

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 21 of 2021

Petition filed by Maharshi Udyog (MU) under Section 142 of the Electricity Act, 2003 against Maharashtra State Electricity Distribution Company Ltd (MSEDCL) for non-compliance of the Commission's directives in Order dated 01 January 2019

And

Case No. 22 of 2021

Petition filed by Maharshi Udyog Seeking Order/ Direction against Maharashtra State Electricity Distribution Company Ltd (MSEDCL) for releasing Principal & Late Payment Surcharge on account of wind energy procurement.

M/s Maharshi Udyog (MU)

..... Petitioner

Maharashtra State Electricity Distribution Co. Ltd.

..... Respondent

Coram

Sanjay Kumar, Chairperson

I.M. Bohari, Member

Mukesh Khullar, Member

Appearance in both the Cases:

For the Petitioner

: Shri. V.N.Bohra (Adv)

For the Respondent

: Shri. Ravi Prakash (Adv)

ORDER

Date: 30 June, 2021

1. M/s Maharshi Udyog, a Wind Generator has filed two (2) Cases on 8 March 2020 against Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL). In Case No.21 of 2021, Maharshi Udyog sought action against MSEDCL under Section 142 of Electricity Act 2003 (EA-2003) for non-compliance of the Commission's Order in Case No.339 of 2018 dated 4 January 2019 and directives for payment of outstanding Late Payment Surcharge (LPS) along with interest. Whereas Case No.22 of 2021 has been preferred for seeking an Order for immediate payment of over-due principal amount and LPS thereon.
2. The Commission notes that in both the Cases Petitioner is same and is seeking relief on account of non-payment of dues for energy injection from its Wind Projects. Therefore, the Commission is deciding these two cases through this Common Order.
3. **Prayers of Maharshi Udyog in two Petitions are as follows:**

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- (i) *Direct the respondent MSEDCL to effect payment of outstanding LPS as defined in order dated 4/1/19 (1/1/19) along with interest @ 18% p.a. following the direction of this Hon'ble Commission and also pass an order for Punishment for non compliance of the direction passed on 4/1/19 (1/1/19) with interest thereon also.*
- (ii) *Direct the respondents for effecting payment of outstanding LPS in preference to any other payment to any other generating company and no payment to any other company be released till payment to petitioner.*
- (iii) *Impose such penalty and /or daily penalty on respondent officer under section 142 of the Electricity Act 2003, as the commission may deem fit, for delay in payment of LPS beyond the date of order to the date of payment of LPS.*
- (iv) *Direction for cost of this petition be released apart from the LPS.*

Case No.22 of 2021

- (i) *Direct the respondents to release Principal Rs. 70,38,182.00 Rs Seventy lac thirty eight thousand one hundred eighty two only & LPS (Late Payment surcharge) for Rs 8,41,455/00 (Rs Eight Lakh Fourty one thousand four hundred Fifty five only) i.e. Total Rs78,79,637/00 (Rs Seventy-Eight Lakh Seventy Nine Thousand Six Hundred*

Thirty Seven only) in favour of the petitioner, on account of LPS on delay period as agreed rate of the PPA/s.

(ii) Direct the Respondents to remit the amounts due and payable on time in terms of the PPA;

(iii) Direct the Respondent to pay the costs of the present petition;

4. Petitioner in its Petitions has stated as follows:

4.1. Maharshi Udyog owns one (1) WTG of 1.25 MW capacity at Dhule. Generation has been tied up with MSEDCL vide Power Purchase Agreement (PPA) dated 10 July 2007. The capacity has been developed/created under Government of Maharashtra's policy for promoting generation of electricity through non-conventional energy sources.

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4.2. Maharshi Udyog referred to its earlier Petition in Case No.339 of 2018 filed seeking the Commission's directives to release LPS amounting Rs 16,04,114/- (Rs Sixteen lakh four thousand one hundred fourteen only) for its Wind turbine unit.

4.3. The Commission decided the Case No.339 of 2018 vide its Common Order dated 1 January 2019, wherein the Commission directed both the parties to reconcile the claims made in the Petitions and to commit a timeline for payment. If MSEDCL did not comply with timeline then penal interest of 1.25% on LPS is leviable. The said Order has been willfully disobeyed by MSEDCL.

4.4. Subsequent to issuance of the Order dated 4 January 2019, Maharshi Udyog approached MSEDCL and tallied the details of the entire outstanding sum and made a detailed reconciliation of the accounts. During the said exercise, MSEDCL assured to release the due payments.

4.5. Maharshi Udyog also put up all the facts of development of reconciliation of the dues /accounts with MSEDCL on record by its e-mails. It also made requests on regular intervals vide written communication dated 05 August 2019, 14 November 2019 and 09 June 2020 to release the sum payable, in accordance with the directions of the Commission. Even after re-conciliation exercise of the outstanding principal and LPS, MSEDCL overlooked to release payments, which is nothing, but willful non-compliance of the Commission's Order dated 1 January 2019.

- 4.6. MSEDCL is making in-tolerable delay and entirely failed to release the sum even after explicit Order of the Commission and after reconciliation of the accounts due. As such it is proved violation of the Commission's Order and direction, which comes under the purview of the contempt proceedings under the provisions of Section 142 of the EA-2003.

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- 4.7. As per Clause 12.02 of the PPA, payment of bills should have been made within 45 days. Thereafter, interest will be payable to Maharshi Udyog at the rate of 2% per annum above the SBI short term lending rate. The clauses defined in the PPA is having a binding force in law. MSEDCL is supposed to follow the terms of the PPA and is duty bound to release the payment of interest on account of delay.
- 4.8. MSEDCL is regularly overlooking and ignoring the agreed term of the PPA, which is proven case of financial in-discipline and the powers to check such irregularity lies with the Commission.
- 4.9. Maharshi Udyog persuaded MSEDCL to release the payments due by sending the written communications dated 05 August 2019, 14 October 2019 and 09 June 2020 and personal visits. But neither the payment had been made nor the communications were replied positively nor any satisfactory assurance has been provided.
- 4.10. The delay in making such payment cannot be described as situation beyond control of MSEDCL or due to its bad financial condition. MSEDCL is getting the regular payment from the consumers it serves. But on the contrary, it is intentionally defaulting on payments due to Maharshi Udyog. The Maharshi Udyog is facing extreme financial hardship due to failure of MSEDCL to make timely payment as agreed under the PPA. It is also affecting smooth running and operation of its installed capacity.
- 4.11. With respect to payment of LPS for delayed payment, it is noteworthy that the Hon'ble Appellate Tribunal for Electricity (APTEL) in its judgment in the matter of Ispat Industries Ltd. v. MERC (Appeal Nos. 70 & 110 of 2008) dated 05 August 2010, has *inter alia* held that a person deprived of its legitimate payment should be compensated through interest. The relevant portion of the said judgment is reproduced below:

“

31. A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for such a deprivation through interest. In an action by way of restitution, it is the duty of the court to give full and complete relief to the party by ordering for interest as well.” (Emphasis added)

- 4.12. Further, the Commission, in the matter of M/s. Hindustan Zinc Limited (HZL) v/s Maharashtra State Electricity Distribution Co. Ltd, in Case No. 150 of 2015 has fairly settled similar issue and directed MSEDCL to pay the LPS due to HZL as per Section 11.04 of the EPA within 30 days. Thereafter, interest will be payable to HZL at 1.25% per month on any surcharge amount remaining to be paid.
- 4.13. As it is evident that the amount is still due and MSEDCL is liable to pay to the Petitioner the entire overdue interest on account of LPS on the bills already raised for sale of electricity and to pay the interest on delay period @ 1.25% per month on daily basis, as agreed / agreed rate of the PPA.
- 4.14. As per Maharshi Udyog, as on 31 January 2021; the Principal and LPS liability works out to be Rs. 70,38,182/- & Rs 8,41,455/- respectively. Principal amount liability is for the month of February-2019 and June-2019 to February-2020. LPS liability is for the month of October-2018 to February-2020.
5. **Respondent MSEDCL in its reply dated 26 April 2021 submitted as below:**

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- 5.1. As per the payment plan submitted before the Commission on 12 September 2018, MSEDCL was committed to pay the outstanding dues for the period upto March, 2018 generation month by the end of March, 2019. Accordingly, MSEDCL had already paid outstanding principal amount of Rs. 1.50 Crores attributable to billing of generation month of February-2018 to May-2019. Further, MSEDCL has processed DPC/LPS of Rs. 16,71,781.00 for the period July-15 to September-18 for payment on 26 April 2021. Accordingly, it has complied with the Commission's Order dated 01 January 2019 in Case No. 339 of 2018.
- 5.2. The delay in payment of Wind Generators is basically due to low recovery (around 7%) from agriculture consumers although it covers 30% sale of MSEDCL. Due to this MSEDCL is not in a position to release payment to RE generators within due date and hence the payment gets delayed. Similarly, the arrears of government departments for supply of electricity to public water works and street light consumers category are still pending. The Commission had allowed only very little provision for bad debts in spite of having largest consumer base and rural area covered which has less prospective to pay on time.
- 5.3. The Petitioner prayed for the payment of carrying cost at the rate of 15% per annum of the delay in payment of the late/delayed payment surcharge by MSEDCL. In this regard it is submitted that in respect of said issue, MSEDCL has filed the appeal (Appeal No.386/2019

[DFR No.2342/2019]) against Commission's Order dated 2 August 2019 in Case No 105 of 2019 in respect of M/s Rajlaxmi Mineral Ltd before Hon'ble APTEL challenging levy of 1.25% penal interest on LPS. Appeal is still pending before Hon'ble APTEL for final judgement and final hearing in this matter is scheduled on 08 July 2021.

- 5.4. The total payment of Rs. 3516.33/- in FY 2017-18, Rs.5807.77/- Crs in FY 2018-19, Rs.3402.11/- in FY 2019 -20 and Rs.877.67 Crs in FY 2020-21 Crs (till 31.03.2021) has already been done to various wind generators.

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- 5.5. After reiterating submissions made in Case No 21 of 2021 which is summarised above, MSEDCL stated that it has already initiated process to clear the outstanding payment of wind generator as per the compliance report submitted on 15 February, 2021 to the Commission based on availability of funds.
- 5.6. The delay in timely payments to some generators is attributable to the circumstances which are beyond the control of the MSEDCL. Default in payment is not wilful but is only attributable to the circumstances and Cash crunch.
- 5.7. Further, as per MSEDCL's record, Principal outstanding of the Petitioner is Rs 0.60 Crores for the Generation month June-2019 to December-2019. DPC/LPS outstanding is Rs. 0.08 Crores for the Period October-2018 to January-2019 & March-2019 to February-2020. The said amounts are yet to be reconciled with petitioner.
6. At the E-hearing held on 27 April 2021, both parties have reiterated their submission made in Petition/Reply. Considering the argument made, the Commission directed MSEDCL to comply with Order dated 1 January 2019 in its entirety including payment of penal interest directed therein and submit the justification for delayed compliance. Further, MSEDCL shall forthwith pay the undisputed amount in Case No. 22 of 2021 to the Petitioner and take up reconciliation with Petitioner subsequently to settle the balance amount.
7. **MSEDCL in its compliance Report dated 04 May 2021 has stated as under:**

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- 7.1. MSEDCL has complied with the Commission's Order dated 01 January 2019. It has cleared principal outstanding amount of Rs.108.01 Lakhs vide payments dated 17 November 2019, 30 March 2019, 30 October 2019. Further, LPS/DPC of Rs.16.71 Lakhs has been paid on 26 April 2021 along with penal interest of Rs.5.58 Lakhs on 04 May 2021.

7.2. Reasons for delayed Compliance are as follows:

- Low recovery from Agricultural consumers and increased arrears of government departments for supply of electricity to PWW and street lights.
- Financial crisis due to COVID-19 epidemic and subsequent lockdown. Due to pandemic, MSEDCL's performance is very badly affected.
- Delay in payment is not intentional and is solely attributable to the financial constraints. As per availability of funds, MSEDCL has made following payments to various wind generators:

Financial Year	Amount Paid out (in Rs. Crores)
FY 2017-18	3516.33
FY 2018-19	5807.77
FY 2019-20	3401.11
FY 2020-21	877.67

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7.3. MSEDCL paid undisputed principal outstanding amount of Rs.65.27 Lakhs and LPS/DPC of Rs.7.49Lakhs on 03 May 2021 and 04 May 2021 for the period of June-19 to Feb-20.

8. At the second E-hearing held on 18 June 2021, the Advocate appearing on behalf of the Petitioner submitted that MSEDCL has paid out the legitimate dues. No liability is pending for periods mentioned in Case No. 21 of 2021 and Case No. 22 of 2021 and is satisfied with the compliance.

Commission's Analysis and Rulings

9. Case No.21 of 2021 has been filed seeking directions to MSEDCL to settle outstanding payment of LPS in terms of the Commission's Order in Case No.339 of 2018 dated 1 January 2019 along with interest @ 18% p.a. Further, Maharshi Udyog seeks action under Section 142 of EA 2003 for alleged non-compliance of the Commission's Order dated 1 January 2019. Case No.22 of 2021 has been preferred for seeking an Order for immediate payment of over-due principal amount and the LPS thereon.

10. MSEDCL contended that it has complied with the Commission's directives in Order dated 1 January 2019. It has paid outstanding principal amount of Rs. 1.50 Crores for generation month February-2018 to May-2019. Further, MSEDCL has processed LPS of Rs.

16,71,781/- for the period July-2015 to September-2018 for payment on 26 April 2021. With regard to payment of interest on LPS, MESDCL mentioned that it has filed the appeal against Commission's Order dated 2 August 2019 in Case No 105 of 2019 before Hon'ble APTEL challenging principle of payment of 1.25% Penal Interest vide Appeal No.386 of 2019 [DFR No.2342/2019]. The said matter is sub-judice and still pending. In Case No.22 of 2021, as per MSEDCL's accounts, Principal outstanding is Rs 0.60 Crores for the Generation month June-2019 to December-2019. DPC outstanding amount is Rs. 0.08 Crores for the Period October-2018 to January-2019 & March-19 to February-2020. Apart from above, MSEDCL cited Covid-19 pandemic situation for non-performance of its obligation and financial crunch.

11. During the first hearing the Commission noted that although MSEDCL has challenged issue of payment of 1.25% penal interest before Hon'ble Tribunal, it is not stayed or set aside. Hence, the Commission directed MSEDCL to comply with the Order dated 1 January 2019 in entirety. The Commission also directed MSEDCL to settle the undisputed amounts in Case No.22 of 2021 and reconcile the remaining amounts subsequently.
12. MSEDCL vide its Compliance Report dated 4 May 2021 stated that in Case No. 21 of 2021 it has complied with Order dated 1 January 2019 in its entirety by payment of outstanding principle and DPC amount. Further, penal interest of Rs.5.58 Lakhs at the rate of 1.25% on delayed payment of DPC amount is paid on 04 May 2021. Similarly, in Case No. 22 of 2021, undisputed principal outstanding amount of Rs.65.27 Lakhs and LPS/DPC of Rs.7.49 Lakhs has been paid on 03 May 2021 and 04 May 2021 for the period of June-2019 to February-2020.
13. The Commission further noted that during second hearing, the Petitioner, Maharshi Udyog has expressed satisfaction on compliance reported by MSEDCL and did not press for any other action as has been prayed for in non-compliance matter. Hence, the Commission does not find any reasons to proceed further in present proceedings as nothing survives in this matter which requires a ruling of the Commission.
14. Hence, the following Order.

ORDER

In terms of observation in para 13, the Case Nos. 21 of 2021 and 22 of 2021 stands disposed of.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson


(Abhijit Dishpande)
Secretary

