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

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Case No. 111 of 2016

Date: 27 June, 2017

CORAM: Shri. Azeez M. Khan, Member

Shri. Deepak Lad, Member

In the matter of Petition filed by Maharashtra Airport Development Company Limited against Abhijeet MADC Nagpur Energy Pvt. Ltd.(AMNEPL) for restitution of monies / reversing unjust enrichment of AMNEPL arising out of the Concession Agreement executed between MADC and AMNEPL on 7 November, 2007.

Maharashtra Airport Development Company Limited (MADC)Petitioner

Abhijeet MADC Nagpur Energy Private Limited (AMNEPL) Respondent

Advocate for the Petitioner: Adv. Samir Malik

Advocate for the Respondent: Adv. Hemant Singh

Shri. Satish Shrikhande (Rep.)

Daily Order

- 1. Heard the Advocates of Petitioner and Respondent.
- 2. MADC stated that:
 - a. The dispute has arisen between a Generating Company and a Distribution Licensee with regards to restitution in terms of the concession Agreement having been declared ultra-vires of the EA, 2003, and therefore this Commission has the power to resolve the dispute under Section 86 (1) (f).
 - b. The Commission, under Section 86 (1) (f) of the EA, 2003, can adjudicate upon the disputes between the Distribution Licensees, and Generating Companies and has the power to refer any such dispute for Arbitration. The Commission may refer this case for Arbitration as the dispute is for restitution of monies / reversing unjust enrichment amounting to Rs. 910 Crore, for which evidence would have to be led pursuant to the Contract.

c. MADC is a regulated entity under the EA, 2003. As regards the appointment of arbitrator under Section 86 (1) (f) by the Commission. The Supreme Court Judgment on the Gujarat Urja case may be referred to.

3. AMNEPL stated that:

- a. This Commission is not the appropriate forum to adjudicate on the matter, and does not have any jurisdiction. MADC may approach the appropriate Forum.
- b. The Supreme Court Judgment dated 11 April, 2017 in Civil Appeal Nos. 5399-5400 of 2016 (Gujrat Urja), referred to by the Advocate of MADC is not relevant in this matter.
- c. AMNEPL has filed a separate Application to reject the Petition on the preliminary issue of Jurisdiction and maintainability, and would file its Reply on the merits of the matter if it is found to be maintainable.

The Commission directed AMNEPL to file its substantive Reply within two weeks on maintainability as well on the merits of the Petition, and MADC to submit its Rejoinder, if any, within three weeks thereafter.

The next date of hearing will be communicated by the Secretariat of the Commission.

Sd/-(Deepak Lad) Member Sd/-(Azeez M. Khan) Member