

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 150 of 2020

Petition of M/s MSPL Limited seeking adjudication of disputes between Petitioner and Maharashtra State Electricity Distribution Company Ltd. and directions against MSEDCL for non-issuance of credit notes and non-adjustment of wind units injected.

M/s MSPL Limited Petitioner

Maharashtra State Electricity Distribution Co. Ltd. Respondent

And

Case No. 151 of 2020

Petition of M/s Ramgad Minerals & Mining Limited seeking directions against Maharashtra State Electricity Distribution Company Limited for non-issuance of credit notes and non-adjustment of wind units injected

M/s Ramgad Minerals & Mining Limited Petitioner

Maharashtra State Electricity Distribution Co. Ltd. Respondent

Coram

I.M. Bohari, Member
Mukesh Khullar, Member

Appearance in both the Cases:

For the Petitioner

M/s MSPL Limited

M/s Ramgad Minerals & Mining Limited : Smt. Dipali Sheth (Adv)

For the Respondent

: Shri. Ashish Singh (Adv)

ORDER

Date: 1 February, 2021

1. M/s MSPL Limited (MSPL) and M/s Ramgad Minerals & Mining Limited (RMML) have filed these Cases dated 21 July 2020 against Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) seeking directions for settlement of claims for the units injected during April-2018 to June-2018, non-issuance of credit notes and failure to provide adjustment of wind units despite issuance of credit notes.
2. The Commission notes that both the Petitions have common grounds and are seeking similar relief. In view of the above, the Commission is deciding these two cases through this Common Order. MSPL and RMML together have been termed as Petitioners.
3. **Main prayers of the Petitioners are as follows:**

Case No.150 of 2020

- i. *Direct MSEDCL to consider the offline application dated March 17, 2018 and issue credit note for the wind units injected into the grid by the Petitioner for the period from April 2018 to June 2018 and make immediate payment for the same to the Petitioner;*
- ii. *Direct MSEDCL to issue credit note to Petitioner for all wind units injected into the grid by the Petitioner for sale to MSEDCL for the period from March 2017 and April 2017 and April 01, 2014 to April 11, 2014 and make immediate payment for the same to the Petitioner;*
- iii. *Direct MSEDCL to give credit for all the wind units injected into the grid by the Petitioner for the period from March 13, 2014 to March 31, 2014, April 2016 and January 2017 and make immediate payment for the same to the Petitioner;*

Case No.151 of 2020

- i. *Direct MSEDCL to consider the offline application dated March 17, 2018 and issue credit note for the wind units injected into the grid by the Petitioner for the period from April 2018 to June 2018 and make immediate payment for the same to the Petitioner;*

- ii. *Direct MSEDCL to issue credit note for all wind units injected into the grid by the Petitioner for sale to MSEDCL for the period from April 01, 2014 to April 11, 2014 and make immediate payment for the same to the Petitioner;*
- iii. *Direct MSEDCL to give credit for all wind units injected into the grid by the Petitioner for the period from March 13, 2014 to March 31, 2014, October 2015 to January 2016, April 2016 and January 2017 and make immediate payment for the same to the Petitioner;*

Common Prayers in both Cases:

- iv. *Direct MSEDCL to pay interest on the amounts due and payable to the Petitioner from the due date till payment and realization thereof @18% per annum;*
- v. *Condone the inadvertent delay in filing the Petition in respect of issues specified in paragraph No.14 above;*
- vi. *Award costs of these proceedings against MSEDCL and in favour of the Petitioner; and*
- vii. *Pass such other relief (s) and order (s) as the Hon'ble Commission may deem just in the facts of the present case.*

4. Petitioners in the Petitions have stated as follows:

- 4.1. By way of present Petitions, Petitioners are seeking directions against MSEDCL for settlement of following claims:
 - Claim for energy injected during April-2018 to June-2018;
 - Non- issuance of credit notes for energy supplied during valid contract period and resultant non-payment;
 - Non-issuance of credit notes for energy supplied to third party and non-adjustment of units despite issuance of credit notes.

Apart from the three issues raised by the petitioners, they have also submitted their say on the aspect of Limitation which is linked to the above three issues. The Petitioners have substantiated the above-mentioned claims as follows.

A. Settlement of claim for the energy injected during the period of April-2018 to June-2018

- 4.2. Details related to contracted capacity during 01 February 2017 to 31 March 2018 under short-term arrangement with MSEDCL are depicted in following table:

	MSPL	RMML
Capacity Contracted	2X500 kW	50 kW
Wind Mill Location	Aral-Kathi, Satara	Aral-Kathi, Satara
Period of contract	01 February 2017 to 31 March 2018	01 February 2017 to 31 March 2018
Permission for short term sale to MSEDCL Ref. No. & Date	PP/NCE/ Wind/ Sale to MSEDCL /21723 dated 07 September 2017. To be read with corrigendum letter dated 13 March 2018	PP/NCE/Wind/ Sale to MSEDCL/21755 dated 07 September 2017

- 4.3. The aforementioned permissions were valid till March 2018. In order to continue the sale of power to MSEDCL, the Petitioners vide a letter dated 17 March 2018 requested MSEDCL for permission to sell power for the period from 01 April 2018 to 31 March 2019.
- 4.4. MSEDCL belatedly vide its letter dated 23 April 2018 informed that it has developed a web portal for procurement of short-term power from wind power projects from 01 January 2018 and practice of offline application has been discontinued. MSEDCL further, requested the Petitioners to apply online and the application will have to be made thirty (30) days prior to the period of sale of power.
- 4.5. The Petitioners vide their letters dated 08 May 2018 informed MSEDCL that they would be submitting online application for sale of power from July-2018 onwards and further, requested to consider the offline application for sale of power for the period from April-2018 to June-2018.
- 4.6. Thereafter, on 31 May 2018 Petitioners applied through online portal for sale of power for the period from July-2018 to March-2019. The same were accepted and letters of intent had been issued to the Petitioners vide letters dated 29 June 2018.
- 4.7. Vide letters dated 30 August 2018, 25 December 2018 and 22 June 2020; they have requested MSEDCL to consider the offline application dated 17 March 2018 for sale of power to MSEDCL for the period from April-2018 to June-2018 as per past practice.
- 4.8. In the past, Petitioners had applied for sale of power to MSEDCL by way of an offline application and MSEDCL had based on the offline application granted permission for sale

of power. It is submitted that MSEDCL had not intimated to the Petitioner in any manner regarding the change in mode of application prior to the letter dated 23 April 2018 sent by it to the Petitioner. MSEDCL has not publicized by way of any Circular or Notification such change in procedure i.e. online mode of applications for procurement of short-term power from wind generators. Due to such change in application procedure, the Petitioners suffered financial loss especially in high wind season.

- 4.9. Under the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 and the Maharashtra Electricity Regulatory Commission (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2019 wind power plants have been given “MUST RUN” status.
- 4.10. On account of the MUST RUN status, the Petitioner’s Wind Power Plants injected power into the grid during the period from April-2018 to June-2018. MSEDCL has enjoyed this wind power fed into the grid, sold it to its consumers and also realized the revenue for the energy injected by the Petitioners.
- 4.11. The rightful dues of the Petitioners cannot be denied as it will tantamount to fait accompli for change in methodology without any prior notice. MSPL and RMML in their submission mentioned that they have injected 2,61,443 and 1,18,060 units respectively during the period from April 2018 to June 2018. The said energy was not meant to be gratuitous. Section 70 of the Indian Contract Act provides for obligation on person enjoying benefit of non-gratuitous act.
- 4.12. The Petitioners have submitted that though they repeatedly called upon MSEDCL to consider the offline application dated 17 March 2018 and accept the request for sale of power from April 2018 to June 2018, MSEDCL has failed to do so compelling the Petitioners to approach the Commission in this regard.

B. Non- issuance of credit notes for energy supplied during valid contract period and resultant non-payment:

- 4.13. The Petitioners supplied power to MSEDCL after getting legitimate permission for sale of short-term power. MSEDCL failed to issue credit notes for energy supplied, the details of which are depicted in following table:

Generator	Permission for short term sale to MSEDCL Ref. No. & Date	Period of Contract	Period of Non-Issue of Credit Notes
MSPL	Ref. No. 12284 dated 29 April 2016	01 April 2014 to 31 March 2015	01 April 2014 to 11 April 2014
	Ref. No. 5352 dated 13 March 2018	01 February 2017 to 31 March 2018	March 2017 & April 2017
RMML	Ref. No. 12284 dated 29 April 2016	01 April 2014 to 31 March 2015	01 April 2014 to 11 April 2014

4.14. The Petitioners have submitted that they have reminded MSEDCL vide letters dated 20 August 2018, 04 April 2019, 06 August 2019, 11 March 2020 and 22 June 2020 to issue those credit notes and to make payments. However, MSEDCL has till date not responded to any of those letters.

4.15. On account of non-issuance of credit notes for the said period, the Petitioner has not been able to raise invoices for the said period on MSEDCL which has resulted in financial losses to the Petitioner.

C. Non-issuance of credit notes for energy supplied to third party and non-adjustment of units despite issuance of credit notes:

4.16. MSEDCL had granted Open Access (OA) permissions to the MSPL to supply power to M/s Cooper Corporation Private Limited (CCPL). The details of OA permissions with respect to MSLP are as follows:

Sr. No.	OA No.	Date	Period
1	15854	04 June 2013	01 April 2013 to 31 March 2014
2	02690	19 January 2016	01 February 2016 to 29 February 2016
3	6267	23 February 2016	01 March 2016 to 31 March 2016
4	13267	10 May 2016	01 April 2016 to 31 March 2017
5	-	23 December 2016	01 January 2017 to 31 January 2017

Further, OA permissions were granted to RMML to supply power to M/s Cooper Corporation Private Limited (CCPL) & M/s Okasa Pharma Private Limited (OPPL), the details of the said OA permissions are as follows:

Sr. No.	OA No.	Party Name	Date	Period
1.	15852	OPPL	04 June 2013	01 April 2013 to 31 March 2014
2.	38926	CCPL	07 November 2015	01 October 2015 to 31 March 2016
3.	13266	CCPL	10 May 2016	01 April 2016 to 31 March 2017
4.	-		23 December 2016	01 January 2017 to 31 January 2017

4.17. Pursuant to the aforementioned OA permissions, the Petitioners supplied power to CCPL and OPPL. Here, MSEDCL has failed on two counts i.e. to issue credit notes with respect to power supplied by the Petitioners and in giving credit adjustments in the bills of CCPL and OPPL, when credit notes were issued. Details of such events are captured in table below:

Generator	OA Consumer	Period of Non-Issue of Credit Notes	Period of failure to adjust credit units in bills of OA consumers, when credit notes were issued
MSPL	CCPL	13 March 2014 to 31 March 2014	Months of April 2016 and January 2017
RMML	OPPL	13 March 2014 to 31 March 2014	-
	CCPL	-	Months of October 2015 to January 2016, April 2016 and January 2017

Due to above failures on part of MSEDCL, the Petitioners have suffered financial losses.

4.18. RMML in its Petition specifically made reference to letter dated 12 July 2017 sent by the Superintendent Engineer, Satara to Chief Engineer (Commercial), wherein it has been categorically admitted that the bills of CCPL for the period from October 2015 to December 2015 were generated without taking into consideration the wind units supplied by the Petitioner RMML. Further, the Superintendent Engineer, Satara sought guidance of the Chief Engineer (Commercial) with respect to the manner by which credit for the 73,284.42 units supplied by the Petitioner to CCPL can be made.

4.19. The Petitioners vide letters dated 20 August 2018, 04 April 2019, 06 August 2019, 1 January 2020, 11 March 2020 and 22 June 2020 requested MSEDCL to issue credit notes

and to adjust the wind units for which credit notes have already been issued in the bills of OPPL and CCPL.

- 4.20. OPPL and CCPL are no longer interested in purchasing that power from the Petitioner due to inordinate delay in issuing of the credit notes and giving adjustment for the wind units in their bills. Petitioners seek directions against MSEDCL to issue credit notes for units injected into the grid and unadjusted units may be paid out at the rate of Average Power Purchase Cost (APPC).

D. Issue of Limitation:

- 4.21. The present Petition is not barred by limitation. With respect to the issue pertaining to credit for units injected during the period from April 2018 to June 2018, the claim is not barred by limitation. Further, the limitation period pertaining to units supplied to MSEDCL during the period from March 2017 to May 2017 stands extended on account of the lockdown imposed by the Government of Maharashtra for COVID-19. With respect to the issue pertaining to non-adjustment of units supplied to third party, the Petitioner has been diligently following up with MSEDCL for the same.
- 4.22. The Petitioners submitted that the delay, if any, was unintentional and inadvertent and the same may be condoned. For said purpose they have referred to the Supreme Court Judgement in case of Collector, Land Acquisition, Anantnag & Anr. V. Mst. Katiji & Ors. (1987) 2 SCC 107, State of Nagaland Vs. Lipok Ao (2005) 3 SCC 752 and also in the matter of Ram Nath Sao & Ors. Vs. Gobardhan Sao & Ors. (2002) 3 SCC 195.
- 4.23. In support of the claims falling within the period of limitation, the Petitioners have referred to Hon'ble Supreme Court's Judgement in Suo Moto Writ Petition (Civil) No. 3 of 2020 for taking cognizance of the limitation period on account of the COVID-19 Virus and resultant difficulties. In said Judgement dated 23 March 2020 Hon'ble Supreme Court ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15 March 2020.

5. MSEDCL in its reply dated 29 September 2020 submitted as below:

- 5.1. MSPL and RMML have opted for sale of power to MSEDCL as well as third party sale via Open Access.

Claims prior to 21 July 2017 barred by limitation:

- 5.2. The present petitions have been filed by the Petitioners only on 21 July 2020 before Commission. Hence, any claim prior to the period 21 July 2017 would be barred by limitation and cannot be allowed in the adjudicatory process set in motion under the provisions of Section 86 (1) (f) of the Electricity Act, 2003.
- 5.3. This issue has been settled by the Hon'ble Supreme Court vide its judgment dated 16 October 2015 in the matter of *Andhra Pradesh Power Coordination Committee and Others Versus Lanco Kondapalli Power Limited and Ors* by categorically ruled that principles underlying the Limitation Act, 1963 are applicable to State Commissions when it functions as Statutory adjudicatory quasi-judicial /judicial authority in determining all claims or disputes, including those arising out of contract between licenses and generating companies.
- 5.4. Hence, wherever any claim/dispute is raised before the Commission under Section 86 (1) (f) then limitation act strictly applies and any claim barred by limitation i.e. a period of three (3) years cannot be adjudicated unless the principles underlying Section 5 and Section 14 of the Limitation Act, 1963 are satisfied. In the present case, the Petitioner has not made out any case under the said provisions of Limitation Act.
- 5.5. The Commission in its Order dated 09 September 2019 in Case No.04 of 2019 has taken the similar analogy as stipulated by the Hon'ble Supreme Court and has rejected the claims of the Petitioners prior to FY 2016-17 being time barred.

Claim for the units injected from April-2018 to June-2018

- 5.6. MSEDCL had issued permission to MSPL and RMML, to supply wind power under short terms sale from 1 February 2017 to 31 March, 2018. MSEDCL has clearly stated in its Permission letter dated 07 September 2017 that the permission for short term sale of power was granted only till 31 March 2018 and there was no such extension clause in the permission letter. Hence, the said letter cannot form the basis for any further extension or extension requests.
- 5.7. Subsequently, MSEDCL has developed an online web portal for procurement of power from wind power projects on short term basis for transparency, faster processing of applications and ease of access to the wind developer. The information on development of web-portal was placed on record during proceedings in Case No.155 of 2017.
- 5.8. The web based online platform was opened from 01 January 2018 to offer sale to MSEDCL with effect from April-2018. It is to submit that, during the period between 1 January 2018 to 31 March 2018, there were 107 number of applications submitted on the web-based

platform to supply short term power, which confirms that the web-based platform was well received among the wind generators. The Petitioners had more than 3 months of time to have acted in this matter. MSEDCL acted in line with the regulatory practices in its approach while setting up web-based platform in terms of Commission's Order dated 15 November, 2017.

- 5.9. In addition to above, the MSEDCL has replied to the Petitioner's Application, through the letter dated 23 April 2018 informing development of an online web portal for procurement of power from wind projects on short term basis.
- 5.10. MSEDCL was not bound by any agreement or direction to accept such applications which are not in line with the policies of MSEDCL and in line with the approval received from Commission to procure through web-based platform. Hence, the petitioners claim is invalid.
- 5.11. As regards the contention of the Petitioner regarding the must-run status of renewable energy generating stations it is submitted that in the past the Commission and Hon'ble APTEL have Ordered that without any agreement to supply energy, generating stations cannot inject electricity. MSEDCL has referred to the Commission Order dated 1 July 2020 in the Case No.28 of 2020 wherein it has been clearly ruled that generating station cannot continue to inject energy without valid EPA and cannot claim compensation.

Non-issuance of Credit Notes for energy supplied to MSEDCL and resultant non-payment

- 5.12. In the matter of MSPL, MSEDCL has submitted that, till FY 2016-17, the accounting process was decentralized. The billing and payment had been carried out at field offices. However, from FY 17-18 onwards, MSEDCL has transformed the accounting and billing systems under centralized mode and incorporated IT technology wherein various checks and balances were introduced in the centralized mode which eliminates the error in accounting. Hence, the credit note for March 2017 and April 2017 was not issued due to technical issues during this transient phase. It is to specifically mention that non issuance of the credit notes was not intentional. However, non-issuance of credit notes does not restrict any generator to raise their claims. It could claim against the energy sale on the basis of Joint Meter Reading available with generator.
- 5.13. The claim presented by the Petitioners are barred by limitation and cannot be allowed in the adjudicatory process set in motion under the provisions of Section 86 (1) (f) of the Electricity Act, 2003.

Non-issuance of credit notes for energy supplied to third party and non-adjustment of units despite issuance of credit notes:

- 5.14. The non-issuance of credit notes for energy supplied to third party CCPL and OPPL for the period from 13 March, 2014 to 31 March, 2014 are barred by limitation and cannot be allowed.
- 5.15. Further, non-adjustment of units for the month of April 2016 and January 2017 in the bills of OPPL and for the months of October 2015 to January 2016, April 2016 and January 2017 in the bills of CCPL are barred by limitation and cannot be allowed in the adjudicatory process set in motion under the provisions of Section 86 (1) (f) of the Electricity Act, 2003.

6. Petitioners in its Rejoinder dated 15 October 2020 have stated as under:

6.1. Objection on the basis of period of Limitation:

MSEDCL is merely raising technical objection on the issue of 'limitation'. It is submitted that the claims prior to 21 July 2017 are not barred by limitation. The claims of the Petitioner are undisputed and continuous cause of action as the Petitioners were continuously in touch with MSEDCL which is not denied. As the claims are continuous, the provisions of the Limitation Act, 1963 ("Limitation Act") shall not apply. Due to spread of COVID-19 virus, the period of limitation has been extended by the Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No. 3/2020 vide its Order dated 23 March 2020.

6.2. Publicizing the web-based application process for short-term power procurement:

With reference to the proceedings in which, MSEDCL informed the Commission about development of online portal, the Petitioners were neither party to any such petition filed by MSEDCL nor was made aware of this newly developed web portal earlier. The Petitioners submits that it is only after MSEDCL's letter dated 23 April 2018, it became aware about the change in mode of application as well as time for making the application for the very first time. It is submitted that MSEDCL had not intimated to the Petitioner in any manner regarding the change in mode of application prior to the letter dated 23 April 2018. It is submitted that if MSEDCL decides to change the mode of application for sale of short-term power, it is the duty of MSEDCL to inform the wind generators about the proposed change well in advance to enable them to make applications on time.

Further, the submissions of MSEDCL that one hundred and seven (107) number of applications were submitted on web-based portal cannot be corroborated as MSEDCL has not furnished any list of generators who had applied for the sale of short-term power through web portal.

6.3. Past Practices:

Petitioners have mentioned that in the past MSEDCL has granted belated permissions for sale of power and referred to the permission bearing No. PP/NCE/Wind/Sale to MSEDCL/21723 dated 07 September 2017 read along with letter dated 13 March, 2018 for the period from 01 February, 2017 to 31 March, 2018. Therefore, they have urged that the same modus operandi should have been adopted by MSEDCL for granting the permission for the period from 01 April, 2018 to 31 March, 2019.

- 6.4. The non-issuance of credit notes in timely manner has caused grave inconvenience to the Petitioner and moreover MSEDCL calculates due date only once bill is issued and not on the basis of Joint Meter Reading Reports. It is submitted that the claim pertaining to the period of March 2017 to April 2017 is not barred by limitation as the same stands extended on account of the lockdown which was imposed by the Government of Maharashtra for COVID-19 and further in line with the Order of Hon'ble Supreme Court in Suo Moto Writ Petition (Civil) No. 3/2020.
- 6.5. The Petitioners have referred to Judgement of Hon'ble Supreme Court in the matter of Indian Council for Enviro-Legal Action v. Union of India & Ors. (2011) 8 SCC 161 and Eureka Forbes Limited vs. Allahabad Bank (2010) 6 SCC 193 for asserting their prior period claims pertaining to non-issuance of credit.
- 6.6. None of the contentions of MSEDCL are tenable and the same are devoid of merits. MSEDCL has failed to establish its contentions and allegations. It is submitted that MSEDCL has failed to make out any case for dismissal of the Petitions.
7. At the E-hearing held on 05 January 2021, both parties have reiterated their submission made in Petition/Reply.

Commission's Analysis and Rulings

8. The Petitioners in the present petitions are mainly seeking relief in respect of following three issues:
 - a. settlement of claims for energy injected during April-2018 to June-2018;
 - b. non-issuance of credit notes during valid agreement period with MSEDCL; and
 - c. non-issuance of credit notes and adjustment of energy injected in respect of valid third-party Open Access.

In the following paragraphs, the Commission is deciding the above-mentioned issues.

9. Settlement of claims for energy injected during April-2018 to June-2018:

- 9.1 The Petitioners have stated that they were having valid permission for short-term sale of power upto 31 March 2018. Vide a letter dated 17 March 2018, they requested MSEDCL for sell of power for the period from 01 April 2018 to 31 March 2019. However, MSEDCL

vide its letter dated 23 April 2018 asked Petitioners to submit online application for the period of July-2018 to March-2019. In the mean time due to 'Must Run Status', the Petitioners have injected power into the Grid. In spite of repeated follow up, MSEDCL is not considering offline application and sale of power for the months of April-2018 and June-2018. While opposing contentions of Petitioners, MSEDCL stated that the web based online platform was opened from 01 January 2018 to offer sale to MSEDCL with effect from April-2018. Wind Generators were aware of such web portal and hence during the period between 1 January 2018 to 31 March 2018, there were 107 number of applications on web-based platform to supply short term power. With regard to Must Run Status, MSEDCL has referred to the Orders of the Commission and Hon'ble APTEL which stipulate that without any agreement to supply energy, generating stations cannot inject electricity.

- 9.2 The Commission notes that it is an admitted fact that post expiry of the short-term EPA on 31 March 2018, MSEDCL has signed EPA with Petitioners through online portal for the period of 1 July 2018 onwards. Thus, during the period of 1 April 2018 to 30 June 2018, there was no valid agreement between Petitioners and MSEDCL. As per Petitioners they have applied in advance on 17 March 2018 through offline mode for short term sale of energy beyond 31 March 2018, but MSEDCL insisted for online application which needs to be filed 3-month in advance. Petitioners have contended that they were not aware of such online platform and MSEDCL also did not gave adequate publicity to such change i.e. compulsory use of online platform for short term sale. In this regard, the Commission is of the opinion that if Petitioners intended to sell its power to MSEDCL, it is the Petitioners' responsibility to follow up with the procedures set out and mode of their application. Merely, relying on earlier procedures and making written off-line applications will not serve the purpose. In fact, the web portal-based procurement of power is a transparent and easy mode of application which was started from 1 January 2018 i.e. around three months before expiry of Petitioners' EPAs. Further, such proposal of web-based power procurement platform was submitted before this Commission in Case No. 155 of 2017 which was filed on 1 November 2017. Therefore, such proposal was in public domain since November 2017. Further, other wind generators have applied through same online portal during that period as notified by MSEDCL in their reply on oath. All these have only revealed that Petitioners as generators who want to sell their electricity were not diligent enough and did not take adequate precaution to update themselves about changed method of power procurement by MSEDCL. Further, it is also a fact that as a generator, Petitioners have multiple options to sell its electricity (In the past Petitioners have sold electricity to Open Access consumers). Sale to MSEDCL is just one of the possible options available with the Petitioners. Under such circumstances, if generator did not comply with procedure set by buyer, which has been complied by other generators and Petitioners themselves for the period post 1 July 2018, no fault can be attributed to the buyer for introducing new

online-platform. Hence, the Commission does not find any merit in the contention of the Petitioner that they were unaware about on-line application and therefore their off-line applications should have been considered.

- 9.3 As far as Petitioners' contention that considering must run status of Wind Energy they continued injecting energy during the months of April-2018 to June-2018 and they must be compensated for the same, it is pertinent to note that the APTEL, in its various judgments has ruled that the entity injecting any energy into the grid without a valid contract need not be compensated. APTEL in its Judgment dated 16 May 2011 in M/s Indo Rama Synthetics Vs MERC has explained the importance of PPA for injecting power into the Grid and thereafter held that no compensation shall be payable for energy injected without agreement. Relevant part of the APTEL Judgment is reproduced below:

“

11 *In our opinion the Section 70 and 72 of the Indian Contracts Act, 1872 will not be applicable in the present case. The present case is governed by the Electricity Act, 2003 which is a complete code in itself. In the electricity grid, the SLDC, in accordance with Section 32 of the Act is responsible for scheduling and dispatch of electricity within the state, to monitor the grid operations, to exercise supervision and control over the intrastate transmission system and to carry out grid control and dispatch of electricity though secure and economic operation of the State Grid. All the generators have to generate power as per the schedule given by the SLDC and the grid code in the interest of secure and economic operation of the grid. Unwanted generation can jeopardize the security of the grid. Moreover, in this case the injection of electricity was without the consent or knowledge of the distribution licensees and the energy generated by the appellant was booked to the distribution licensees for balancing the energy generated/injected with energy consumption in the energy accounting. Accordingly, the decision in Haji Mohammed Ishaq WD. S.K.Mohammed and others vs. Mohamad Iqbal and Mohamed Ali & Co. Reported in (1978) 2 SCC 493 relied upon by the appellant will also not be of any relevance.*

.....

13 ***Thus, we do not find any substance in the claim of the appellant for compensation for the power injected into the grid without any schedule and agreement”.***

- 9.4 Also, the Commission through various Order has re-iterated above principle laid down by the Hon'ble APTEL and has rejected the claims for compensation for energy injected into the grid without any valid contract.

- 9.5 Accordingly, the Commission rules that as there was no valid EPA for the period of 1 April 2018 to 30 June 2018, no compensation can be allowed for energy injected during this

period. Further, in the interconnected system, where multiple Distribution Licensees and OA consumers are connected, any single entity cannot be identified as a user of such energy which has been injected without any valid contract.

10. Non-issuance of credit notes, during period of valid agreement with MSEDCL

10.1 The Petitioners have contended MSEDCL has failed to provide credit notes for the following period which was within a valid EPA tenure:

Generator	Period of Non-Issue of Credit Notes
MSPL	01 April 2014 to 11 April 2014
	Months of March 2017 & April 2017
RMML	01 April 2014 to 11 April 2014

10.2 The Petitioners have urged MSEDCL to issue credit notes for above mentioned period. MSEDCL has objected with above contention stating that such claims are now barred by time limitation. MSEDCL has relied upon the judgment dated 16 October 2015 of the Hon’ble Supreme Court in the matter of *Andhra Pradesh Power Coordination Committee and Others Versus Lanco Kondapalli Power Limited and Ors.* for this purpose. While opposing this contention of MSEDCL, Petitioners have contended that they have diligently followed up with MSEDCL for issuance of credit notes. Further, Petitioners referred to Hon’ble Supreme Court’s Judgment in *Suo Moto Writ Petition (Civil) No. 3 of 2020* by which on account of the COVID-19 pandemic, the Supreme Court has extended period of limitation in all matters w.e.f. 15 March 2020.

10.3 In this regard, the Commission notes that the Hon’ble the Supreme Court vide its Judgment dated 16 October 2015 in the matter of “*Andhra Pradesh Power Coordination Committee and Others Versus Lanco Kondapalli Power Limited and Others*” has categorically held about the applicability of limitation Act to the adjudication proceedings before the Commission. The relevant para. of the said Judgment passed by the Hon’ble Supreme Court is reproduced as under:

“

30. We have taken the aforesaid view to avoid injustice as well as possibility of discrimination. We have already extracted a part of paragraph 11 of the judgment in the case of State of Kerala v. V.R.Kalliyankutty (supra) wherein Court considered the matter also in the light of Article 14 of the Constitution. In that case the possibility of Article 14 being attracted against the statute was highlighted to justify a particular interpretation as already noted. It was also observed that it would be ironic if in the name of speedy recovery contemplated by the statute, a creditor is enabled to recover claims beyond the period of limitation. In this context, it would be fair to infer that the special adjudicatory

role envisaged under Section 86(1)(f) also appears to be for speedy resolution so that a vital developmental factor – electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the Civil Court. Evidently, in absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court. But in appropriate case, a specified period maybe excluded on account of principle underlying salutary provisions like Section 5 or 14 of the Limitation Act. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory. [Emphasis added]

In view of the above, any claim barred by time limitation i.e. a period of three (3) years cannot be adjudicated unless the principles underlying Section 5 or Section 14 of the Limitation Act, 1963 are satisfied. Apparently, in the present case, Petitioner have not made out any case under the said provisions of Limitation Act and have merely stated that it was regularly following up with MSEDCL for issuance of credit notes.

- 10.4 The Commission notes that claims for credit notes pertain to April 2014 and March & April 2017. Claims for April 2014 have become time barred in terms of limitation act in April 2017 itself. It is also a settled principle of law that mere correspondence between the contracting parties cannot extend the period of limitation. Aggrieved Party has to approach the Courts within the period of limitation. In the present case, the cause of action arose in May,2014 and Petitioners have approached the Commission in 2020 i.e. after a gap of 6 years without any valid justification for such delay. Therefore, the Commission rejects the claim for credit notes pertaining to April 2014 which is barred by limitation.
- 10.5 With respect to claims for Months of March 2017 & April 2017, the Commission notes that limitation period allows submission of claims till March and April 2020. Present Petitions have been filed on 21 July 2020 which is beyond such limitation period under normal circumstances. However, the Commission is also aware that in view of Covid-19 pandemic, Hon’ble Supreme Court vide its judgment dated 23 March 2020 in Suo Moto Writ Petition (Civil) No. 3 of 2020 has ruled as follows:

“This court has taken Suo Moto cognizance of the situation arising out of the challenge faced by the country on account of the COVID-19 Virus and resultant difficulties that may be faced by the litigants across the country for filing their petitions/applications/suits/appeals /all other proceedings within the period of Limitation

prescribed under the general law of limitations or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure the lawyers/litigants do not have to come physically to file such 2 proceedings in respective Court/Tribunals across the country including this court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. March 15, 2020 till further order/s to be passed by this Court in present proceedings.”

By a further Order dated 06 May 2020 the Hon'ble Supreme Court has extended the limitation periods applicable to proceedings under the Arbitration & Conciliation Act, 1996, thus making the extension comprehensive.

10.6 Aforementioned Judgement was passed for the benefit of those whose remedy may get barred by time because they were unable to report physically to file such proceedings in respective courts/tribunals. Considering above, the Commission concludes that the issuance of credit notes during the months of March-2017 and April-2017 are not time barred.

10.7 The Commission also notes that from FY 17-18 onwards, MSEDCL has transformed the accounting and billing systems of Wind Energy under centralized mode and incorporated IT technology. The credit note for March 2017 and April 2017 was not issued due to technical issues during this transient phase. Therefore, it would be appropriate if MSEDCL issues such credit notes to the Petitioners. Accordingly, the Commission directs MSEDCL to issue pending credit notes for the period of March and April 2017 by following due process, within a month from the date of this Order.

10.8 Having allowed issuance of pending credit notes for March and April 2017, the Commission is not inclined to allow any carrying cost as prayed for as Petitioners were not diligent enough to approach the Commission earlier and have taken almost 3 years for the same.

11. Non-issuance of credit notes and adjustment of energy injected in respect of valid third-party Open Access

11.1 Petitioners have stated that MSEDCL has not issued credit notes for energy supplied by the Petitioners for third party sales and also has not adjusted units in the bills of OA consumers even though credit notes were issued. MSEDCL has objected to the claim of the Petitioners based on law of limitation.

11.2 The Commission notes that energy transaction referred by the Petitioners to supplement its claim had occurred during March-2014 to January-2017. As per limitation act, such claim become time barred in March 2017 to January 2020 which is well before the Supreme Court Judgment dated 23 March 2020 extending period of limitation. Also, Petitioners have not provided valid justification for such delay in filing the claims. Hence, such claims are clearly beyond the period of limitation stipulated in the limitation act and hence cannot be considered by this Commission.

11.3 Hence, the Commission rejects the claims of the Petitioners for issuance of credit notes and adjustment of credits notes in the bills of OA consumers as same are barred by period of limitation.

12. Hence, the following Order.

ORDER

- 1. The Cases No. 150 of 2020 is partly allowed.**
- 2. The Commission directs MSEDCL to issue pending credit notes for wind energy injected into the grid for the period for March 2017 and April 2017, within a month from date of this Order.**
- 3. The Case No. 151 of 2020 is dismissed.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

