

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.merc.gov.in](http://www.merc.gov.in)

CASE No. 155 of 2020

Case of WinIndia Ventures Pvt Ltd seeking adjudication of disputes with Maharashtra State Electricity Distribution Co. Ltd. for illegal rejection of online application dated 14 July 2020 for sale of power to MSEDCL at Rs. 2.52 per unit.

WinIndia Ventures Pvt Ltd

.....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd.

....Respondent

Appearance

For the Petitioner

:Shri Gaurav Mitra (Adv.)

For the Respondent

:Shri Harinder Toor (Adv.)

Coram

**I.M. Bohari, Member
Mukesh Khullar, Member**

ORDER

Date: 21 August 2020

1. M/s WinIndia Ventures Pvt Ltd (**WIVPL**) has filed this Case dated 26 July 2020 seeking adjudication of disputes with Maharashtra State Electricity Distribution Co. Ltd (**MSEDCL**) for illegal rejection of online application dated 14 July 2020 for sale of power to MSEDCL at Rs. 2.52 per unit.
2. **Main Prayers of WIVPL are as follows:**
 - (a) *Hold and declare that rejection dated 21.07.2020 by MSEDCL of the online application dated 14.07.2020 made by Petitioner is illegal and bad in law, in view of directives contained in daily order dated 13.07.2020 passed by Hon'ble APTEL;*

- (b) *Hold and declare that the “Terms and Conditions” for online application do not permit the rejection of the application on the grounds contained in MSEDCL’s rejection letter dated 21.07.2020;*
- (c) *Direct MSEDCL to immediately accept the online application dated 14.07.2020 made by the Petitioner and reconnect the Petitioner within a period of 24 hours;*
- (d) *Initiate appropriate enquiry in the conduct and manner in which the “Chief Engineer” (Renewable Department) and other concerned officers of MSEDCL have rejected the online application dated 14.07.2020 despite directives contained in daily order dated 13.07.2020 passed by Hon’ble APTEL thereby making the entire orders and liberty granted therein as otiose as well as rejection of online application in complete derogation to the “Terms and Conditions” for online application and make them accountable by inflicting appropriate punishment under the provisions of Electricity Act, 2003;*

3. WIVPL in its Petition has stated as under:

- 3.1 WIVPL owns and operates a windmill with an installed capacity of 1.5 MW located at Gat No. 488/3, Village-Devikhandi, Tal-Khanapur, District- Sangli (Site- Bhud).
- 3.2 It had filed Petition in Case No. 24 of 2020 requesting the Commission to direct MSEDCL to sign Energy Purchase Agreement (**EPA**) for its 1.5 MW wind project, commissioned on 11 November 2014 at Generic tariff. As WIVPL’s said Wind Turbine Generator (**WTG**) of 1.5 MW capacity was disconnected on 28 May 2020 without any prior intimation or notice, just before the scheduled hearing on 3 June 2020 in Case No. 24 of 2020, it had filed another Petition in Case No. 101 of 2020 seeking reconnection/compensation of its wind turbine on the ground that it validly applied for “Sale of power under competitive bidding to MSEDCL” for FY 2020-2021 which was never rejected by MSEDCL.
- 3.3 The Commission in its Order dated 3 July 2020 in Case No. 24 of 2020 rejected the claim of WIVPL for entering into an EPA for a period of 13 years. However, the Commission directed MSEDCL to compensate WIVPL at APPC rate along with floor price of non-solar RECs for 3 years i.e. FY 2014-15 to 2016-17.
- 3.4 Further, the Commission vide its Order 7 July 2020 in Case No. 101 of 2020 rejected the Petition and ruled as under:

“ 15.6 In view of the above analysis and considering the fact that WIVPL submitted a conditional bid for sale of short-term power and MSEDCL’s statement that bid was rejected because the application was also incomplete, the Commission is of the opinion that MSEDCL not accepting the short term bid offered by WIVPL is appropriate.
- 3.5 On 9 July 2020, WIVPL filed 2 Appeals before the APTEL, viz DFR No. 230/2020 against the Commission’s Order dated 3 July 2020 in Case No. 24 of 2020 and DFR No. 229 of 2020 against the Commission’s Order dated 7 July 2020 in Case No. 101 of 2020.

- 3.6 On 13 July 2020, APTEL in its Daily Order in I.A No. 779/2020 in DFR No. 229/2020 has held that WIVPL may pursue its application made through web portal and needs no liberty from APTEL, without prejudice to dispute in subject matter of appeal in DFR No 229 and 230 of 2020.
- 3.7 Pursuant to the said direction/liberty from the APTEL, WIVPL once again applied on the online portal of MSEDCL on 14 July 2020 for sale of power to MSEDCL at Rs. 2.52 per unit. As there was no response of MSEDCL on the above communication, WIVPL once again requested MSEDCL vide email dated 20 July 2020 to intimate the outcome of the online application dated 14 July 2020 submitted by WIVPL.
- 3.8 MSEDCL vide its communication dated 21 July 2020 once again rejected the application of WIVPL on the issue of “Without Prejudice” application made by WIVPL despite the observations/directions contained in the daily Order dated 13 July 2020 passed by the APTEL.
- 3.9 During the course of hearing on 13 July 2020 before APTEL, MSEDCL should have objected or made submission to the modified prayer for interim relief seeking liberty to pursue the matter relating to application through web portal. In the daily Order dated 13 July 2020 it is clearly mentioned as under:
- “The learned counsel for first respondent (MSEDCL) submitted that he has nothing to say or object to this modified prayer at this stage”.*
- 3.10 MSEDCL’s rejection letter clearly states that “It is noteworthy that those terms and conditions do not envisage/provide for any conditional offer to sell short term power to MSEDCL.” The “terms and conditions” of online application clearly do not envisage a situation wherein it is open for MSEDCL to reject online application on the issue of applications being made by WIVPL “without prejudice to Appeal”. This action of MSEDCL is discriminatory and without any force of law.
- 3.11 MSEDCL has failed to justify or provide any reasonable ground as to what would be the consequence/loss that it would suffer if it allows the online application of WIVPL. In fact, there would be no loss to MSEDCL, as even if WIVPL succeeds in its claim (Appeal) for an EPA of 13 years, then MSEDCL would pay in addition to Rs. 2.52, differential tariff for the period under which it has purchased power under online application from WIVPL i.e. Rs. 5.70 - Rs. 2.52 (EPA rate- online application rate). However, in case WIVPL fails in its claim (Appeal) for an EPA of 13 years, then MSEDCL would only pay Rs. 2.52 to WIVPL for the period it purchased power under online application.
- 3.12 Pursuant to MSEDCL’s communication dated 21 July 2020, WIVPL on 22 July 2020 filed an I.A No. 855/2020 in DFR No. 229/2020 before the APTEL seeking “Appropriate Directions” in view of daily Order dated 13 July 2020 passed by APTEL and rejection of

fresh online application dated 14 July 2020 on the same ground by MSEDCL stating that WIVPL's application cannot be considered in view of pending Appeals.

3.13 During the course of hearing on I.A. 855/2002 in DFR No 229 of 2020 on 24 July 2020 the APTEL observed that the rejection dated 21 July 2020 by MSEDCL of the online application dated 14 July 2020 was a fresh cause of action for which WIVPL is free to approach the Commission. The APTEL granted liberty to WIVPL to approach the Commission for adjudication of its grievance.

3.14 MSEDCL needs to be held accountable and appropriate proceedings should be initiated against its officers who are responsible for such wrongful rejection including but not limited to the Chief Engineer (Renewable) department under whose instructions, such illegal rejections are carried out even after orders and directions passed by competent court of law.

4. MSEDCL in its reply dated 6 August 2020 has stated as under:

4.1 MSEDCL is procuring power from all the RE generators on non-discriminatory basis taking into consideration the interest of common consumers at large. MSEDCL has opted for the short-term power procurement option so as to give relief to the small wind generators due to difficulties faced by them as a result of outbreak of Covid-19 as well as to comply with the RPO target of MSEDCL. The PPAs executed on the short-term basis are purely with mutual consent and carry total sanctity of law. Also, for long term contracts, MSEDCL is procuring power at very competitive rates through bidding process to safeguard the interest of its consumers. Further, MSEDCL is under no obligation to compulsorily purchase power from any specific generator. Rather, MSEDCL is free to choose from among the wind generators available in the open market.

4.2 The Commission vide its Order dated 7 July 2020 in Case No. 101 of 2020 has held that the MSEDCL is justified in rejecting a conditional bid and application was also incomplete for sale of short-term power and the Commission does not find any error in disconnecting 1.5 MW WTG of WIVPL, since they did not have valid EPA or OA permission for consumption of injected power.

4.3 WIVPL, being aggrieved by the Order dated 7 July 2020, has filed an Appeal before the APTEL being DFR No. 229 of 2020. The APTEL considered the interim relief in the said Appeal, vide its Order dated 13 July 2020. The APTEL on insistence by WIVPL has granted liberty to pursue the matter before MSEDCL. Further the APTEL observed that in case WIVPL succeeds in having its said application accepted by MSEDCL or in alternative having made alternative arrangements for sale of electricity to third parties, its WTG must be connected to the state grid without prejudice to dispute that is subject matter of the said Appeal or the connected Appeal registered as DFR No. 229 and 230 of 2020.

4.4 As per direction of APTEL, WIVPL applied on 14 July 2020 for sale of power under short term basis to MSEDCL along with a "without prejudice" email dated 14 July 2020.

- 4.5 MSEDCL vide its letter dated 21 July 2020 replied to WIVPL's email informing that, conditional application offering sale of power under short term basis cannot be processed / considered. MSEDCL has started the said Portal on a temporary basis, to give benefits to RE generators during COVID 19 situation and is processing only those applications that are received on the portal, offering to sell power to MSEDCL only on the basis of terms and conditions mentioned therein. Further, those terms and conditions do not envisage/provide for any conditional offer to sell short term power to MSEDCL.
- 4.6 The APTEL vide its daily order dated 13 July 2020 has not mandated WIVPL to sell power to MSEDCL as an interim arrangement to seek grid connectivity. WIVPL was given a choice to sell its power in open market. WIVPL has not exercised this option but instead has submitted conditional application which tampers the sanctity of an PPA which is a mutual agreement between two parties.
- 4.7 MSEDCL cannot be forced to purchase power from any specific generator more so when various other options are available with WIVPL such as sale to Open Access consumer, sale to Other Distribution Licensee in the State or opt for REC mechanism.
- 4.8 MSEDCL has not violated any law by not accepting the conditional application of WIVPL and thus, the present petition deserve to be dismissed with cost.
5. At the e-hearing through video conferencing held on 7 August 2020, the Advocate of WIVPL reiterated its submissions in the Petition. The Advocate of MSEDCL reiterated its submissions in its reply. On the request of the Advocate of the WIVPL seeking to submit written rejoinder within a day on the issues which were not mentioned in written reply but argued by MSEDCL during the hearing, the Commission allowed WIVPL to submit its rejoinder within a day.
6. **WIVPL in its Notes of Arguments dated 7 August 2020 in addition to its Petition has made following submission:**
- 6.1 The APTEL granted the modified prayer of liberty to apply to MSEDCL on an Appeal DFR No. 229/2020 which was filed on one of the main issues i.e. denial of online application as the same was made "without prejudice" and hence this entire exercise of liberty to apply to MSEDCL serves no purpose if MSEDCL again rejects on the same issue which it has evidently done on 21 July 2020. In such a situation, the APTEL could have simply said that the option to apply to MSEDCL is out of question because WIVPL is applying Without Prejudice to pending Appeals and the same is pending consideration in Appeal being DFR No. 229/2020 and the only liberty that can be granted is liberty to apply to third party and in the event of a successful third party agreement, MSEDCL shall grant reconnection without prejudice to appeals being DFR No. 229 and 230 of 2020. MSEDCL has clearly violated the very intent and defeated the entire propose of the Daily Order dated 13 July 2020.

- 6.2 Online application was never made by using the words Without Prejudice. The application was made in the desired format. The email dated 14 July 2020 sent by WIVPL subsequently clarified that there are no conditions attached to the application for supply of power. The separate email sent by Petitioner has been misconstrued by MSEDCL to mean a “conditional offer” when there are no conditions attached to the supply. The supply is unconditional. The email only explained the various eventualities about payment of a different rate, if WIVPL succeeds in appeal (DFR No. 230/2020) arising out of Case No. 24 of 2020. Exercise of an alternate legally available commercial option subject to outcome of such appeal (DFR No. 230/2020) without giving up original claim of 13 years EPA cannot be termed as a conditional offer.
- 6.3 During the course of the arguments on 7 August 2020, MSEDCL has made a categorical statement that in any circumstance, MSEDCL does not want to buy power from WIVPL (whether conditional or unconditional). WIVPL takes strong objection to such statements being made as the issue for adjudication before the Commission is for the rejection letter dated 21 July 2020 and no other issue. The rejection by MSEDCL was only on one issue i.e application made by WIVPL without prejudice.
- 6.4 The Commission in its Order dated 7 July 2020 in Case No 101 of 2020 has held that MSEDCL cannot use its discretion while procuring power from online portal. Hence, the statements made by MSEDCL for not buying power from WIVPL, is absolutely discriminatory. MSEDCL being a State utility cannot act in such discriminatory manner and such statement made by MSEDCL is highly reprehensible.
- 6.5 Because WIVPL has other options to sell power, does not gives MSEDCL the right to discriminate against WIVPL. Such statement clearly violates Article 14 of Constitution of India. All options available includes option to sell to MSEDCL which being a State utility is expected to function in an unbiased and non-discriminatory manner. MSEDCL cannot say that it has the freedom to choose RE Generators from open market, when it invites open online applications from all RE Generators at a pre-determined price of Rs. 2.52 per unit. In such pre-determined open online procedure where the price is fixed for all, it cannot pick and choose and thereby exercise discriminatory practices.
- 6.6 Assuming without admitting, even if MSEDCL in any circumstance, does not want to buy power from WIVPL (whether conditional or unconditional), even then its online “Terms and Conditions” should contain such terms which evidently are not there, meaning thereby that its online “Terms and Conditions” should clearly say that all RE Generators can apply on the online portal barring those who are in litigation with MSEDCL. Having once applied on the online portal, MSEDCL is bound to treat the application in accordance with the online “Terms and Conditions” and not otherwise.
- 6.7 There is no “Terms and Conditions” which grants the authority to MSEDCL to reject the online application on the issue of “Without Prejudice” or purported conditionality. Draft

EPA available online for the present online application also does not envisage any such “Terms and Conditions” under which the online application of WIVPL cannot be processed.

6.8 The Hon’ble Supreme Court has also held in *Adani Gas Limited Petroleum and Natural Gas Regulatory Board and Others* [2020 SCOnline SC 201] in para 67 that “bidders cannot be disqualified on the basis of a criterion which was not notified and of which bidders had no knowledge. To disqualify a bidder on such issues would be arbitrary and would constitute an infraction of Article 14”.

7. MSEDCL in its Written Argument dated 13 August 2020 has stated as under:

7.1 There was not any direction or grant of liberty by the APTEL to WIVPL to make a “without prejudice” application on MSEDCL’s web portal. On the contrary, the APTEL clarified that WIVPL may pursue (for which it really needed no liberty from APTEL) its application and the legal remedy, if any, available on account of denial of such application in accordance with law. Thereupon, should WIVPL succeed in having its said application accepted by MSEDCL or in alternative having made alternative arrangements for sale of electricity to third party, then it would be granted re-connection to the State Grid subject to law and applicable Regulations. This consequential circumstance would be without prejudice to dispute i.e. subject matter of the Appeal or the connected Appeal registered as DFR No. 229 of 2020 and DFR No. 230 of 2020.

7.2 Even in the Order dated 7 July 2020 in Case No 101 of 2020, the Commission has held at para 15.4 and 15.6 that MSEDCL not accepting the bid of WIVPL is appropriate, as the said bid was a conditional bid. The Commission has expected that the bid submitted in MSEDCL’s web portal are unconditional. The earlier bid was also made “without prejudice” to the claims of WIVPL.

7.3 The application form for MSEDCL’s web portal, envisages or provide for the following:

- (i) That the applicant should consent for sale of RE power at a fixed rate;
- (ii) That merely submitting application does not guarantee the power purchase by MSEDCL; and
- (iii) That the actual sale will be effected only after execution of Energy Purchase Agreement.

7.4 WIVPL submitted its application form on 14 July 2020 on MSEDCL’s web portal at fixed tariff rate of Rs.2.52 per unit. However, contemporaneously WIVPL by its covering e-mail dated 14 July 2020 to MSEDCL sets out that WIVPLs application was without prejudice to its claims in the Appeals, pending before the APTEL. In the circumstances MSEDCL by email/letter dated 21 July 2020 duly pointed to WIVPL that the offer made in WIVPL’s application was a conditional offer, which was not acceptable to the MSEDCL, as the terms and conditions do not envisage /provide for any conditional offer.

- 7.5 MSEDCL believes that if the without prejudice application of WIVPL is accepted and the subsequent sale of power is made subject to the outcome of the pending Appeals then WIVPL is likely to further claim from MSEDCL at a later date or subsequently the differential amount between preferential generic tariff rate of Rs.5.70 per unit and the fixed rate of Rs.2.52 per unit in MSEDCL's web portal for such sale of power to MSEDCL. MSEDCL is not agreeable to and does not at all want any burden/liability of such differential amount, just because MSEDCL is assisting and facilitating RE generators by inviting short term sale offers during COVID 19. WIVPL is always free to sell RE power to third parties at preferential generic tariff rate through EPA, Open Access and / or REC to mitigate its losses, if any or at all.
- 7.6 As WIVPL has been and is persistently making and relying upon its "without prejudice" applications, MSEDCL has submitted before the Commission that MSEDCL does not want to process any offer of sale of RE power from WIVPL. This is also because MSEDCL does not desire to have any further litigation with WIVPL on procurement of RE power and/or to be saddled with needless additional claims alleged by WIVPL.
- 7.7 MSEDCL was and is under no obligation to compulsorily or otherwise procure/purchase RE power from WIVPL and this is more so as, WIVPL has been persistently making without prejudice offer or conditional offer which is clearly detrimental and destructive of the object, scope and scheme of MSEDCL's web portal facility by short term power procurement.
- 7.8 MSEDCL has been and is processing only unconditional offers made at the fixed tariff rate on MSEDCL's web portal in accordance with its terms and conditions, with the clear understanding and agreement between the Applicant and MSEDCL that the rate will be the fixed tariff rate specified by the MSEDCL. In case WIVPL makes an unconditional application at fixed tariff rate specified by MSEDCL, with the clear understanding that such fixed rate will not be subject to the preferential generic tariff rate and/or outcome of WIVPL's pending Appeals before APTEL. In that event MSEDCL will consider and process such application of WIVPL in accordance with law and its terms and conditions.
8. **WIVPL in its Notes of Arguments No-2 dated 13 August 2020 in addition to its Petition and Note of Arguments No-1 has made following submission:**
- 8.1 MSEDCL's understanding of the daily Order of the APTEL that no liberty was granted to WIVPL to apply to MSEDCL is incorrect. The APTEL granted liberty to WIVPL which is clear from the daily Order dated 24 July 2020 reproduced as under:

As is clear from the perusal of the last said order, we had granted liberty, pursuant to modified prayer of the Applicant/Appellant for it to pursue its application that had been made through web portal of MSEDCL.....

- 8.2 The term Without Prejudice appearing in the daily Orders of the APTEL dated 13 July 2020 and 24 July 2020 is for both i.e. the application as well as reconnection. The observation of Without Prejudice applied to the process of the online application and also the process of reconnection. Both the issues are Without Prejudice
- 8.3 If the context and purpose of the Daily Order dated 13 July 2020 is not understood in the true letter and spirit and a piecemeal interpretation is chosen by MSEDCL, then the Daily Order dated 13 July 2020 would be rendered otiose and WIVPL even after being granted the liberty by the APTEL would have no such liberty with MSEDCL.
- 8.4 MSEDCL cannot devise a mechanism wherein it wants to evade payments under a judicial Order. What is legally payable has to be paid and if the APTEL decides that MSEDCL has to enter into an EPA for 13 years so be it.
- 8.5 MSEDCL fails to understand that if WIVPL succeed in Appeals before the APTEL, then in any case, it would have to pay WIVPL the Tariff of Rs. 5.70 even without getting any power from WIVPL.
- 8.6 The Terms and Conditions of the online application specifically lay down the terms and conditions under which the application may be made and/or rejected. There is no Terms and Conditions which grants the authority to MSEDCL to reject the online application on the issue of Without Prejudice or purported conditionality. WIVPL is giving consent for sale of power at fixed rate but this would obviously be subject to outcome of pending Appeals before the APTEL.
- 8.7 According to MSEDCL in order to avail the online application, WIVPL will necessarily have to give up its claim of 13 years EPA and reduce the said period. Surely such a stand of MSEDCL is impermissible and is coercive and discriminatory. All contracts are subject to law of the land and Orders/Judgments by competent court of law. In the unique and specific facts related to WIVPL, all contracts as made from now onwards till decisions by the APTEL in DFR NO. 230/2020 will be subject to such decision.
- 8.8 In that view of the matter and without getting into any further adversarial position on each and every defense taken by MSEDCL, WIVPL requests the Commission to allow the Petition of WIVPL by holding that sale of power by WIVPL under “online short term portal” will be subject to outcome of Appeals pending before the APTEL.

Commission’s Analysis and Ruling:

9. Present Petition has been filed against MSEDCL’s action of rejecting online application for sale of Wind power on of short-term basis. The Commission notes that MSEDCL has started such online portal to enable RE Generator (Wind/Solar) to sell its power to MSEDCL at pre-decided rate of Rs. 2.25 per unit for Group-I Wind Generators (commissioned before 27 December 1999) and at Rs. 2.52 per unit for other Wind Generators. Similarly, for Solar generators such pre-decided short-term rate is Rs. 2.50 per unit. RE Generators have been provided option of 3 to 12 months PPA tenure. In present circumstances of Covid-19 when

consumer demand has been reduced drastically, this Web Portal of MSEDCL helps RE Generators having contracts with third party or for self-use to sell any surplus energy to MSEDCL instead of curtailing their generation.

10. Main contention of WIVPL is that MSEDCL has wrongly rejected its application submitted on this Web Portal for sale of its Wind Power and has given discriminatory treatment which is not expected from MSEDCL as a State entity. Before dealing with this issue, the Commission notes that present dispute has background of ongoing litigation between WIVPL and MSEDCL which is summarized below:
 - 10.1 WIVPL in the recent past had filed two Petitions for its disputes with MSEDCL in respect of its 1.5 MW wind project. In the Petition in Case No 24 of 2020, WIVPL had sought direction against MSEDCL for execution of EPA and compensating it for the power injected from its project since commissioning. Before the Commission could hear the matter, MSEDCL disconnected the WTG of WIVPL on 28 May 2020. Aggrieved by the action taken by MSEDCL, WIVPL had filed another Petition in Case No. 101 of 2020 seeking reconnection/restoration of WTG and compensation for loss of generation on account of such disconnection of its WTG and considering the application made by it on online web portal of MSEDCL for short-term sale of power from its 1.5 MW WTG.
 - 10.2 While dealing with the matter in Case No 24 of 2020, the Commission by its Order dated 3 July 2020 has granted partial relief (compensation for energy used during FY 2014-15 and FY 2016-17) to WIVPL but rejected WIVPL's request for directing MSEDCL to sign EPA at generic tariff of Rs. 5.70 per unit.
 - 10.3 Similarly, while dealing with another matter in Case No 101 of 2020 the Commission by its Order dated 7 July 2020 has held that the action taken by MSEDCL for rejecting the application for sale of short-term power on account of incomplete and conditional bid was appropriate.
 - 10.4 Aggrieved by the dispensations provided by the Commission in both the matters, WIVPL on 9 July 2020 has challenged both Orders of the Commission in the APTEL by filing Appeals viz DFR No. 230/2020 against Order dated 3 July 2020 in Case No. 24 of 2020 and DFR No. 229 of 2020 against Order dated 7 July 2020 in Case No. 101 of 2020.
 - 10.5 Both the matters were listed for hearing at the APTEL on 13 July 2020. On WIVPL's Appeal (DFR No. 229 of 2020 against Case No 101 of 2020), the APTEL by its Daily Order dated 13 July 2020 has not granted any interim relief in the nature of immediate reconnection of WIVPL's WTG but on insistence of WIVPL for considering the modified prayer, granted liberty to pursue its application made to MSEDCL through web portal.
 - 10.6 Pursuant to the direction of the APTEL, WIVPL again applied on Web portal of MSEDCL on 14 July 2020 for short term sale of power from its WTG. MSEDCL vide its communication dated 21 July 2020 has rejected such application on the ground that the

application made is without prejudice to Appeal before the APTEL and terms and condition do not envisage conditional offer.

- 10.7 Aggrieved by MSEDCL's response, WIVPL again approached the APTEL by filing IA seeking appropriate direction on rejection of its application dated 14 July 2020 by MSEDCL. During hearing on 24 July 2020 at the APTEL, WIVPL stated that it would rather pursue the legal remedy before MERC. Hence, the APTEL disposed of the Application directing WIVPL that it may pursue such legal remedy for denial of Application in accordance with law.
- 10.8 Accordingly, WIVPL has approached the Commission in the instant matter seeking direction against MSEDCL to accept the online application dated 14 July 2020 made by it and reconnect the WIVPL's WTG within a period of 24 hours.
11. Thus, WIVPL's main contention is that once the APTEL has allowed it to apply to MSEDCL for sale of power through web portal without prejudice to its rights in pending appeal, it is wrong on the part of MSEDCL to reject such application only on the ground that the application has been submitted subject to 'without prejudice to pending appeals'. Whereas MSEDCL has contended that Web Portal envisages short term power procurement at fixed rate and WIVPL's condition of 'without prejudice to pending appeals' brings uncertainty in rate of power procurement and hence it has rejected the application. Therefore, the Commission has framed following issues for its consideration in present matter:
- a. Whether, APTEL has allowed WIVPL to submit application for sale of power to MSEDCL without prejudice to pending appeals?
 - b. Whether MSEDCL is right in rejecting WIVPL's application which has been submitted without prejudice to pending appeals?

The Commission is dealing with these issues in the following paragraphs.

12. **Issue A: Whether APTEL has allowed WIVPL to submit application for sale of power to MSEDCL without prejudice to pending appeals?**
- 12.1 WIVPL has contended that the APTEL has allowed it to pursue its online application for sale of power with MSEDCL without prejudice to its rights under pending appeals in connected matters. It has also contended that during the said hearing before the APTEL, advocate of MSEDCL did not object to such prayer sought by it.
- 12.2 As WIVPL's contentions are based on the APTEL Daily Order dated 13 July 2020, the Commission finds it important to refer to the same. Relevant part of said Daily Order is reproduced below:

*“Having heard the learned counsel on all sides, we do find some distinguishing facts in so far as the case of Bothe is concerned. At the same time, we also note that by an alternative prayer in the present appeal, the appellant is seeking compensation for being denied reconnection, this clearly implying that the appellant cannot make out a case of irreparable loss, one of the crucial considerations for interim injunctive relief. In the circumstances, **we are not inclined to grant any interim relief in the nature of immediate reconnection to the appellant**, more so because the reasons why the appellant could not get itself registered under the Maharashtra State Policy 2008 till 2019 and the facts arising out of the competitive bidding (to which the reference was made by the learned counsel for MSEDCL) need to be subjected to detailed scrutiny after replies and the necessary documents have been taken on board.*

*Against the above backdrop, learned counsel for the appellant submitted that MSEDCL has come up with an open invitation for similarly placed wind power generators by receiving applications almost on regular basis through its web portal where under short-term or medium-term permissions are being granted and the electricity is being procured. The learned counsel also submitted that the appellant had also made an application through web portal but the said request was trashed for some irrelevant reasons, the appellant having been advised to pursue and prosecute appropriate legal remedy in that regard. **The learned counsel also fairly conceded that, as was suggested by the counsel for MSEDCL, it has the liberty to sell the power generated by it to any other parties who may be interested in procuring such energy this**, of course, being subject to appropriate negotiation being undertaken as per law and prevalent regulations and all compliance made in such regard, **though also adding that the appellant would like to preferably sell its power to MSEDCL and sell it to third parties only if it was unable to have an arrangement with MSEDCL but for such purposes it would need reconnection to the State Grid.** On the basis of these submissions, modifying the prayer made for interim relief at this stage, learned counsel for appellant submitted that **the applicant/appellant would be satisfied if it were to be given liberty to pursue the matter relating to the application through web portal and also continue persuading MSEDCL to purchase power from it.** The learned counsel for first respondent (MSEDCL) submitted that **he has nothing to say or object to this modified prayer at this stage.***

*In the facts and circumstances, **we clarify that the appellant may pursue** - for which he really needs no liberty from us -**its application made through web portal and the legal remedy**, if any, available on account of denial of such application in accordance with law and **should it succeed in having its said application accepted by MSEDCL or in alternative having made alternative arrangements for sale of electricity to third parties, it would be granted reconnection to the State Grid subject to law and applicable regulations**, without prejudice to dispute that is subject matter of this appeal or the connected appeal presently registered as DFR No. 229 and 230 of 2020.”*

- 12.3 As can be seen from the above Daily Order, the Counsel for the WIVPL has fairly accepted before the Hon’ble APTEL that it has liberty to sell its power to any other party but it would like to sell it preferably to MSEDCL and if it does not work then only it will look for third

party. Accordingly, WIVPL sought liberty from APTEL to pursue matter of its online application with MSEDCL and continue persuading MSEDCL to purchase power from it. MSEDCL had not objected to this prayer of WIVPL. Thereafter, APTEL had granted liberty to WIVPL to pursue online application with MSEDCL or make any alternate arrangement for sale of power to third party and thereafter get connected to State Grid. Said liberty has been granted without prejudice to appeal pending before the APTEL.

12.4 Thus, the APTEL has granted liberty to WIVPL to pursue with MSEDCL regarding its online application or make any other arrangement for sale of power without prejudice to its rights under appeals pending before the APTEL.

13. Issue B: Whether MSEDCL is right in rejecting WIVPL's application which has been submitted without prejudice to pending appeals?

13.1 MSEDCL stated that WIVPL's application was rejected because the terms and condition for short term procurements does not envisage/provide any conditional offer, but WIVPL vide its email dated 14 July 2020 has set out condition that the online application made on 14 July 2020 was without prejudice to its claims in the Appeals, pending before the APTEL. While opposing the contention of MSEDCL, WIVPL stated that online application was made in prescribed format. However, its subsequent email dated 14 July 2020 only clarified that application is made without prejudice to the pending Appeals before the APTEL. As per WIVPL, such email cannot be termed as conditional offer and there are no conditions attached to its application for supply of power to MSEDCL. WIVPL has also contended that no where on Web Portal it is mentioned that conditional offers would be rejected or 'without prejudice' will be treated as conditional offer and will be rejected.

13.2 In para 9 above, the Commission has already noted the purpose of Web Portal facility made available by MSEDCL to RE Generators. As observed earlier in this Order, one of the main conditions of this Web Portal based procurement is short term RE power procurement at pre-decided fixed tariff. Said Web Portal does not allow RE generators to quote any tariff rate but if they wish to offer sale of power to MSEDCL, they need to consent for pre-decided fixed tariff. Probably due to such feature of Web Portal, after submitting its online application on 14 July 2020, WIVPL had to write separate email to MSEDCL on 14 July 2020 stating that its online application is without prejudice to appeal pending before APTEL. As there is no scope for submitting conditional offer on Web Portal, it is incorrect to infer that Web Portal has not disclosed that conditional offers will be rejected.

13.3 WIVPL in present Petition has explained possible implications of its offer which is submitted without prejudice to pending appeals. As per WIVPL, if it succeeds in appeals pending before APTEL then MSEDCL would require to pay differential amount between EPA rate and short term rate (Rs. 5.70 per unit and Rs. 2.52 per unit) and if it fails in appeal then it will get only Rs 2.52 per unit for such short term sale and there would be no obligations on MSEDCL. As per MSEDCL, such condition is against its intent of procuring short term power through Web Portal at pre-decided fixed rate.

- 13.4 As held earlier in the Order, WIVPL has been granted liberty by the APTEL to peruse online application with MSEDCL without prejudice to pending appeals. However, it is also equally important to see objective of MSEDCL to procure short-term power through Web-Portal. Admittedly, while granting liberty to WIVPL to pursue with MSEDCL regarding its online application, the APTEL has not issued any instruction to MSEDCL. In fact, as accepted by its Counsel before the APTEL, WIVPL has been given liberty to contract for sale of its power to third party if its application is not accepted by MSEDCL. The Commission notes that a Distribution Licensee plans its power procurement considering various factors such as the power demand and supply position, grid/system conditions, availability of cheaper power thereby providing lowest tariff to its consumers (i.e. protecting the interest of the consumers) and at the same time protecting its commercial and financial interest as well. With these overall objectives, during Covid-19 circumstances, MSEDCL has enabled RE Generators to sell their surplus power to MSEDCL through Web-Portal at pre-decided fixed tariff. While doing so, it is expected that MSEDCL should not use any discretion. During the hearing in the matter, Advocate of MSEDCL has stated that it can reject any application submitted on Web Portal and would not be interested in procuring power from WIVPL. Such stand taken by MSEDCL would create discriminatory treatment which is not expected from state utility like MSEDCL, however in subsequent written submission, MSEDCL has corrected its stand and stated that if WIVPL submits unconditional offer, MSEDCL is ready to procure Short-Term power from MSEDCL.
- 13.5 Admittedly, due to WIVPL's claim that its online application is without prejudice to appeal pending before APTEL, there is possibility of MSEDCL paying incremental tariff on energy procured on Short Term basis through Web Portal. Therefore, as against fixed tariff envisaged in Web-Portal based procurement, WIVPL's offer is with possibility of revision in tariff with retrospective effect at later date. Therefore, in the opinion of the Commission, WIVPL's online offer read with its email is different from the other offers received through Web Portal consenting for pre-decided fixed tariff. Further, as stated above every Distribution Licensee has rights to protect its commercial interest and ultimately interest of its consumers. Therefore, the Commission does not find anything wrong in MSEDCL's action to reject WIVPL's online application. Also, such action does not account to discrimination as WIVPL's offer is different from fixed rate offer envisaged in Web-Portal.
14. The Commission in its Order dated 3 July 2020 in Case No 24 of 2020 has suggested that WIVPL may exercise various options such as sale to Open Access consumer, sale to Other Distribution Licensee in the State or opt for REC mechanism. Similarly, the APTEL in its Daily Order dated 13 July 2020 has also cited possible alternative arrangement available for WIVPL for sale of electricity to third parties. However, WIVPL has persistently applied for sale of its power to MSEDCL on the web portal. MSEDCL has shown its willingness to consider WIVPL's application if the application is submitted without any condition and at fixed rate of Rs.2.52 per unit.
15. In view of the foregoing the Commission is of the opinion that though WIVPL's Appeals are pending before the APTEL, in the meantime WIVPL can take advantage of high windy season by exercising various options cited in above para including the option of applying

to MSEDCL's web portal for the sale of short term power at a fixed rate of Rs.2.52 per unit in prescribed format without any conditions. MSEDCL shall consider WIVPL's such unconditional application as per the terms and condition of the procurement of short-term power through Web Portal.

16. Hence the following Order

ORDER

- 1. The Case No. 155 of 2020 is rejected.**
- 2. Maharashtra State Electricity Distribution Company Limited is right in rejecting Petitioner's application for sale of power through Web-portal which was without prejudice to pending appeals.**
- 3. WinIndia Ventures Pvt Ltd can take the advantage of high windy season by exercising various options cited in para 14 above including the option of applying in the prescribed format on MSEDCL's web portal, for unconditional sale of short term power at a fixed rate. In such a case, MSEDCL shall consider the application without any discrimination.**

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(I. M. Bohari)
Member**


**(Abhijit Deshpande)
Secretary**


The seal is circular with a purple border. Inside, there is a map of Maharashtra with a sun-like symbol in the center. The text "MAHARASHTRA ELECTRICITY REGULATORY COMMISSION" is written around the top inner edge, and "॥ आदित्य हृदयम् ॥" is written around the bottom inner edge.