

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 164 of 2020

Case of Bramhacorp Ltd. for seeking adjustment of Open Access credit units for the months of June 2016, September 2017, July 2018 and October 2019

Coram
Sanjay Kumar. Chairperson
I. M. Bohari, Member
Mukesh Khullar, Member

Bramhacorp Ltd.	Petitioner
V/s	
Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL)	Respondent

Appearance:

For Petitioner	: Shri Mohan Borole(Rep.) Ms. Sheetal Pednekar (Rep.)
For MSEDCL	: Shri Ashish Singh (Adv.)

ORDER

Dated:9 June 2021

1. Bramhacorp Ltd. (**Bramhacorp/ Petitioner**) has filed a Case on 4 August 2020 under the Regulation 19.2, 20 and 32 of Distribution Open Access Regulations 2016 (**DOA Regulations 2016**) for seeking adjustment of Open Access (**OA**) credit units for the months of June 2016, September 2017, July 2018 and October 2019.
2. **Petitioner's main prayer are as follows:**
 - (a) *To accept and admit the Petition through email and grant urgent hearing and issue interim temporary orders for the period of COVID-19 Lockdown.*
 - (b) *To direct MSEDCL to adjust the Open Access energy credits in the month of June 2016, September 2017, July 2018 and October 2019 and extend credits in subsequent month's energy bill without further delay.*

3. Petitioner has stated as follows:

- 3.1. Bramhacorp is a commercial consumer of MSEDCL having the business of Hotel and Restaurant, at Shindoli Tal. Mahabaleshwar.
- 3.2. Bramhacorp is also partial Open access (OA) consumer sourcing power under OA through multiple Renewable Energy sources (Wind and Solar).
- 3.3. The main issue raised by Petitioner in the instant Case is about the non-adjustment of OA credit units (Wind generated Units) for the month of June 2016, September 2017, July 2018 and October 2019. The details showing OA sought, status of adjustment of OA units by MSEDCL and subsequent correspondence made with MSEDCL for these adjustments of OA Periods are as under:

Sr. No	Month	OA Source through		Adjustment of Units	Correspondence done with MSEDCL
		Wind	Solar		
1	June 2016	- Generator: Sanjay D. Ghodawat HUF - Capacity: 0.58 MW	- Generator: Agrawal Minerals (Goa) Pvt. Ltd. - Capacity: 2 MW	- Solar units adjusted. - Wind Units not adjusted.	19 July 2016 06 February 2018 20 August 2018 19 September 2018 28 March 2019
2	September 2017 -	- Generator: Star Flexi Pack Industries, - Capacity 0.46 MW	- Generator: D. H. Patel - Capacity: 1 MW	- Solar units adjusted. - Wind Units not adjusted.	19 October 2017 6 February 2018 20 August 2018 19 September 2018 9 April 2019
3	July 2018	- Generator: Star Flexi Pack Industries, - Capacity 0.46 MW - Generator <u>Ghodawat Energy</u> - Capacity <u>0.69MW</u>	NA	Wind Units of 0.69 MW not adjusted.	17 August 2018 19 September 2018 28 March 2019
4	October 2019	- Generator : Sargam Retails Pvt. Ltd. - Capacity :0.7 MW - Generator : <u>Giriraj Enterprizes</u> - Capacity :<u>2 MW</u>	NA	Wind Units of 2 MW not adjusted.	13 November 2019 18 December 2019

3.4. Bramhacorp had been relying on MSEDCL Satara Circle office in good faith for credit adjustment of wind units. However, MSEDCL Satara circle office neither denied adjustment of above OA energy nor has adjusted the same till date.

4. MSEDCL in its submission dated 24 December 2020 has stated as under:

4.1. Present Petition was filed by the Petitioner only on 4 August 2020.

4.2. Hence any claim prior to the period 3 August 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 (EA).

4.3. 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 Others*). Supreme Court in this case has categorically held 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 Licensees and generating companies.

4.4. Hence wherever any claim/dispute is raised before the Commission under Section 86 (1) (f) of the EA 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, Bramhacorp has not made out any case under the said provisions of Limitation Act.

4.5. In fact, in view of the above Judgment of the Hon'ble Supreme Court, the Commission has taken similar analogy in Order dated 9 September 2019 in Case No. 4 of 2019 and has rejected the claim of Petitioner for payment of purchase of surplus units prior to FY 2016-17 being time barred.

4.6. The details of OA issued are as under

Month	Type of OA	Generator	Period	MW
June 2016	STOA	Sanjay D Ghodawat, Satara (Location No. 1047)	01 June 2016- 30 June 2016	0.58 MW
	STOA	Agrawal Minerals (Goa) Pvt. Ltd., Solapur (Location No. 1047)	01 June 2016- 30 June 2016	0.58 MW
September 2017	MTOA	Star Flexi Pack Industries, Satara (Location No. 4167 and 4168)	01 June 2017 to 31 May 2020	0.46 MW

	MTOA	Dr. D. H. Patel, Solapur (Location No. PVSP-04)	01 June 2017 to 31 May 2020	1 MW
July 2018	MTOA	Star Flexi Pack Industries, Satara (Location No. 4167 and 4168)	01 June 2017 to 31 May 2020	0.46 MW
	MTOA	Dr. D. H. Patel, Solapur (Location No. PVSP-04) (Cancelled on 05.01.2018)	01 June 2017 to 31 May 2020	1 MW
	STOA	Ghodawat Energy Pvt. Ltd., Satara (Location No. 1048)	01 July 2018 to 31 July 2018	0.69 MW
October 2019	MTOA	Star Flexi Pack Industries, Satara (Location No. 4167 and 4168) – (Cancelled On 10.04.2019)	01 June 2017 to 31 May 2020	0.46 MW
	STOA	Sargam Retails Pvt. Ltd., Satara (Location No. M-18 and M-19)	01 October 2019 to 31 October 2019	0.7 MW
	STOA	Giriraj Enterprises, Sangli (Location No. KK-01)	1 October 2019 to 31 October 2019	0.7 MW

4.7. Hence, the claim of Bramhacorp for the period of June, 2016 is time barred under the Limitation Act.

4.8. For the remaining claim of the Petitioner, an opportunity may be granted to MSEDCL to mutually settle the issues.

- At the e-hearing through video conferencing held on 28 December 2020, MSEDCL requested time to mutually resolve the issues of adjustment of wind units with the Petitioner on which the Petitioner had shown his readiness. Considering the request, the Commission adjourned the hearing and directed both the Parties to resolve the issues mutually within two weeks.

6. At the next e-hearing through video conferencing held on 16 April 2021,
- 6.1. Representatives of the Bramhacorp stated that MSEDCL has given the adjustment of OA units for the month of July 2018 and October 2019. He further stated that MSEDCL has not considered the adjustment of Units for the month of June 2016 considering the period of limitation. However, the Petitioner has continuously followed up with MSEDCL for the credit adjustment of wind units.
- 6.2. Advocate of the MSEDCL stated that the claim of Bramhacorp for the period of June, 2016 is barred by the period of limitation and for other months i.e., July 2018 and October 2019, MSEDCL has given the credit adjustments of units in the OA bill. For the month of September 2017, there is no MSEDCL consumption available against which the OA Units credit adjustment can be given and hence no adjustment for said month is given. Further, MSEDCL be allowed to file the detailed reply of the reconciliation of OA credit adjustment of wind units.
- 6.3. Accordingly, the Commission directed MSEDCL to file its detailed reply/ reconciliation of the information for each of the months of the adjustment of OA wind units within a week.
7. **MSEDCL has filed the detailed reply/ reconciliation of the information for each of the months vide E-mail dated 27 April 2021 as shown hereunder:**
- 7.1. As per the directives of the Commission during the hearing dated 16 April 2021, the information regarding reconciliation carried out with Bramhacorp.
- 7.2. The said Petition is for credit adjustment of OA units for four months – June 2016, September 2017, July 2018 and October 2019. The month wise details are as under:
- i) June 2016:
The present Petition was filed by Bramhacorp only on 04 August 2020 before the Commission and any claim prior to the period 03 August 2017 would be barred by limitation and same is also submitted by MSEDCL in its reply.
- ii) September 2017:
In the month of September 2017, there is no MSEDCL consumption available against which the OA Units adjustment can be given and hence no adjustment for said month is given.
- iii) July 2018:
The credit adjustment of Rs. 5,22,411.61 towards OA units adjustment is given in March 2021 bills and same is also accepted by the Petitioner in hearing dated 16 April 2021.
- iv) October 2019:
The credit adjustment of Rs. 5,24,038/- towards OA units adjustment is given in January 2021 bills and the transmission charges for same has been debited for Rs. 18811.90 in March 2021 bills. The same is also accepted by the Petitioner in hearing dated 16 April 2021.

Commission's Analysis and Ruling:

8. Petitioner is a partial OA consumer and is availing OA through multiple sources (wind and solar). In the instant case, Petitioner has raised the issue that MSEDCL has not adjusted the units generated from Wind Plant for some months. Hence the Petitioner has sought credit adjustment of OA units for the months of June 2016, September 2017, July 2018 and October 2019.
9. At the request of both the Parties to mutually resolve the issues of adjustment of wind units, the Commission during the hearing dated 28 December 2020 had directed both Parties to resolve the issue mutually. Accordingly, both the Parties have resolved the issues for the month of July 2018 and October 2019 and the same was accepted by the Petitioner during the hearing held on 16 April 2021. Further, MSEDCL has also submitted the reconciliation statement of the adjustment of wind units as mentioned at Para. 7 above. The Commission notes that for the month of July 2018 and October 2019, MSEDCL has provided the OA credit adjustments as mentioned at Para. 7 above which was also accepted by Petitioner.
10. The Commission further notes the submission of MSEDCL for the month of September 2017 wherein MSEDCL has submitted that there was no MSEDCL consumption available against which OA Units adjustment for September 2017 can be given and hence no adjustment was given in the said month. On perusal of bills enclosed with the Petition, the Commission notes that there was no consumption of MSEDCL units for the adjustment of OA units. The Commission further notes that MSEDCL has submitted the details about the adjustment of OA units for the month of September 2017 during the hearing held on 16 April 2021 as well as reconciliation of OA units, vide Email dated 27 April 2021. However, Petitioner has neither replied nor made any submissions /grievance for the month of September 2017. Hence the Commission accepts the submission of MSEDCL for the month of September 2017.
11. In view of the above, based on the factual details of reconciliation of OA credit adjustment for the month of September 2017, July 2018 and October 2019 filed by MSEDCL, the issues raised by the Petitioner are thus addressed and nothing survives in the matter for adjudication of grievance of Petitioner for these aforesaid 3 months.
12. For the month of June 2016, the Petitioner has contended that MSEDCL has failed to provide wind units credit adjustment. MSEDCL has objected to this contention stating that such claims are now barred by time limitation as the Petition was filed on 4 August 2020 and any claim prior to the period 3 August 2017 is barred by 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, Petitioner has contended that they have continuously followed up with MSEDCL for adjustment of wind units for the month of June 2016. 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]

13. In view of the above, any claim barred by time limitation i.e., a period of three (3) years cannot be adjudicated by the Commission unless the principles underlying Section 5 or Section 14 of the Limitation Act, 1963 are satisfied. Apparently, in the present case, Petitioner has not made out any case under the said provisions of Limitation Act and has merely stated that it was regularly following up with MSEDCL for credit adjustment of wind units.
14. On perusal of documents enclosed with the Petition, the Commission notes that for credit adjustment of OA units for the month of June 2016, the Petitioner has made the correspondence with MSEDCL Satara Circle office on 19 July 2016, 6 February 2018, 20 August 2018, 19 September 2018 and 28 March 2019. The Commission further notes that the Petitioner has made only correspondences with the MSEDCL for the month of June 2016, and it has not approached the Court within the period of Limitation which ends in June 2019. The Commission further notes that claims for credit adjustment of wind units pertaining to June 2016 has become time barred in terms of Limitation Act in June 2019 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 June 2016 and Petitioner has approached the Commission in August 2020 i.e. after a gap of 4 years without any valid justification for such delay. Therefore, the Commission rejects the claim for credit adjustment of wind units pertaining to June 2016 which is barred by limitation.

15. Hence the following Order

ORDER

Case No. 164 of 2020 is partly allowed in terms of para. 11 for the adjustment of units that are within the period of Limitation i.e. for the month of September 2017, July 2018 and October 2019.

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

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

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

