

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 119 of 2018**

**Case of Roha Dyechem Pvt. Ltd. for directions to Maharashtra State Electricity  
Distribution Company Ltd. with regard to the terms of Open Access permissions**

**And**

**MA 14 of 2021 in Case No. 119 of 2018**

**Miscellaneous Application of Roha Dyechem Pvt. Ltd. seeking compliance of the Order  
dated 27 April 2021 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal  
No. 319 of 2018**

Roha Dyechem Pvt. Ltd. ....Petitioner

V/s.

Maharashtra State Electricity Distribution Co. Ltd. ....Respondent

**Case No. 19 of 2019**

**Case of Arvind Cotsyn (India) Ltd. regarding unilateral reduction of Open Access  
capacity and non-compliance of MERC Order dated 27 February 2018 in Case No. 80 of  
2016 by Maharashtra State Electricity Distribution Co. Ltd.**

**And**

**MA 15 of 2021 in Case No. 19 of 2019**

**Miscellaneous Application of Arvind Cotsyn (India) Ltd. seeking compliance of the Order  
dated 27 April 2021 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal  
No. 288 of 2019**

Arvind Cotsyn (India) Ltd. ....Petitioner

V/s.

Maharashtra State Electricity Distribution Co. Ltd. ....Respondent

**Case No. 118 of 2019**

**Case of Western Precicast Pvt. Ltd. for adjudication of dispute regarding wrongful curtailment of Open Access capacity and denial of Medium Term Open Access**

**And**

**MA 12 of 2021 in Case No. 118 of 2019**

**Miscellaneous Application of Western Precicast Pvt. Ltd. seeking compliance of the Order dated 27 April 2021 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 378 of 2019**

Western Precicast Pvt. Ltd. ....Petitioner

V/s.

Maharashtra State Electricity Distribution Co. Ltd. ....Respondent

**And**

**Case No. 119 of 2019**

**Case of Jsons Foundry Pvt. Ltd. for adjudication of dispute regarding wrongful curtailment of Open Access capacity and denial of Medium Term Open Access**

**And**

**MA 13 of 2021 in Case No. 119 of 2019**

**Miscellaneous Application of Jsons Foundry Pvt. Ltd. seeking compliance of the Order dated 27 April 2021 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal No. 377 of 2019**

Jsons Foundry Pvt. Ltd. ....Petitioner

V/s.

Maharashtra State Electricity Distribution Co. Ltd. ....Respondent

Appearance:

For

Western Precicast Pvt. Ltd. and

Jsons Foundry Pvt. Ltd. and

Roha Dyechem Pvt. Ltd.

..... Smt Dipali Sheth (Adv.)

For Arvind Cotsyn (India) Ltd.

..... Shri Anand Ganeshan (Adv.)

For Maharashtra State Electricity Distribution Co. Ltd.

..... Shri Ravi Prakash (Adv.)

For Maharashtra Energy Development Agency

..... Shri Manoj Pise (Rep.)

For Energy Department, Government of Maharashtra

..... Shri Prashant Badgire (Rep.)

**Coram**

**Shri Sanjay Kumar, Chairperson**

**Shri I. M. Bohari, Member**

**Shri Mukesh Khullar, Member**

**ORDER**

**Date: 25 June, 2021**

1. The four Petitioners in the present matters viz. Roha Dyechem Pvt. Ltd., Arvind Cotsyn (India) Ltd., Jsons Foundry Pvt. Ltd. and Western Precicast Pvt. Ltd. had approached the Commission through their separate Petitions seeking directions against Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) on the issue related to curtailment of Open Access (OA) capacity while processing their OA Applications and retrospective curtailment of the OA capacity granted to them. The Commission while passing the Orders rejected the claims of the Petitioners. Aggrieved by the Orders of the Commission, the Petitioners preferred separate Appeals before the Hon'ble Appellate Tribunal for Electricity (ATE). The details are as under:

<b>Appeal No.</b>	<b>Order passed by the Commission</b>	<b>Details of matter</b>
319 of 2018	Order dated 12 July 2018 in Case No. 119 of 2018	Roha Dyechem Pvt. Ltd. v/s. MSEDCL
288 of 2019	Order dated 18 April 2019 in Case No. 19 of 2019	Arvind Cotsyn (India) Ltd. v/s. MSEDCL
377 of 2019	Order dated 9 September 2019 in Case No. 119 of 2019	Jsons Foundry Pvt. Ltd. v/s. MSEDCL
378 of 2019	Order dated 9 September 2019 in Case No. 118 of 2019	Western Precicast Pvt. Ltd. v/s. MSEDCL

2. Since the issues involved in all these Appeals were principally the same, the Hon'ble ATE passed the common Judgment dated 27 April 2021 (**ATE Order**) in these Appeals allowing with the following directions:

*“ Having regard to the factual and legal aspects of the matter, as stated supra, the instant Appeals filed by the Appellants are allowed. The impugned orders passed by the Maharashtra Electricity Regulatory Commission dated 12.07.2018 in the Case No.119 of 2018, dated 18.04.2019 in the Petition No. 19 of 2019, dated 09.09.2019 in the Case No. 119 of 2019 and dated 09.09.2019 in the Case No. 118 of 2019 are hereby set aside to the extent challenged in the Appeals.*

**The matter stands remitted back to the first Respondent, MERC with the direction to pass the appropriate order in the light of the observations made in the preceding paragraphs in accordance with law as expeditiously as possible within a period of three months after receiving the copy of this judgement.** *The Appellants and the Respondents herein are directed to appear before the first Respondent, MERC personally or through their counsel without notice on 04.05.2021.”*

3. Pursuant to the aforesaid ATE Order, the Petitioners filed following Miscellaneous Applications (**MA**) seeking compliance of the aforesaid Judgment:

- i. MA No.12 of 2021 filed by Western Precicast Pvt. Ltd. in Case No. 118 of 2019 (filed on 3 May 2021)
- ii. MA No.13 of 2021 filed by Jsons Foundry Pvt. Ltd. in Case No. 119 of 2019 (filed on 3 May 2021)
- iii. MA No.14 of 2021 filed by Roha Dyechem Pvt. Ltd. in Case No. 119 of 2018 (filed on 3 May 2021)
- iv. MA No.15 of 2021 filed by Arvind Cotsyn (India) Ltd. in Case No. 19 of 2019 (filed on 6 May 2021)

4. The Petitioners sought directions to MSEDCL for grant/restoration of the OA quantum that were sought by the Petitioners through their respective past OA Applications along with the compensation on account of loss incurred by them due to the wrongful denial/curtailment of the OA quantum for their respective periods. The Petitioners also sought directions to MSEDCL for grant of OA to the OA quantum as sought in their respective OA Applications for the current period i.e. May and June 2021 based on Hon'ble ATE Order.

5. The matters were listed for E-hearing on 4 May, 18 May and 1 June 2021 for hearing for compliance of Hon'ble ATE Order. Till the E-hearing dated 4 May 2021, one of the Petitioners viz. Arvind Cotsyn had not filed its MA. At the E-hearing dated 4 May 2021, Advocate of Arvind Cotsyn stated that it intends to file its MA and sought time to file the same. The Commission directed Arvind Cotsyn to file its MA. The Commission also directed MSEDCL to file its replies within a week and listed the matters for hearing on 18 May 2021.

6. **During the E-hearing held on 18 May 2021:**

- 6.1 Advocate appearing on behalf of MSEDCL stated that:

- i. On account of the Covid 19 pandemic, MSEDCL has been working with only 15% staff strength which has led to inadvertent delay in processing and approval of the submissions in the matters.
  - ii. Accordingly, it requested for grant of additional time for filing its submissions and requested that the hearing should be adjourned.
- 6.2 In response, the Advocate appearing on behalf of the Petitioners stated that:
  - i. The Petitioners have no objection to the adjournment request of MSEDCL, however, adjournment may be granted subject to grant of ad interim relief as sought by the Petitioners. The OA sought for the current period i.e. May 2021 may be allowed for the quantum as sought by the Petitioners without any restrictions.
  - ii. Also, in the absence of OA permission (on account of wrongful denial by MSEDCL) and despite of Applicant's contention that such validity of OA permission was already under challenge before Hon'ble ATE, MSEDCL had disconnected 0.92 MW wind power plant of Jeson Foundry of at Mhatrewadi on 12 June, 2020 during high wind season. MSEDCL should be directed to reconnect the wind power plant immediately. Similarly, MSEDCL needs to be directed to immediately reconnect the Chavaneshwar Wind Power Plant.
- 6.3 In response, the Advocate for MSEDCL stated that:
  - i. The Hon'ble ATE has directed to pass an appropriate Order in these matters within three months of the receipt of the Order. Still there is ample time as only three weeks had passed since the issuance of the ATE Order.
  - ii. The Commission has to pass the Order after hearing all the Parties including MSEDCL.
  - iii. There are a number of prayers in all these Miscellaneous Applications including prayers for compensation. No urgency is seen from any of these prayers. Further, the interim relief sought by the Petitioners would amount to final relief. Hence, MSEDCL has objections to the ad interim relief prayed by the Petitioners.
- 6.4 After hearing the Parties, the Commission adjourned the matters and scheduled the hearing on 1 June 2021. MSEDCL was given one last chance to file its replies within ten days and the Petitioners were given liberty to file rejoinder, if any within 3 days thereafter.
7. MSEDCL filed its replies on 31 May 2021 on merits of the Miscellaneous Application, inter alia, informing that the ATE Order had been challenged by MSEDCL by way of a Civil Appeal No. 1803 of 2021 before the Hon'ble Supreme Court. MSEDCL also stated that along with the said Appeal, an application seeking urgent listing had also been preferred by MSEDCL and the same awaited consideration. MSEDCL also contended that through the Miscellaneous Applications, the Petitioners had sought to plead a completely new and fresh case through a Miscellaneous Application, as the same is impermissible in law.
8. **At the E-hearing dated 1 June 2021:**

- 8.1 The Advocate appearing on behalf of the Petitioners reiterated the submissions as made out in the Miscellaneous Applications and further stated that:
- i. The ATE Order is quite clear and the Petitioners are seeking consequential reliefs based on further developments.
  - ii. The Commission should take note of the conduct of MSEDCL requesting the Commission time and again for granting of additional time under the garb of difficulties faced due to COVID-19 pandemic and understaffing issues whereas the real intent was only to defer hearing to file an Appeal before the Hon'ble Supreme Court against the ATE Order.
  - iii. Although MSEDCL has filed its Civil Appeal before the Hon'ble Supreme Court, neither there is a stay to the ATE Order nor MSEDCL had been able to get the matter listed before the Hon'ble Supreme Court in spite of its Application for urgent listing.
  - iv. The Petitioners are entitled to get the relief sought in their respective Miscellaneous Applications. An Order may be passed on Ad interim relief on immediate basis and the compensation issue may be dealt with while passing the final Orders.
- 8.2 The Advocate appearing on behalf of MSEDCL reiterated its submissions as made out in the replies and further stated that:
- i. MSEDCL has duly exercised its legal rights available under the law by filing the Civil Appeal before the Hon'ble Supreme Court.
  - ii. Under the garb of Miscellaneous Applications, the Petitioners cannot seek to increase the scope of remand.
  - iii. The electricity costs incurred by the Petitioners have already been included as a part of cost of the goods manufactured by them which have been sold further to the third Parties. Thus, the refund, if allowed now, would unjustly enrich the Petitioners and would also consequently lead to double recovery. Hence, MSEDCL objects to the compensation claim raised by the Petitioners.
- 8.3 After hearing the Parties, the Commission directed the Parties to file their respective written submissions and the cases were closed for Orders.
9. In accordance with the direction of the Commission, the written submissions were filed by the Petitioners on 2 June and 7 June 2021. No written submissions were received by MSEDCL. However, vide its email dated 15 June 2021, MSEDCL informed that in the Civil Appeal filed by MSEDCL, the Hon'ble Supreme Court, vide its Order dated 15 June 2021 has passed a stay Order with the following directions:
- “ Issue notice returnable by 28-07-2021. Counter affidavit, if any, be filed in the meanwhile. In the meanwhile, there shall be stay of operation of the impugned judgment and order of the Appellate Tribunal to the extent that the appeal has been remitted back to the Maharashtra Electricity Regulatory Commission with directions to pass appropriate orders in the light of the observations made in the impugned judgment and order. ”*

10. The Commission notes that present proceedings have been initiated in light of the directions passed by the Hon'ble ATE in its Order dated 27 April 2021. However, since the Order and more specifically the part of the Order pertaining to remitting the Order to the Commission for passing appropriate Order, has been stayed, the Commission is unable to issue the consequential Order in the present proceeding for implementation of the ATE Order. Therefore, the Commission is inclined to dispose of these Cases with liberty to the Petitioners to approach afresh for restoration of present proceedings as per directives of the Hon'ble Supreme Court, in Civil Appeal No. 1803 of 2021.
11. The Petitioners have been pressing for an Ad interim relief seeking grant of OA permission for the current period i.e. May and June 2021. However, the Ad interim reliefs as well as other reliefs sought by the Petitioners are part of the Miscellaneous Applications which have been moved citing the directions in the ATE Order. However, considering the fact that the implementation of ATE Order has been stayed, it would not be appropriate to deal with the prayers made in the Miscellaneous Applications.
12. Hence, the following Order:


### **ORDER**

1. **Case No. 119 of 2018, MA 14 of 2021 in Case No. 119 of 2018, Case No. 19 of 2019, MA 15 of 2021 in Case No. 19 of 2019, Case No. 118 of 2019, MA 12 of 2021 in Case No. 118 of 2019, Case No. 119 of 2019 and MA 13 of 2021 in Case No. 119 of 2019 are disposed of in terms of the observations made at para. 10 of this Order.**
2. **The Petitioners are at liberty to approach the Commission afresh for restoration of present proceeding, as per the directives of the Hon'ble Supreme Court, in Civil Appeal No. 1803 of 2021.**

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

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

**Sd/-**  
**(Sanjay Kumar)**  
**Chairperson**

  
**(Abhijit Deshpande)**  
**Secretary**

