

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@merc.gov.in
Website: www.mercindia.org.in / www.merc.gov.in

CASE Nos. 62, 53, 68, 74, 75, 79, 135, 136 and 144 of 2016, and MA No. 22 of 2016 in Case No. 53 of 2016

Date: 22 November, 2016

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

Case No. 62 of 2016

Petition of M/s. Sun N Sand Hotels Private Limited for adjudication of dispute with Maharashtra State Electricity Distribution Limited regarding payment of interest on delayed payments.

M/s. Sun N Sand Hotels Private Limited Petitioner

Maharashtra State Electricity Distribution Company Limited Respondent

Appearance

For the Petitioner : Shri. N. M. Kumar (Rep)

For the Respondent : Shri. Ashish Singh, Adv.

Case No.53 of 2016

Petition of M/s Shah Promoters & Developers for adjudication of dispute with Maharashtra State Electricity Distribution Limited.

M/s Shah Promoters & Developers Petitioner

Maharashtra State Electricity Distribution Company Limited Respondent

Appearance

For the Petitioner : Ms. Dipali Sheth, Adv.

For the Respondent : Shri. Ashish Singh, Adv.

Case No 68 of 2016

Petition of M/s Ghatge Patil Industries Ltd. regarding breach of Commission's Order dated 24.11.2003 and breach of Clause 12.02 of PPAs dated 31.12.2005, 13.12.2006, 18.02.2006 and 02.05.2006

M/s. Ghatge Patil Industries Limited Petitioner

Maharashtra State Electricity Distribution Company Limited Respondent

Appearance

For the Petitioner :Ms. Dipali Sheth, Adv.

For the Respondent :Shri. Ashish Singh, Adv.

Case No 74 of 2016

Petition of M/s. CLP Wind Farms (Khandke) Pvt.Ltd. for recovery of outstanding dues and Delayed Payment Charges under Wind Energy Purchase Agreements.

M/s. CLP Wind Farms (Khandke) Pvt. Limited Petitioner

Maharashtra State Electricity Distribution Company Limited Respondent

Appearance

For the Petitioner :Ms. Dipali Sheth, Adv.

For the Respondent :Shri. Ashish Singh, Adv.

Case No 75 of 2016

Petition of M/s. CLP Wind Farms (India) Pvt. Ltd. for recovery of outstanding dues and Delayed Payment Charges under the Wind Energy Purchase Agreements

M/s. CLP Wind Farms (India) Private Limited Petitioner

Maharashtra State Electricity Distribution Company Limited Respondent

Appearance

For the Petitioner :Ms. Dipali Sheth, Adv.

For the Respondent :Shri. Ashish Singh, Adv.

Case No 79 of 2016

Petition of M/s Bindu Vayu Urja Pvt. Ltd. for adjudication of dispute with Maharashtra State Electricity Distribution Company Limited

M/s Bindu Vayu Urja Private Limited Petitioner

Maharashtra State Electricity Distribution Company LimitedRespondent

Appearance

For the Petitioner :Ms. Dipali Sheth, Adv.

For the Respondent :Shri. Ashish Singh, Adv.

Case No. 135 of 2016

Petition of M/s. D. J. Malpani for a adjudication of dispute with MSEDCL.

M/s. D. J. Malpani Petitioner

Maharashtra State Electricity Distribution Company LimitedRespondent

Appearance

For the Petitioner :Ms. Dipali Sheth, Adv.

For the Respondent :Shri. Ashish Singh, Adv.

Case No. 136 of 2016

Petition of M/s. Giriraj Enterprises for adjudication of dispute with MSEDCL.

M/s. Giriraj Enterprises Petitioner

Maharashtra State Electricity Distribution Company LimitedRespondent

Appearance

For the Petitioner :Ms. Dipali Sheth, Adv.

For the Respondent :Shri. Ashish Singh, Adv.

Case No. 144 of 2016

Petition filed by M/s. L. B. Kunjir for adjudication of dispute with MSEDCL.

M/s. L. B. Kunjir Petitioner

Maharashtra State Electricity Distribution Company LimitedRespondent

Appearance

For the Petitioner :Ms. Dipali Sheth, Adv.

For the Respondent :Shri. Ashish Singh, Adv.

Miscellaneous Application (MA) No. 22 of 2016 in Case No. 53 of 2016

Intervention Application of Kamal Engineering Corporation (Div. of Kamal Encon Ind. Ltd., formerly KEC Ind. Ltd.) in Case No. 53 of 2016, pertaining to adjudication of dispute with MSEDCL.

M/s Kamal Engineering CorporationApplicant
Maharashtra State Electricity Distribution Company LimitedRespondent

Appearance

For the Applicant : Shri. S. K. Gupta (Rep)
For the Petitioner (in the principal Case) :Ms. Dipali Sheth, Adv.
For the Respondent :Shri. Ashish Singh, Adv.

DAILY ORDER

Heard the Advocates/Representatives of the Petitioners and Repondent.

The Commission observed that, since similar issues have been raised in these Cases by Wind Energy Generators, they would be heard together, and the Commission would also consider a common Order. The Parties agreed.

Case No. 62 of 2016

1. The Representative of the Petitioner stated that:

- (i) The Petitioner has 18 Wind Turbines (18 x 0.8 MW), commissioned on different dates at different locations, having different Energy Purchase Agreements (EPAs) with Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL).
- (ii) There are two nodal officers from MSEDCL's side, viz. the Superintending Engineers, Sangli and Nashik. There has been substantial delay in the payments due from MSEDCL to the Petitioner for last two years. The delays are up to 75 days beyond the due date while, as per the terms of the EPAs, payments are to be made within 45 days. In the last month, Petitioner has received some payments from MSEDCL. Hence, the Commission may direct MSEDCL for timely payments, as per the agreed terms and conditions of EPA, and for the interest arising from late payments (i.e. delayed payment charge (DPC)).
- (iii) Petitioner has been consistently reminding the nodal officers of MSEDCL through letters for the delayed principal and interest payments. It also faces problems in obtaining Open Access from MSEDCL. To a query of the Commission, the Petitioner stated that, despite this delay in payments by MSEDCL, it wishes to continue its EPAs with MSEDCL.
- (iv) Petitioner has submitted a detailed statement showing a substantial amount of interest on account of delayed payments, as on February, 2016, due and payable by

MSEDCL. It has received a letter from MSEDCL asking for waiver of DPC, to which it has replied that, being a commercial organisation, such waiver cannot be agreed to since it is also liable to pay loan instalments and interest to banks and financial institutions.

2. The Advocate of MSEDCL stated that he is appearing on behalf of MSEDCL in all these Cases. The issues being similar, and in the light of the submissions of MSEDCL covered in the Order dated 10 August, 2016 in the Hindustan Zinc Ltd. (HZL) matter, he wished to make a general argument/submission in all these Cases for the Commission's consideration.
3. The Petitioner stated that, since it has already filed its Rejoinder to the submissions of MSEDCL, it may be allowed to make additional submissions on the general argument/submission of MSEDCL.

Case Nos. 53, 68, 74, 75, 79, 135, 136, and 144 of 2016

1. The Advocate for the Petitioners stated that these Petitions have been filed with regard to recurring non-payment and/or late payment of the principal amounts as well the DPC, which is the interest for delayed payments, under the EPAs with MSEDCL, despite the clear directions of the Commission in its Order dated 10 August, 2016 in the similar matter of HZL, which has not been complied with. Most of the wind energy projects involved in these Cases are funded projects. Hence, timely payments are necessary and there should not be any waiver of DPC for the delay. Moreover, carrying cost may also be provided for the delay in DPC payment, which is more than nine months. Similar Rejoinders have been filed to MSEDCL's Replies.
2. The Advocate for MSEDCL stated that, as regards compliance of the Order dated 10 August, 2016 in the HZL matter, MSEDCL has preferred an Appeal before the Appellate Tribunal for Electricity (ATE) on 3 November, 2016 (DFR No. 3623/2016), though there is no stay on the Commission's Order as of now.
3. Advocate of MSEDCL stated that, in addition to the points made in his Replies, while the Petitioners have communicated their claims to MSEDCL through various letters to which MSEDCL might not have responded, they have not provided details of their projects like the commercial operation date, EPA period, details of capital investment already recovered so far, etc. The Commission observed that MSEDCL's Replies (para 6) make this point.
4. The Advocate of MSEDCL stated that, since MSEDCL has made a specific prayer for relaxation of clause 12.02 of the EPAs, it is asking for such details of these projects. The claims of the Petitioners need to be evaluated in terms of the balance of public interest as against the private interest. In support of his contention, he circulated the ATE Judgment dated 17 April, 2012 in Appeal No 11 of 2012 (para 17). It is also in this context that MSEDCL had sought details of the extent to which project investments had already been recovered, and the accounts of the Petitioners' projects. The Commission observed that this

was not relevant to the specific issue raised with regard to delayed or non-payment of principal amounts and/or DPC in terms of MSEDCL's obligations under the EPAs.

5. With regard to the averment in the Replies that the process and periodicity of tariff determination and revisions results in long gaps in recovery of its revenue requirements and has contributed to MSEDCL's financial difficulties, the Commission observed that MSEDCL itself had delayed the submission of its Multi-Year Tariff (MYT) Petitions (by two years following the 2012 Tariff Order, and its last MYT Petition by several months).
6. To the Commission's query regarding the statement made in the Replies that, because of liquidity constraints, payments have had to be delayed to all Generators and not only the Petitioners, which has been challenged in their Rejoinders, the Advocate of MSEDCL reiterated that, MSEDCL had generally not been able to make timely payments to all Generators. Advocate for the Petitioners referred to the Annexure of MSEDCL's Replies which shows, for instance, that payments have been made to Ratan India Power Ltd. upto August, 2016, in contrast to the Petitioners and other similar Generators. This constitutes discrimination and abuse of its dominant position. The Commission may direct MSEDCL to pay all dues within time, along with interest. She also pointed out that MSEDCL's Appeal against the HZL Order is still pending and that the Commission's Order has not been stayed. Advocate for MSEDCL submitted that, from 27 April, 2016 to 21 November, 2016, MSEDCL has made payments to several Wind Generators, totaling Rs. 828.80 crore. Some of the Petitioners in the present Cases are also included in that figure. Whenever funds are available, payments are released to the Generators. As such, there is no discrimination. The Petitions did not allege abuse of its dominant position by MSEDCL, and hence no argument can be put forward with reference to Section 60 of the EA, 2003 at this stage. Moreover, inadvertence does not amount to such abuse.
7. The Commission observed that two of the Petitioners had offered the option of setting off the dues of MSEDCL against their consumer bills, which MSEDCL did not accept. MSEDCL submitted that the proposals are being forwarded to its competent authority for consideration, by way of which some dues may get settled. The Commission observed that exercising this option earlier, which is a standard practice in many cases where there are dues on both sides, might have been prudent and beneficial to both MSEDCL and the Petitioners.
8. The Commission observed that the issue of non-payment for over-injected energy raised by some of the Petitioners had not been addressed by MSEDCL in its Replies in those Cases. MSEDCL may do so within a week, with a copy to the concerned Petitioners who may file their Rejoinders within a week thereafter.

MA No. 22 of 2016 in Case No. 53 of 2016

1. The Representative of the Intervention Applicant (MA No. 22 of 2016) in Case No 53 of 2016 submitted that there is no difference between the issues raised by the Petitioner and the Intervener, and hence the Intervention Application may be allowed.
2. The Advocate of MSEDCL stated that he had no objection to the Intervention Application since, being a Wind Generator, it is facing the same problem and is on a similar footing.
3. The Advocate for the Petitioner objected to the Intervention Application since the Intervener was not a necessary party and the specifics of its case are different from those of the Petitioner in the main matter. She drew attention to the rulings of the Supreme Court and the provisions of the Code of Civil Procedure, cited in the Reply to the Application, in this context.
4. Noting the prayers made by several Petitioners for relaxation in the quantum of fees for filing their dispute Petitions, the Commission mentioned that it is in the process of reviewing the Fees and Charges Regulations separately. In this background, the Intervention Applicant suggested that its Application be kept pending till such review. However, the Commission observed that the Applicant had not shown that it is a necessary party in Case No. 53 of 2016, in which the Petitioner has made certain individual claims relating to its own specific case. As such, the Intervention Application is rejected, with liberty to the Applicant to approach the Commission through a separate Petition if it so desires.

The Cases are reserved for Orders.

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

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