

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 339 of 2019**

Case of Windmill Owners Welfare Association of India against non-compliance by Maharashtra State Electricity Distribution Company Limited of the Commission's Order dated 16.10.2018 in Case No.187 of 2017 read with relevant provisions of the EA, 2003.

Windmill Owners Welfare Association of India ..... Petitioner

V/s

Managing Director (Maharashtra State Electricity Distribution Co. Ltd.) ..... Respondent

**Appearance**

For the Petitioner : Smt. Lakshmi Raman (Adv.)  
For the Respondent : Shri. Ashish Singh (Adv.)

**Coram**

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

**ORDER**

**Date: 17 August 2020**

1. Windmill Owners Welfare Association of India (WOWAI) has filed this Case on 16 December 2019 against Managing Director - Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), Chief Engineer (Power Purchase) (MSEDCL) on Non-Compliance of the Commission's Order dated 16 October 2018 in Case No. 187 of 2017 and Contempt under Section 142 and 146 of the Electricity Act, 2003 (EA).
2. **Main Prayers of WOWAI are as follows:**
  - a) *Commission be pleased to initiate the contempt proceedings against the Respondents for the continued non-compliance of the directives.*
  - b) *Commission be pleased to direct the Respondents to settle immediately the remaining principal amount for the sale of power as annexed at "Exhibit-C".*

- c) Commission be pleased to direct the Respondents to pay interest on the dues of the Petitioner as directed by Order dated 16.10.2018.
- d) Commission may be pleased to direct the respondents to immediately pay the amount of Delay Payment Charges as set out at "Exhibit-C".
- e) Commission be pleased to direct the Respondents to pay interest on the DPS amount owed to the members of the Petitioner.

**3. WOWAI in its Petition has stated as under:**

3.1 As directed by this Commission in Order dated 16 October 2018 in Case No. 187 of 2017, MSEDCL did not take any steps to reconcile the amounts and has failed to make single payment on account of Delay Payment Charge (DPC). Accordingly, Section 142 and 146 of EA shall be invoked.

3.2 Period and amount of Dispute is as tabulated below:

<b>Sr. No</b>	<b>Particulars</b>	<b>Claimed as per Petition</b>
1	Principal Outstanding (Rs. in lakh)	162.97
2	Period of Principal Outstanding	Till 31 October 2019
3	Outstanding DPC amount (Rs. in lakh)	314.04
4	Period of DPC	Till 31 October 2019
5	Outstanding Interest on DPC amount (Rs. in lakh)	62.59
6	Period of interest on DPC	May 2017 onwards
7	<b>Total outstanding amount (Rs. In Lakh)</b>	<b>539.6</b>

**4. MSEDCL in its reply dated 6 March 2020 has stated that:**

4.1 MSEDCL has sent mail on 1 November 2018 for reconciliation of outstanding dues and reconciliation has been completed with 7 members of WOWAI.

4.2 After submission of payment plan and till the end of March 2019, MSEDCL has paid total amount of Rs.131.74 Crs to the Members of Petitioners till September 2018 generation month.

4.3 The Payment plan submitted to the Commission is in respect of Principal outstanding and does not pertain to Delayed payment Charges. Apart from that MSEDCL has paid Rs.43.30 Crs in FY 2019-20 till 31 January 2020.

4.4 Regarding the issue of payment of penal interest at 1.25% per month on DPS amount, MSEDCL has filed the appeal before APTEL against MERC Order dated 2 August 2019 in Case No 105 of 2019 of M/s Rajlaxmi Mineral Ltd and appeal is still pending before tribunal for final judgement.

4.5 The delay in payment of wind generators is basically due to low recovery (around 7%) from agriculture consumers, arrears of government departments for supply of electricity

to public water works and streetlight consumers category etc. The Commission allowed provision for bad debts of 1.5% of receivables in MERC MYT Regulations. Thus, if there are no funds available with MSEDCL, because of delayed ARR, outstanding from Government and agricultural arrears, it may not be always possible to make timely payments to the wind generators.

5. At the hearing held on 4 August 2020, the Advocate of the Petitioner reiterated its submission and sought a time-frame in which entire dues get cleared. The Representative of MSEDCL reiterated submission made in its reply and further stated that as part of financial support requested from Financial Institutions on account of financial crunch due to Covid-19, it has included outstanding payments of RE generators. The outstanding dues of RE generators will be directly paid by these Financial Institutions from amount approved to the MSEDCL. The Commission directed MSEDCL to submit its written submission within two days mentioning the details of outstanding payments and when was the payment proposed to be cleared.
6. **MSEDCL in its additional submission dated 5 August 2020 has stated that:**
  - 6.1 The total outstanding principal liability in respect of petitioners is Rs. 6.12 Crs and total outstanding DPC is Rs.6.16 Crs. MSEDCL will pay as per availability of fund.
  - 6.2 In pre-Covid-19 period when MSEDCL revenue was in the range of Rs 4500-5000 Cr per month, the revenue dropped to around 2000-2500 Cr per month during this lockdown period, hence MSEDCL was not in position to make timely payment to its generator.
  - 6.3 MSEDCL has approached various Financial Institutions for borrowing money in order to repay the outstanding payments of various Renewable energy generators. MSEDCL has applied for loans and it is expected that it will be sanctioned by Financial Institutions in a month's time. As and when the amount is availed from financial institutions, the same will be paid directly to Petitioner for clearing its outstanding payment.
7. Further, the Commission sought additional information from MSEDCL regarding latest details of outstanding Principal amount, DPC and Interest on DPC for various wind generators. MSEDCL vide its email dated 8 August 2020 submitted that outstanding Principal amount is Rs. 5.5 Cr. for period of March 2019 to December 2019, outstanding DPC amount is Rs. 6.16 Cr. for period of January 2015 to December 2016 and interest on DPC is Rs. 0.72 Cr. (to be reconciled) for period of June 2017 to October 2019.

#### **Commission's Analysis and Ruling:**

8. The Commission notes that the Petitioner had approached Commission twice, seeking direction to MSEDCL for payments of its outstanding amount and for compliance of the Commission's Order. Now the Petitioner has filed this Case alleging non-compliance of the Order dated 16 October 2018 in Case No. 187 of 2017. The Order dated 16 October 2018 issued by the Commission was in fact on the Petition filed by the Petitioner seeking initiation of contempt proceedings. The Commission in the said Order ruled as under:

“16. The Commission has already provided dispensation in combined Order dated 16 May, 2018 for releasing the outstanding principal amount and DPC within 30 days. Thereafter, interest will accrue at 1.25% per month on any DPC amount remaining to be paid. It is observed that from Annexure IV of the WOWAI’s Petition that MSEDCL has released some principal amount to WOWAI. Hence the Commission is of the opinion that it is not a case of complete non-compliance of the Commission’s Order dated 16 May, 2018. Prima facie from the document placed on record, the Commission is of the opinion that MSEDCL has not paid the outstanding dues of WOWAI without malafide intention. Hence the Commission is not inclined to proceed against MSEDCL under Sections 142, of the EA, 2003. However, the Commission warns MSEDCL to honor and adhere to the contractual obligation of EPA and directives given by the Commission in totality. In order to sort out the issues/differences once for all, the Commission directs the parties involved from both the sides in the present Cases to sit together and reconcile the statement of account within two weeks from the date of this Order and a conciliation Report be submitted to the Commission within two days thereafter. The Commission recognizes the fact that MSEDCL in compliance with the Commission’s earlier directions has worked out a time bound mechanism as specified in para 15 of this Order, in order to clear the outstanding claims of all the Wind generators. The Commission expects the plan to be adhered to in a very just Order in Case No 187 of 2017 Page 23 of 23 and fair manner to cover all the Wind generators irrespective of the fact whether they have petitioned or otherwise.

17. The Commission notes that the plan chalked out by MSEDCL is based on objective criteria for clearing outstanding dues in a sequence among concerned wind energy generators. The Commission directs MSEDCL to strictly adhere to the plan as submitted to the Commission in its true letter and spirit and release the amount to the Wind generators without any deviation in chronological order. At the time of reconciliation, MSEDCL shall inform WOWAI the exact time limit in which the payment would be made to it for their outstanding dues of principal and DPC amount. Further, MSEDCL should note that if it deviated from its commitment given in the plan, interest will be payable thereafter (beyond the date committed in the plan) at 1.25 % per month on any DPC.”

9. The Petitioner in the present Case has contended that MSEDCL has failed to comply with Commission’s above directives to reconcile outstanding amount within stipulated period. MSEDCL in its Reply has stated that it has completed reconciliation with 7 members of WOWAI.

10. Amount claimed by the Petitioner and payments to be made as per latest information submitted by MSEDCL is summarized in table below:

Sr. No	Particulars	Claimed as per Petition	MSEDCL’s submission
1	Principal Outstanding (Rs. Crores)	1.63	5.5
2	Period of Principal Outstanding	Till 31 October 2019	March 2019 to December 2019
3	Outstanding DPC amount (Rs.	3.14	6.16

<b>Sr. No</b>	<b>Particulars</b>	<b>Claimed as per Petition</b>	<b>MSEDCL's submission</b>
	Crores)		
4	Period of DPC	Till 31 October 2019	January 2015 to December 2016
5	Outstanding Interest on DPC amount (Rs. Crores)	0.63	0.72
6	Period of interest on DPC	May 2017 onwards	June 2017 to October 2019
7	<b>Total outstanding amount (Rs. Crores)</b>	<b>5.40</b>	<b>12.38</b>

The Commission notes that still there is difference in the Principal, DPC and Interest on DPC amount as submitted by both parties. The Commission also notes the outstanding amounts have been worked out by the Petitioners and MSEDCL for different periods. Hence, the Commission directs both parties to reconcile the amount. MSEDCL shall ensure that the said reconciliation gets completed within 2 weeks and thereafter within a week inform date by which all outstanding amount would be paid.

11. The Commission notes that although MSEDCL has filed appeal against its Order granting interest on DPC, no stay has been granted by the Hon'ble APTEL. Hence, MSEDCL is duty bound to comply with that order of the Commission. Hence, during the process of reconciliation of the amount as stated above, interest on DPC shall also be included.
12. On the issue of payment of outstanding amount, the Commission notes the financial difficulties pointed out by MSEDCL due to reduction in the revenue collection on account of Covid-19 and its submission that while approaching Financial Institutions for loans to mitigate financial crunch arisen due to Covid-19, it has included outstanding payments of RE generators in that and once the amount is sanctioned by Financial Institutions (which is expected within a month), RE Generators will be paid directly by Financial Institutions without routing such amount through MSEDCL.
13. In view of the above submission made by MSEDCL the Commission opines that the delay in payment of dues is neither willful nor deliberate. Further, MSEDCL has informed about it approaching the Financial Institutions to clear the outstanding amount of RE generators including present Petitioner and hence the Commission thinks it fit to provide one more opportunity to MSEDCL to clear the dues of Petitioners and hence is not inclined to invoke any action against MSEDCL under Section 142 and 146 of the EA 2003. Instead of penalizing MSEDCL, Commission feels that Petitioner will be better served if outstanding amount is paid to it as committed by MSEDCL.
14. Hence, the following Order:

### **ORDER**

- 1. The Case No. 339 of 2019 is partly allowed.**

2. Maharashtra State Electricity Distribution Company Limited is directed to reconcile the outstanding amount with the Petitioner within two weeks from the date of this Order and thereafter Maharashtra State Electricity Distribution Company Limited shall inform within a week the date by which outstanding amount will be paid.

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(I. M. Bohari)  
Member

