

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 83 of 2016**

**Date: 22 September, 2016**

**CORAM:** Shri. Azeez M. Khan, Member  
Shri. Deepak Lad, Member

**Petition of M/s Western Precicast Pvt. Ltd. regarding denial of Short Term Open Access**

M/s Western Precicast Pvt. Ltd .....Petitioner

Maharashtra State Electricity Distribution Company Ltd. (MSEDCL)

Maharashtra Energy Development Agency (MEDA) .... Respondent

**Present during the hearing**

For the Petitioner : Ms. Dipali Sheth, (Adv)

For the Respondent, MSEDCL : 1. Shri Rahul Sinha, (Adv)  
2. Shri U.R. Dhaygude, (Rep)

Consumer Representative : Shri Ashok Pendse, (Rep) TBIA

**Daily Order**

Heard the Advocates of the Petitioner and the Respondent.

1. The Petitioner submitted that:

- (i) Petitioner had commissioned two wind mills having capacity of 1.25 MW at Chakala, (Nandurbar) and 1.50 MW at Sinnar (Nasik) and entered into Energy Purchase Agreement (EPA) with MSEDCL for 13 years on 27 April, 2006 and 10 December, 2008, respectively.
- (ii) As per Article 12.01 of the EPA, Petitioner issues monthly invoices for sale of energy to MSEDCL for its two units. Accordingly, MSEDCL has made payment till July, 2015. However, MSEDCL has failed to make payments towards outstanding invoices from

August, 2015 onwards till date, and also late payment surcharge in respect of the bills raised till date. As per the payment mechanism, MSEDCL is expected to pay in 45 days.

- (iii) As per Article 12.02 of the EPAs, in case of any delay in payment by MSEDCL beyond the stipulated date, or non-payment, MSEDCL was liable to pay an interest on such delayed payments at the rate of 2% per annum above the State Bank of India short term rate to the Petitioner.
  - (iv) Letters were sent to MSEDCL on 11 April, 2015, 17 July, 2015, 25 January, 2016, 14 February, 2016 and 6 March, 2016 regarding the payment of the outstanding dues to which MSEDCL has not replied till date.
  - (v) Upon failure to pay the outstanding dues, considering the default under Article 13.02 of EPA, Petitioner sent Notice on 6 March, 2016 to MSEDCL to cure the breach by making the payment of the principal outstanding dues within thirty days. The Notice specified that the EPA shall stand terminated on the expiry of the period of thirty days. However, MSEDCL failed to pay the outstanding dues and outstanding interest till date, and not replied to the Notice.
  - (vi) Therefore, on 12 April, 2016, the Petitioner sent a legal Notice for termination of the EPA due to the non-payment of the total outstanding dues. However, MSEDCL again failed to reply to the Notices of the Petitioner or raise any dispute pertaining to termination of the EPA.
  - (vii) On the same day, i.e. 12 April, 2016, Petitioner submitted two Short Term Open Access (STOA) applications for self use of wind energy generated from its wind units at Chakala and Sinnar.
  - (viii) MSEDCL, vide its letter dated 29 April, 2016, rejected the STOA Applications stating that the Petitioner has executed Long Term EPA with MSEDCL for 13 years for its two wind generators and, as per the Commission's Order in Case No. 200 of 2014, the EPA cannot be terminated prematurely.
  - (ix) MSEDCL neither disputed the outstanding dues nor the termination of the EPA. Hence, the Petitioner requested the Commission to direct MSEDCL for issuance of STOA for self use.
  - (x) Petitioner also requested the Commission to dispose of the matter expeditiously and clarified that the Petition is only for STOA for self-use.
2. MSEDCL submitted that it has filed its Reply which is briefly as below:-
- (i) EPA does not have any termination provisions.
  - (ii) The dispute arises due to non-payment of outstanding dues. Hence, the Petitioner may approach the appropriate forum to resolve its dispute and for termination of EPA.
  - (iii) As per Article 17 of EPA, any dispute arising in connection with the EPA or the performance or non-performance of any obligations there under that cannot be resolved by

negotiation among the parties within sixty days, shall be adjudicated before the Commission and Civil Court, Bombay having jurisdiction in the matter.

(iv) MSEDCL, vide its letter dated 29 April, 2016 had replied that, as per the Commission's Order in Case No. 200 of 2014, EPA cannot be terminated prematurely, and till the existence of EPA, STOA cannot be granted.

3. The Commission asked MSEDCL regarding any reply to the letters and Notices in respect of EPA termination sent by the Petitioner. MSEDCL submitted that it has replied on 29 April, 2016 to the STOA applications only and did not reply specifically to the EPA termination issue. The Commission asked MSEDCL whether the Petitioner was called for discussion for resolving dispute. MSEDCL submitted that it had not called the Petitioner.
4. Petitioner sought one week to file its Rejoinder, which is granted by the Commission.

**Case is reserved for Order.**

**Sd/-**  
**(Deepak Lad)**  
**Member**

**Sd/-**  
**(Azeez M. Khan)**  
**Member**