

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005**  
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**Case No. 143 of 2016**

**Date: 15 November, 2017**

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

Petition filed by Maharashtra State Electricity Distribution Company Limited (MSEDCL) under Section 86(1)(f) and (1)(k) and other applicable provisions of the Electricity Act, 2003 read with Clause 6 of the Order/Contract dated 13<sup>th</sup> February 2006 and in connection with the dispute and differences arising under the Order/Contract dated 13<sup>th</sup> February, 2006 entered into between MSEDCL and Adani Enterprises Ltd.

**Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) ...Petitioner**

**V/s.**

**Adani Enterprises Limited (AEL) ...Respondent 1**

**Western Regional Load Dispatch Center (WRLDC) ...Respondent 2**

**Eastern Regional Load Dispatch Center (ERLDC) ...Respondent 3**

**Maharashtra State Electricity Transmission Company Ltd. (MSETCL) ...Respondent 4**

Representative for the Petitioner: Shri. Harinder Toor (Adv.)

Representative for the Respondent No. 1: Ms. A.A. Mujawar (Adv.)

**Daily Order**

1. Heard the Advocates of the Petitioner and Respondent No. 1.
2. Advocate for MSEDCL stated that

- a) The Commission, during the last hearing dated 13 June, 2017 heard the matter in detail.
  - b) MSEDCL has placed on record the documents regarding the dispute. AEL had participated in MSEDCL's bid taking into consideration trading margin of 4 paise per unit as per CERC Regulations.
  - c) MSEDCL has provided new facts in its submission dated 8 November, 2017 regarding the financial burden on MSEDCL by purchasing costly purchase during May and June, 2006.
  - d) MSEDCL in its submission dated 8 November, 2017 has annexed all the invoices, Letter of Acceptance, Bills, etc regarding power purchase during May, 2006 and June, 2006. MSEDCL has purchased power at a higher rate during this period due to non supply of power by AEL.
  - e) With regard to the comments of AEL, the principle of section 74 of the Contract Act, provides for measure of damages in two classes: (1) Where the contract names a sum to be paid in case of breach; (2) Where the contract contains any other stipulation by way of penalty. In both the cases the measure of damages is by reasonable compensation not exceeding the amount of penalty.
  - f) AEL has not supplied 70% of the contracted power and it is in breach of contract. Hence, MSEDCL is liable for compensation and damages.
  - g) MSEDCL has produced all the actual expenses incurred for the alternative power purchase.
3. Advocate for AEL stated that
- a) The matter is a fit case for arbitration under Section 86 (1) (f) of the Electricity Act, 2003 as it is a purely contractual dispute between the parties.
  - b) AEL through various letters asked for the acceptance of its offer of sale of power subject to the change in rate of trading margin. Even after reminders, MSEDCL has not replied to the proposal of AEL.
  - c) On 21<sup>st</sup> April 2006, MSEDCL informed AEL that the additional trading margin would be paid if approved by CERC/Appellate Tribunal, but on the same day MSEDCL wrote another letter to AEL, saying it has defaulted in supplying the contracted amount quantum of power in April 2006.
4. The Commission asked AEL as to why it had supplied power if MSEDCL had not agreed to its proposal and not accepted its offer in writing. AEL stated that it had supplied power considering the long term relations of trust with MSEDCL.

The Commission directed AEL to verify the calculations made by MSEDCL of the additional burden due to purchase of power from alternative sources. On the request of AEL for filing an additional Rejoinder, the Commission noted that both parties have already pleaded the matter in detail and have been heard by the Commission at length. AEL may only submit any errors in the calculations submitted by MSEDCL within 5 days.

The Case is reserved for Order.

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

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