

**Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005
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Case No. 60 of 2017

Dated: 18 May, 2017

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

Petition of M/s. Bindu Vayu Urja Pvt. Ltd against MSEDCL for Non-Compliance of the Order dated 16.03.2017 of the Commission read with relevant provisions of the EA, 2003 in Case No. 79 of 2016.

M/s. Bindu Vayu Urja Pvt. Ltd.

.....Petitioner

Maharashtra State Electricity Distribution Company Ltd. (MSEDCL)

.... Respondent

Present during the hearing

For the Petitioner

: Ms. Dipali Seth (Adv.)

For the Respondent

: Shri Ashish Singh, (Adv.)

Daily Order

Heard the Advocates of the Petitioner and Respondent.

1. The Petitioner stated that:

- (i) The Commission vide its Order dated 16 March, 2017 in the matter of outstanding payments due from MSEDCL for sale of wind energy and interest on delayed payments under the Wind Energy Purchase Agreements, directed MSEDCL to pay amounts towards outstanding invoices expeditiously, and delayed payment surcharge within 30 days of the Order. On March 17, 2017, it informed MSEDCL to pay outstanding amounts by April 15, 2017, i.e. within 30 days as prescribed by the Commission. However, MSEDCL on March 23, 2017 sought 50% of waiver of interest on delayed payments without any commitment for timely payments. The Projects are financed by banks/financial institutions, and it is required to repay the debt in monthly installments. Any default under the finance agreements leads to default

consequences which include declaring the Petitioner as non-performing asset amongst others. Hence, the Commission may initiate stringent action against MSEDCL for non-compliance of the Commission's Order under Sections 142,146 and 149 of the EA 2003.

- (ii) After the Commission's Order, MSEDCL has made certain payment against principal amount of Rs. 31 Cr, whereas MSEDCL in its Reply has mentioned that Rs. 57.26 Cr. is paid till May 2017, which is more than its outstanding amount.
 - (iii) Since February, 2017, MSEDCL has even stopped sending credit notes. In the absence of such credit notes, Petitioner cannot raise invoices for energy injected from February 2017, as a result of which it cannot be paid and this would also affect its entitlement to DPC
2. Advocate of MSEDCL stated that the delay in making payments is neither deliberate nor intentional, and is solely attributable to the financial constraints of MSEDCL. However, it has released about Rs.3317.07 Cr. to all Wind Generators in FY 2016-17 and FY 2017-18. Hence, it has complied with the Commission's Order as far as payment of principal amount is concerned.
 3. The Commission asked MSEDCL why it has not been issuing credit notes since February, 2017. MSEDCL stated that it is now implementing ERP automatic system for generating credit notes, which will take a few more days to put in service. The Commission enquired why it did not issue the credit notes manually till then. The Commission directed MSEDCL to submit its undertaking within a week regarding time bound issue of credit notes irrespective of implementation of ERP. As far as credit notes for the past period which are not issued due to ERP implementation, the Commission stated that the invoices for these months shall be treated as deemed to have been issued by the Petitioner when they were legally due. Thus, these invoices of earlier periods can be raised with retrospective effect by the Petitioner as per the terms of the EPA.
 4. The Commission observed that the mismatch/discrepancies in the payments made by MSEDCL and outstanding dues of the Petitioner should be reconciled by mutual discussion

The Case is reserved for Order.

Sd/-
(Deepak Lad)
Member

Sd/-
(Azeez M. Khan)
Member