisions of the Transmission Open Access Regulations. Hence, these are unrelated.
- 13.10. The banking facility is extended to the consumers and not the generator. In terms of Regulation 20.4 of MERC (Distribution Open Access) (Second Amendment) Regulations, 2023 (**DOA Second Amendment Regulations 2023**), the consumer is required to pay 8% of banking charges in kind. No other charges are required to be paid by the consumer apart from banking charges.
- 13.11. MSEDCL is mixing up different issues. In view of the above, the Commission may clarify that the banking of power has nothing to do with the dispute being adjudicated in the present petition.
- 13.12. At the outset, it is submitted that the Commission's findings in Para 48 of Order dated 27 December 2023 only pertains to the grant of open access for MSETCL's Transmission System and is not with respect to the grant of banking facility by MSEDCL. In the present case, the Commission has correctly held that: -
- (i) In terms of Regulation 8.2 of the Transmission Open Access Regulations, the Nodal Agency is the State Transmission utility (STU) i.e., MSETCL for grant of Open Access to MSETCL's transmission system. *[Para 48, 69 of Order dated 27.12.2023]*
 - (ii) Open Access has been sought and granted at MSETCL's GSS which forms part of its Transmission System. The power projects and Open Access consumers are directly connected to the transmission system of MSETCL *[Para 35, 41-42 of Order dated 27.12.2023]*
 - (iii) Power is being transmitted from the Generating Stations to MSETCL's GSS via SPDs Power Evacuation Lines and from MSETCL's GSS to the premises of Open Access Consumers through MSETCL's Transmission System. *[Para 33 of Order dated 27.12.2023]*
- 13.13. Further, open access was sought for MSETCL's Transmission System and hence, it is TOA Regulations 2016 which will be applicable for the grant of open access.
- 13.14. DOA Regulations will apply only to qua banking and not qua grant of Open Access for MSETCL's Transmission System.

Commission's Analysis and Rulings:

13.15. The Commission notes that MSEDCL has raised the issue of the applicability of banking under DOA Regulations 2016 and not available under TOA Regulations 2016. The Commission further notes that this issue of applicability of banking was neither argued nor pleaded by MSEDCL during the proceedings of the original petition and therefore, it is a new argument being raised by MSEDCL for the first time at the review stage.

13.16. In this context, it is imperative to note the definition of banking which is provided in DOA Regulations 2016 as below:

“2.1.

....

4. “Banking” means the surplus Renewable Energy injected in the grid and credited with the Distribution Licensee after set off with consumption in the same Time of Day slot as specified in Regulation 20;

13.17. Further DOA Regulations 2016 provides that :

“1.2 These Regulations shall apply for Open Access to and use of the Distribution System of Distribution Licensees in the State of Maharashtra, and where the network of the Distribution Licensee is not being used but supply to an Open Access Consumer is being provided within the distribution area of the Distribution Licensee

13.18. Further, TOA Regulations 2016 also provides that :

“2.2 Words and expressions used herein and not defined in these Regulations but defined in the Act or Indian Electricity Grid Code or the State Grid Code or the Electricity Supply Code or the Rules and other Regulations made under the Act, as the case may be, shall have the meaning assigned to them therein.”

13.19. On the conjoint reading of the above provisions of the Regulations, made it clear that Banking means the surplus Renewable Energy injected in the grid and credited with the Distribution Licensee after set off with consumption in the same Time of Day slots. The Commission further notes that Banking units’ adjustments are extended to the consumers. Further, the provision of banking is governed under different provisions of DOA Regulations 2016 and DOA First Amendment Regulations 2019 and the grant of open access to the Transmission System is governed as per the provisions of the TOA Regulations 2016. Further, TOA Regulations provide that words and expressions used herein and not defined in these Regulations but defined in the Act or Indian Electricity Grid Code or the State Grid Code or the Electricity Supply Code or the Rules and other Regulations made under the Act, as the case may be, shall have the meaning assigned to them therein.

13.20. The Commission further notes that information/details/issues regarding the applicability of banking under DOA Regulations 2016 and not available TOA Regulations 2016

which have been additionally submitted by MSEDCL as part of the review proceedings, were also available with them during the earlier proceedings. In this regard, the provisions of the MERC Transaction of Business Regulations, 2022 are clear and state that the Order can be reviewed only “upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed”. The present issue does not fit into this criterion set by the Regulation.

13.21. Therefore, there is no merit in the review sought by MSEDCL on this ground and the review sought by MSEDCL on this issue is rejected.

14. **Issue (iv): Generating Station or the Consumer in the OA transaction are not directly connected to the transmission system:**

MSEDCL’s submission:

14.1. The Commission erred in concluding in Paras 38 to 42 of the said Common Order that

“In this context, the Commission notes that Generating Stations are directly connected to MSETCL’s Transmission System through 33 kV / 132 kV dedicated transmission line.

The Commission further notes that 33 kV / 132 kV Power Evacuation Lines connecting the Generating Stations to MSETCL’s Transmission System qualify as Dedicated Transmission Line (DTL) in terms of the definition of “Dedicated Transmission Line” under Section 2 (16) of the Electricity Act.”

14.2. The Commission erred in failing to appreciate that under the Statement of Reasons for DOA First Amendment Regulations, 2019 and TOA First Amendment Regulations, 2019, the Commission at Para 15.3 have analysed and explained *inter alia* as follows:

“Regarding ambiguity of applicability of wheeling charges, it is clarified that exemption in wheeling charge is only in case of use of point to point Dedicated transmission lines or in case where generator and consumer in the OA transaction are both directly connected to the transmission system.”

14.3. The Commission erred in failing to appreciate that Section 2(16) of the EA, 2003 defines dedicated transmission lines, as follows:

(16) “dedicated transmission lines” means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be;

14.4. Under Regulation 14.6 (a) of the DOA Regulations, 2016, an Open Access Consumer or

Generating Station using a Distribution System is required to pay Wheeling Charges to the Distribution Licensee.

- 14.5. Further, Regulation 14.6 (b) of DOA Regulations, 2016 [as amended by MERC (DOA) (First Amendment) Regulations, 2019], provides as follows:

“14.6 Wheeling Charge :

...

- b. “Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station only if such dedicated lines are used for point to point transmission or wheeling of power from Generating station to load centre without any interconnection with distribution system.”*

- 14.6. The Open Access Consumer(s) is using the Distribution System of MSEDCL in law for conveyance of electricity/renewable energy, and as such is due and liable to pay the Wheeling Charges to MSEDCL under Regulation 14.6 (a) of the MERC (DOA) Regulations, 2016.
- 14.7. Wheeling Charges are not excluded under Regulation 14.6 (b) of the DOA Regulations, 2016 [as amended by MERC (DOA) (First Amendment) Regulations, 2019] because,
- (i) there is no direct connection of the Consumer or Generating Station to the Transmission System,
 - (ii) the Consumer or Generating Station do not own the lines connecting to the Transmission System,
 - (iii) the lines connecting to the Transmission System are not dedicated transmission lines (particularly, as they are not used for point-to-point transmission)
 - (iv) there is interconnection with the Distribution System of MSEDCL in law, between the wheeling of power from Generating Station to Load Centre.
- 14.8. The Generating Station or the Consumer in the OA transaction are both not directly (i.e., indirectly) connected to the transmission system.

Respondents’s submission:

- 14.9. The foregoing contentions have already been considered and rejected by the Commission. Accordingly, MSEDCL cannot be permitted to re-argue its case in a review proceeding.
- 14.10. Even otherwise, MSEDCL is relying on the SoR to the Distribution and Transmission Open Access Regulation to contend that for exemption from levy of wheeling charges both the generator as well as the consumer in the OA transaction shall be directly connected to the transmission system.

14.11. In this regard, Regulation 14.6(b) of DOA First Amendment Regulations 2019 provides that “*Wheeling Charges shall not be applicable in case a Consumer **OR** Generating Station is connected to the Transmission System directly or using dedicated lines*”. Evidently, the Regulation uses OR. The Hon’ble Supreme Court in catena of Judgments has held that conditions separated by “OR” are read in the alternative. In this regard, reliance is placed on: -

(i) *Super Agrotech Ltd. v. State of U.P.*: (2006) 9 SCC 203 (Para 7)

(ii) *Star Co. Ltd. v. Commissioner of Income Tax*, (1970) 3 SCC 864 (Para 3-4).

14.12. Hence, in terms of Regulation 14.6(b), wheeling charges will be exempted if either the Consumer or the Generating Station is directly connected to the Transmission System through dedicated lines. It is not mandatory for both, consumer and generating station to be directly connected. In the present, case admittedly, the generating stations are directly connected to MSETCL’s Transmission System through the 33 kV dedicated transmission line.

14.13. It is a settled position that statement of object and reasons to the Distribution Open Access and Transmission Open Access cannot be relied upon to expand the scope of the regulations framed by the Commission in exercise of powers *inter alia* under Section 181(1) and (2) of the Electricity Act. In Support of its contentions, Respondents referred following Judgments:

(i) *Arul Nadar v. Authorized Officer, Land Reforms* (1998) 7 SCC 157

(ii) *State of W.B. v. Union of India*, 1962 SCC OnLine SC 27

(iii) *Tata Engineering & Locomotive Company & Anr. v. State of Maharashtra & Ors.* 1992 SCC OnLine Bom 130

14.14. Hence, due to usage of “OR” in Regulation 14.6(b), Open Access Consumers have correctly been held to be entitled to exemption from levy of wheeling charges and losses upon satisfaction of one of the conditions prescribed in Regulation 14.6(b).

14.15. Further, the Generating Stations are directly connected to MSETCL’s Transmission System through 33 kV / 132 kV transmission line. In between there is no interconnection with Distribution System.

14.16. Additionally, the entire power evacuation infrastructure (i.e., 33 kV / 132 kV transmission line and PSS) connecting the Generating Stations to MSETCL’s Transmission System has been constructed by the SPDs for and on behalf of the Generating Station.

14.17. Evidently, the conditions under Regulation 14.6(b) are satisfied for exemption from levy of wheeling charges and losses. This is also in line with the findings in the following judgments/orders: -

- (i) Hon'ble APTEL Judgment dated 12 September 2014 in Appeal No. 245 of 2012 & Batch titled *Steel Furnace Association of India Limited vs PSERC & Anr.*' (Para 36-37) wherein it was held that an EHT consumer directly connected to the transmission system for availing power supply through open access and who is physically not using the distribution system of the licensee is not liable to pay wheeling charges.
- (ii) Order dated 20 October 2006 passed in Case No. 54 of 2005 wherein the Commission explained the rationale behind levy of wheeling charges and *inter-alia* clarified that consumers connected directly with the transmission network would not be required to pay wheeling charges if the distribution licensees' network is not being utilized for wheeling of electricity.

Commission's Analysis and Ruling:

14.18. The main contention raised by MSEDCL in its Review Petitions is that the OA consumer uses the Distribution System of MSEDCL and is not directly connected to the Transmission System.

14.19. The Commission has addressed the issues raised by MSEDCL in the impugned Order dated 27 December 2023 as under:

“

38. The Commission further notes that SoR to TOA and DOA First Amendment Regulations 2019 also clarified on the applicability of wheeling charges for various Open Access transactions. The relevant para. of the SoR to TOA and DOA First Amendment Regulations 2019 is reproduced as below:

“15.3

.....

Regarding ambiguity of applicability of wheeling charges, it is clarified that exemption in wheeling charge is only in case of use of point to point Dedicated transmission lines or in case where generator and consumer in the OA transaction are both directly connected to the transmission system.

Dedicated transmission lines or transmission system are not part of distribution network. As wheeling charges are paid for using distribution network, consumers or generators who are directly connected to transmission system which is not maintained by Distribution Licensee or point to point dedicated transmission lines are not required to pay wheeling charges.

Above relaxation of non-applicability of wheeling charges is not available for the cases where such high voltage network (of transmission stature) of Distribution Licensees is involved. In this context, reference to APTEL Judgement 84 of 2018 is made where the said EHV line is being maintained by the distribution licensee itself and whose tariff is being determined by the Commission under the Retail Tariff Order. As per APTEL ruling, (Judgement 84 of 2018) consumer connected to such EHV line is mandated to pay Wheeling

Charges determined for EHV lines. The relevant extract of the Order is as following:

.....
39.The above SoR to TOA and DOA First Amendment Regulations 2019 clarified that Dedicated transmission lines or transmission system are not part of distribution network. As wheeling charges are paid for using distribution network, consumers or generators who are directly connected to transmission system which is not maintained by Distribution Licensee or point to point dedicated transmission lines are not required to pay wheeling charges.

.....
42.As regards to contentions of the MSEDCL that in the present cases, the Generating Stations are not directly connected to the OA Consumers through DDF line (rather it is the SPDs which maintains the PSS and transfers pooled electricity from various generators to transmission line for open access consumption).Further, MSEDCL contends that there is no point-to-point transmission line for supply of captive power and the Generating Station has an interconnection with MSEDCL at the 33 kV transmission line. In this context, the Commission notes that Generating Stations are directly connected to MSETCL's Transmission System through 33 kV / 132 kV dedicated transmission line. In between there is no interconnection with Distribution System of MSEDCL. Further, the entire power evacuation infrastructure (i.e., 33 kV / 132 kV transmission line and PSS) connecting the Generating Stations to MSETCL's Transmission System has been constructed by the SPDs for and on behalf of the Generating Station. The Commission further notes that 33 kV / 132 kV Power Evacuation Lines connecting the Generating Stations to MSETCL's Transmission System qualify as Dedicated Transmission Line (DTL) in terms of the definition of "Dedicated Transmission Line" under Section 2(16) of the Electricity Act:-

"(16) "dedicated transmission lines" means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred to in section 10 to any transmission lines or sub stations or generating stations, or the load centre, as the case may be;."

43.Further, Hon'ble APTEL's Judgment dated 12.09.2014 passed in Appeal No. 245 of 2012 & Batch (Steel Furnace Association of India Limited vs PSERC & Anr.) held that an EHT consumer directly connected to the transmission system for availing power supply through open access and who is physically not using the distribution system of the licensee is not liable to pay wheeling charges. The relevant para. of the Hon'ble APTEL Judgment dated 12.09.2014 are as under :-

.....
44.The above Hon'ble APTEL Judgment clarifies that the liability to pay wheeling charges arises only when distribution system and associated facilities of a transmission licensee or distribution licensee are used by another person for the conveyance of electricity. Hence, the provisions of the DOA and TOA Regulations

2016 and its 2019 First Amendment are consistent with above Hon'ble APTEL Judgement. In this context, the Commission further notes that in the present cases there is no MSEDCL's distribution system used as the power evacuation lines up to 33kV/132 kV which are constructed, owned and operated by the SPD with right to use agreement for the Solar Generators.

45. The Commission further observes that before dwelling on issue of whether the said 33 kV lines form part of transmission system or distribution system, it is also important to consider whether consumer or user can access and avail supply only by way of connecting through distribution system or whether it is also free to avail supply by way of directly connecting to transmission system. Accordingly, it is important to refer to definitions of "consumer" 2(15) and "works of licensee" 2(77) as outlined under EA 2003. Relevant extracts are as under:

.....

46. Conjoint reading of both definitions clearly highlights that a consumer can avail supply from distribution licensee in its area or from generating station or from any other person willing to supply and the point of connection of its premise for receiving such supply could be part of works of any licensee whether transmission licensee or distribution licensee, as the case may be which depends on the voltage which in turn depends upon the load requirement of the consumer.

47. On the contrary, a distribution licensee or generating company or any other person can supply power to consumer for delivery at its premises connected to transmission system (or distribution system, as the case may be) by way of wheeling (includes transmission) such power, subject to payment of applicable charges. Thus, it is not necessary for consumers to be connected only through distribution system for availing supply. In the instant case, Petitioners/ OA Consumers can avail supply from Generating station or trading licensee or distribution licensee by way of sourcing wheeled power through network of InSTS. In case a consumer connected to the transmission system is sourcing power from distribution licensee in its area of supply, it needs to be ascertained as to which components of the distribution system are being used for such supply by distribution licensee. i.e. At the point of interconnection with consumer, only the meter facilities would only form part of distribution system of distribution licensee, whereas transmission infrastructure upon interface point would form part of transmission system. Further, as provisions of the EA, the Distribution Licensee for supplying power to consumers are assigned the dual role of setting up of distribution wire facility and contract/purchase power from Generators or Trading Licensee or Power Exchanges. Hence, it will not be proper to state that just because a point of connection at consumer premises is interfaced with metering facilities of distribution licensee, the said 33 kV line would form part of Distribution System and in case it not forming part of MSEDCL's distribution, RE Generators would not be entitled for banking facility.

.....
49. In view of the above, the Commission does not find merit in the contentions of the MSEDCL that the said 33 kV line is part of MSEDCL distribution system. Accordingly, the Petitioners are entitled for banking dispensation as specified in DOA and TOA Regulations 2016 and its 2019 First Amendment.

.....
53. The above DOA Regulations provides applicability of the wheeling charges and further stipulates that Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station only if such dedicated lines are used for point-to-point transmission or wheeling of power from Generating station to load centre without any interconnection with distribution system.

.....
61. In view of the above, the Commission notes that Wheeling Charges are payable to the Distribution Licensee only when its Distribution System is used. In the present cases, however, it is clear from the factual matrix set out above that there is no 33kV MSEDCL's Distribution System is used.

[Emphasis Added]

- 14.20. Thus, the Commission in the impugned Order dated 27 December 2023 has clearly stated that it will not be proper to state that just because a point of connection at consumer premises is interfaced with metering facilities of the distribution licensee, the said 33 kV line would form part of MSEDCL's Distribution System.
- 14.21. It is also imperative to note that the Solar Generators and OA consumers are directly connected to the Transmission System through a 33kV dedicated line, and in between that, there is a meter. The DOA First Amendment Regulations 2019 provides applicability of the wheeling charges and further stipulates that Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station only if such dedicated lines are used for point-to-point transmission or wheeling of power from Generating station to load centre without any interconnection with the distribution system. The SoR to TOA and DOA First Amendment Regulations 2019 clarified that Dedicated transmission lines or transmission system are not part of distribution network. As wheeling charges are paid for using the distribution network, consumers or generators who are directly connected to the transmission system which is also not maintained by the Distribution Licensee. Therefore, OA consumers are not required to pay wheeling charges.
- 14.22. Thus, the Commission is of the view that MSEDCL is re-agitating the issue in the present Review proceedings, which was already raised by it in original proceedings and duly considered by the Commission in the impugned Order. Hence, a review on this ground cannot be entertained.

15. **Issue (v): Erred in interpreting and relying upon the Judgement dated 24 May 2011 passed by Hon'ble APTEL in Appeal No. 166 of 2010 (APTEL Judgment dated 24 May 2011) (Chhattisgarh State Power Transmission Co. Ltd. Vs. Chhattisgarh ERC) :**

MSEDCL's submission:

- 15.1. The Commission erred in failing to appreciate that the extracted Paras 48 and 49 of said APTEL judgement dated 24 May 2011, provided that “*a generator taking startup power from distribution licensee and supplying power to same licensee on startup, cannot be termed as a consumer.*”
- 15.2. The Commission erred in failing to appreciate that said APTEL judgement dated 24 May 2011 was not applicable to said Cases, in light of the extracted portion hereinabove. However, relying upon said APTEL judgement, the Commission erred in holding in Para 37 of the Common Order:

“that the Generating Stations cannot be considered ‘consumers’ under the EA merely because they obtain start-up power from MSEDCL via the 33 kV distribution line.”

- 15.3. The Commission erred by failing to recognise that Solar Power Generators in said Cases were the Consumers of MSEDCL under the EA, 2003 and DOA Regulations, 2016.

Respondents's Submission:

- 15.4. The Commission has correctly interpreted the Judgment of the Hon'ble APTEL Judgment 24 May 2011.

Commission's Analysis and Ruling:

- 15.5. On this issue, the Commission in the impugned Order dated 27 December 2023 held as under :

“36.As regards to the issue raised by MSEDCL that MSEDCL has granted permission for charging of SEM to Solar Generators installed at 33 kV level i.e., between generating station and PSS. Further, the said 33KV line was used by MSEDCL to provide start-up power and OA permission to the generator and the reading of which was recorded by SEM connected on the said line. As a result, said 33KV line was part of MSEDCL's distribution system. In this context, the Commission notes that the Hon'ble APTEL in the Judgment, dated 24 May 2011 in Appeal No. 166 of 2010 (Chhattisgarh State Power Transmission Co. Ltd Vs. Chhattisgarh ERC) held that a generating station requiring ‘startup up power’ from the grid cannot be termed as a consumer. The relevant para. of the APTEL Judgment are reproduced as under:

“44 Startup Power has not been defined in the Electricity Act 2003 or in the Rules and Regulations framed there under. It has also not been defined in the repealed Acts viz., Indian Electricity Act 1910, Electricity (Supply) Act 1948 and Electricity Regulatory Commission Act 1998. Thus we have to go by its general meaning. In general parlance, word ‘Startup’ means to start any machine or motor. In terms of electricity, Startup Power is power required to start any machine. Thus Startup Power is power required to start a generator. Next question is why it is required. Thermal generating units, (to some extent large hydro generating units also) have many auxiliaries, such as water feed pump, coal milling units, draft pumps etc.,. These auxiliaries operate on electrical power and are essentially required to run before generating unit starts producing power of its own. These auxiliaries would draw power from grid till unit start producing power and is synchronized with the grid. Once unit is synchronized, requirement of ‘startup power’ vanishes. Thus ‘startup power’ is required only when all the generating units in a generating station are under shutdown and first unit is required to startup. Once any one unit in a generating station is synchronized, power generated by the running unit is used to startup other units. Period of requirement of startup would vary from few minutes to few hours depending upon the size of unit.

45 Above discussion shows that requirement of startup power is essential for every generating station and is very limited both in quantum (MW) and duration terms....

.... 48 Further, consumer as defined in the Act is a person who is supplied with electricity for his own use. Here startup power is supplied to Respondent -1 to startup its generating unit. Once generating unit is synchronized with the grid, the power so generated is supplied to Appellant. Without startup power, generators cannot start and produce power. Thus, in way, startup power is supplied for the benefit of Appellant only. From this point of view, a generator taking startup power from distribution licensee and supply power to same licensee on startup, cannot be termed as a consumer.

49 In light of above discussions a generator requiring ‘startup up power’ from the grid cannot be termed as a consumer.”

37. From the above APTEL Judgment, the Commission notes that the requirement of startup power is essential for every generating station and is very limited both in quantum (MW) and duration terms. Further, in terms of Section 2(15) of the Electricity Act, a ‘consumer’ means any person who is supplied with electricity by the licensee for his own use and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee. The Commission further notes that the Generating Stations cannot be considered “consumers” under the EA merely because they obtain start-up power from MSEDCL via the 33 kV distribution line. The Commission further notes that the

wheeling charges should be based on the use of the system for conveyance of electricity to the consumer taking power under open access and same shall be in accordance with the Open Access Regulations specified by the Commission. Moreover, the connection with MSEDCL's Distribution System is not the determining criteria for levy of wheeling charges. The pre-requisite for levy of wheeling charges is the use of MSEDCL's Distribution System, which is not being used in the present cases."

15.6. The Commission in the impugned Order dated 27 December 2023 has clarified that the above APTEL Judgment dated 24 May 2011 provides for requirement of startup power which is essential for every generating station and is very limited both in quantum (MW) and duration terms. The Commission further notes that in terms of Section 2(15) of the EA 2003, a 'consumer' means any person who is supplied with electricity by the licensee for his own use and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee. The Commission further notes that the Generating Stations cannot be considered "consumers" under the EA merely because they obtain start-up power from MSEDCL via the 33 kV distribution line.

15.7. Therefore, the Commission does not find any merits in the submission of MSEDCL regarding erred in interpreting and relying upon the Hon'ble APTEL Judgement dated 24 May 2011 in Appeal No. 166 of 2010 (*Chhattisgarh State Power Transmission Co. Ltd. Vs. Chhattisgarh ERC*). In view of the above, review on this ground cannot be allowed.

16. **Issue (vi): Erred in interpreting and relying upon the Judgement dated 12 September 2014 passed by Hon'ble APTEL in Appeal No. 245 of 2012 & Batch (Steel Furnace Association of India Ltd. Vs. PSERC & Anr.) (APTEL Judgment dated 12 september 2014):**

MSEDCL's submission:

16.1. The Commission erred in failing to appreciate the following extracted and highlighted portion of said APTEL Judgement:

"36. In 2007 ELR (APTEL) 985, Kalyani Steels Limited vs. Karnataka Power Transmission Corporation Limited, this Tribunal held as under:

On careful analysis, it is clear that liability to pay wheeling charges arises only when distribution system and associated facilities of a transmission licensee or distribution licensee are used by another person for the conveyance of electricity on payment of charges to be determined under Section 62 and not when the consumer uses its dedicated lines of its own.

.....

40. In the present case and on the admitted facts, no part of the distribution system and associated facilities of the first Respondent transmission licensee or the second Respondent distribution licensee is sought to be used by the appellant for the transmission of power from Grid Corporation, from injecting point (sub-station) to appellant's plant. ...”

- 16.2. The associated facilities are clearly encompassed by the definition of ‘distribution system’ under Section 2 (19) of the EA, 2003. Further, as held hereinabove in extracted portion of said Judgement of Hon’ble APTEL, there is a liability to pay Wheeling Charges when the associated facilities (which are part of the distribution system) of a Distribution Licensee are used by another person for the conveyance of electricity.
- 16.3. The Commission erred in failing to appreciate that the associated facilities are being used by Open Access Consumers and/or Solar Power Generators, as detailed hereinabove.
- 16.4. The Commission erred in answering “*Issue II: Whether MSEDCL is entitled for levy of wheeling charges in the present cases?*” by holding that wheeling charges are not payable as there is no 33 kV MSEDCL’s distribution system being used, as held under Paras 50 to 61 of the said Common Order.
- 16.5. The Commission erred in holding in Para 65 of the Common Order that in the present five Cases the OA consumers are connected at 132 kV / 220 kV. The Commission has gravely erred in failing to appreciate that the OA consumers are connected at 33 kV / 132kV / 220 kV.

Respondents’s submissions:

- 16.6. The Hon’ble APTEL in its Judgment dated 12 September 2014 held that an EHT consumer directly connected to the transmission system for availing power supply through open access and who is physically not using the distribution system of the licensee is not liable to pay wheeling charges

Commission’s Analysis and Ruling:

- 16.7. In this regard, it is imperative to note that the Commission in the impugned Order dated 27 December 2023 has ruled as under:

“43. Further, Hon’ble APTEL’s Judgment dated 12.09.2014 passed in Appeal No. 245 of 2012 & Batch (Steel Furnace Association of India Limited vs PSERC & Anr.) held that an EHT consumer directly connected to the transmission system for availing power supply through open access and who is physically not using the distribution system of the licensee is not liable to pay wheeling charges. The relevant para. of the Hon’ble APTEL Judgment dated 12.09.2014 are as under :

“36. In 2007 ELR (APTEL) 985, Kalyani Steels Limited vs. Karnataka Power

Transmission Corporation Limited, this Tribunal held as under:

On careful analysis, it is clear that liability to pay wheeling charges arises only when distribution system and associated facilities of a transmission licensee or distribution licensee are used by another person for the conveyance of electricity on payment of charges to be determined under Section 62 and not when the consumer uses its dedicated lines of its own.

40. In the present case and on the admitted facts, no part of the distribution system and associated facilities of the first Respondent transmission licensee or the second Respondent distribution licensee is sought to be used by the appellant for the transmission of power from Grid Corporation, from injecting point (sub-station) to appellant's plant. Therefore, the definition as it stands, the appellant is not liable to pay wheeling charges and additional surcharge for the Open Access in respect of which it has applied for. In terms of Sub-section (4) of Section 42, the payment of additional surcharge on the charges of wheeling may not arise at all. Yet the appellant is liable to pay surcharge, whether he is liable to charges for wheeling or not and on the second point we hold that the appellant is liable to pay surcharge and not additional surcharge which may be fixed by the third Respondent, State Regulatory Commission”.

37. In Kalyani Steel case, it was seen that the consumer was an EHT consumer directly connected to the transmission system for availing power supply. Even though it was a consumer of the distribution licensee it was physically not using the distribution system of the Distribution Licensee. The Tribunal held that the consumer was not liable to pay wheeling charges when it was availing power through open access. However, the consumer was liable to pay surcharge as determined by the State Commission as per Section 42(2) of the Electricity Act, 2003.

44. The above Hon'ble APTEL Judgment clarifies that the liability to pay wheeling charges arises only when distribution system and associated facilities of a transmission licensee or distribution licensee are used by another person for the conveyance of electricity. Hence, the provisions of the DOA and TOA Regulations 2016 and its 2019 First Amendment are consistent with above Hon'ble APTEL Judgement. In this context, the Commission further notes that in the present cases there is no MSEDCL's distribution system used as the power evacuation lines up to 33kV/132 kV which are constructed, owned and operated by the SPD with right to use agreement for the Solar Generators.

[Emphasis Added]

- 16.8. The Commission in the impugned Order held that the Hon'ble APTEL Judgment dated 12 September 2014 clarifies that the liability to pay wheeling charges arises only when distribution system and associated facilities of a transmission licensee or distribution

licensee are used by another person for the conveyance of electricity. Hence, the provisions of the DOA and TOA Regulations 2016 and its 2019 First Amendment are consistent with above Hon'ble APTEL Judgement.

- 16.9. Further, as ruled by the Commission at **para. 12.41 of this Order** the wheeling charges should be based on the use of the system for the conveyance of electricity to the consumer taking power under open access and the same shall be in accordance with the Open Access Regulations specified by the Commission.
- 16.10. Therefore, the Commission does not find any merits in the submission of MSEDCL regarding erred in interpreting and relying upon the Hon'ble APTEL Judgement dated 12 September 2014 in Appeal No. 245 of 2012 & Batch. In view of the aforesaid discussion, the review sought by MSEDCL on this ground does not sustain.

17. **Issue (vii): Conditions of Review of common Order dated 27 December 2023 & 1 February 2024:**

MSEDCL's submission:

- 17.1. MSEDCL has filed review Petitions under section 94(10(f) of EA 2003.
- 17.2. MSEDCL has not filed any Appeal, Suit or any other legal proceedings to impugn or seek review of the said Common Orders.

Respondents's submission:

- 17.3. In terms of Regulation 28(a) of the MERC Transaction of Business Regulations 2022 read with Order 47, Rule 1 of the Code of Civil Procedure, 1908 (**CPC**), the power of review can be exercised only if any of the following is pleaded and established:
- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him.
 - (ii) Mistake or error apparent on the face of the record.
 - (iii) Any other sufficient reason.
- 17.4. MSEDCL has neither pointed out any error apparent in the Order dated 27 December 2023 nor provided any new evidence/document to substantiate its case for review of the Order. MSEDCL is re-agitating its entire case basis the same arguments which have already been considered and rejected by the Commission in the Order dated 27 December 2023. Thus, the present Review Petition is an Appeal in disguise and ought to be dismissed.
- 17.5. In support of its contentions, Respondents referred following Hon'ble Supreme Court in

the following cases, with respect to exercise of review jurisdiction

- (i) *BCCI v. Netaji Cricket Club & Ors.*, (2005) 4 SCC 741
- (ii) *State of W.B. v. Kamal Sengupta*, (2008) 8 SCC 612
- (iii) *Kamlesh Verma v. Mayawati* (2013) 8 SCC 320

17.6. From the foregoing judgments, the following position of law emerges: -

- (i) The term "mistake or error apparent" refers to an error that is clearly visible from the case record itself and does not necessitate a thorough examination, scrutiny, or explanation of the facts or the legal position [*State of W.B. v. Kamal Sengupta*, (2008) 8 SCC 612].
- (ii) If an error is not obvious and its identification requires extensive debate and reasoning, especially where there could be two different opinions, it cannot be considered an "error apparent on the face of the record" for the purposes of Order 47, Rule 1 of the CPC. [*Kamlesh Verma v. Mayawati* (2013) 8 SCC 320]
- (iii) The power of review can be utilized to correct a mistake but not to replace one viewpoint with another. A review cannot be used to rehear or reconsider a decision under the guise of an appeal. There must be sufficient reason, which must be comparable to the grounds specified under the rule, similar to an apparent error. [*Kamlesh Verma v. Mayawati* (2013) 8 SCC 320]
- (iv) An order cannot be corrected merely because it is legally incorrect or because the court could have taken a different stance on a point of fact or law. [*BCCI v. Netaji Cricket Club & Ors.* (2005) 4 SCC 741]

17.7. Evidently, the grounds raised by MSEDCL are in the nature of an appeal challenging the Order dated 27 December 2023 on merits. MSEDCL has not specifically pointed out as to how the aforesaid findings of the Commission qualify as "error apparent on the face of record" or "mistake of law or facts".

17.8. The grounds raised by MSEDCL in the Review Petition for challenging the findings of the Commission are the same arguments which have already been considered and rejected by the Commission.

17.9. As stated above, it is not open to the Commission to replace its views or rehear / reconsider its decision in a review proceeding without there being any error apparent (fact or law) or any new evidence.

17.10. In the present case, MSEDCL has failed to establish any error apparent. The Hon'ble Supreme Court in *Sanjay Kumar Agarwal v. State Tax Officer*, (2024) 2 SCC 362 (Para 27) has held that a review petition shall be dismissed if it fails to make out any mistake or error apparent on the face of record.

17.11. It is settled law that in a review proceeding a party cannot be permitted to re-agitate and reargue questions / arguments which have already been addressed and decided. Further, even if the judgment sought to be reviewed is erroneous the same cannot be a ground to review the same in exercise of powers under Order 47 Rule 1 CPC. In this regard, reliance is placed on: -

(i) *S. Murali Sundaram v. Jothibai Kanna & Ors.* 2023 SCC OnLine SC 185

(ii) *Arun Dev Upadhyaya v. Integrated Sales Service Ltd.*, (2023) 8 SCC 11

17.12. Thus, MSEDCL's attempt to re-agitate the issues with respect to levy wheeling charges which stands settled by the Commission's Order dated 27 December 2023 is beyond the purview of review proceeding.

17.13. Pursuant to the Impugned Order dated 27 December 2023, Jubilant had filed Execution Petitions in February 2024 before the Commission seeking directions to MSEDCL to make payment of the wheeling charges in terms of the Common Order dated 27 December 2023.

17.14. Pursuant thereto, MSEDCL vide letter dated 05 March 2024 had directed its officers to refund the amount of wheeling charges to Jubilant and other open access consumers. Accordingly, Jubilant has already received the refund amount.

17.15. Thus, the Common Order dated 27 December 2023 stands implemented and complied with. It is noteworthy that the Review Petition was filed on 19 April 2024 i.e., after compliance with the Common Order.

17.16. Filing of the Review Petition after compliance with the Order is not permissible.

Commission's Analysis and Ruling:

17.17. The Commission notes that during the earlier proceedings in the original cases, MSEDCL has also argued similar submissions (which are also raised in the present Review Petitions) that the Distribution system includes associated facilities used by OA consumers and hence OA consumers are liable for payment of wheeling charges. The relevant extract of the impugned common Order dated 27 December 2023 reads as follows:

“14.1

.....

a. *Point of Supply has been defined under Regulation 2.2.2 (mm) of the MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021.*

.....

- b. Further, Distribution System has been defined under Section 2(19) of the Act means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.

.....

24.3. Distribution system is not limited to the system of wires or network, but also includes additional functions or services without such system of wires. However, the underlying objective of both such system of wires and associated facilities thereof, is to enable distribution or supply of electricity.

24.4. MERC DOA Regulations, 2016, defines Banking means the surplus Renewable Energy injected in the grid and credited with the Distribution Licensee after setting off with consumption in the same Time of Day slot as specified in Regulation 20.

.....

24.6. The generation SEM meter is installed at 33 KV level (being an associated facility of MSEDCL) and accordingly, billing is carried out using said meter.”

- 17.18. It is imperative to note the Hon’ble Supreme Court Judgments dated 8 August 2013 in Review Petition (CRL.) NO. 453 OF 2012 in Writ Petition (CRL.) 135 OF 2008 [Kamlesh Verma v. Mayawati (2013) 8 SCC 320] which has provided the principals of review. The relevant extracts of the Hon’ble Supreme Court Judgment are as below:

“16. Error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. This Court, in Lily Thomas v. Union of India [(2000) 6 SCC 224: 2000 SCC (Cri) 1056] held as under: (SCC pp. 250-53, paras 54, 56 & 58)

“54. Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the grounds specified in Order 47 Rule 1 of the Code of Civil Procedure which provides:

‘1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.'

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order 40 Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

17. In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court in Kerala SEB v. Hitech Electrothermics & Hydropower Ltd. [(2005) 6 SCC 651] held as under: (SCC p. 656, para 10)

18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. [(2006) 5 SCC 501], held as under: (SCC pp. 504-505, paras 11-12)

"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks

the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the principles

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

[Emphasis added]

- 17.19. The above Hon'ble Supreme Court Judgment provides the principle when review will not be maintainable. The Hon'ble Supreme Court further provides that while the power of review can be used to rectify errors, it cannot be used to substitute one point of view for another. A review cannot be used to rehear or reconsider a decision under the guise of an appeal. There must be a sufficient reason that is analogous to the grounds listed in the rule, much like an apparent error.
- 17.20. In view of the above discussions, the Commission is of the view that some of the issues raised in the present review proceedings were already raised during the original proceeding and these issues are being re-agitated in the present proceeding. MSEDCL is seeking re-consideration or re-hearing on these issues, which is impermissible under the law. None of the grounds stated in these review cases can be said to fall within the ambit and scope of Regulation 28 of MERC Transaction of Business Regulations, 2022. Review case has a limited purpose and cannot be allowed to be "an appeal in disguise". The Commission's review jurisdiction is limited. It is also not the case of the Petitioner that there is any new important evidence or matter which was not within its knowledge even after exercise of due diligence, when the original Orders were passed and now same is being presented in the present proceeding, for the purpose of seeking review of the impugned Orders. Further, the Commission in the preceding part of this Order observed that there is also no error apparent on the face of records which warrants review of the impugned Orders.
18. In view of the above analysis, there is no merit in the grounds of review raised by MSEDCL and hence the present review Petitions needs to be rejected.
19. **Hence, the following Order:**


COMMON ORDER

1. IA 22 of 2024 and 23 of 2024 disposed of in terms of ruling at Para 11.33 of this Order.
2. The Review Petitions in Case Nos. 79 of 2024 and 80 of 2024 dismissed.

Sd/-
(Surendra J. Biyani)
Member

Sd/-
(Anand M. Limaye)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Dr. Rajendra G. Ambekar)
Secretary

