

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13<sup>th</sup> Floor, Cuffe Parade, Mumbai 400005.**  
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**Case No. 17 of 2021**

**Case filed by Eurotex Industries and Exports Limited seeking directions to Maharashtra State Electricity Distribution Company Ltd. for issuing correct bills in compliance of the Judgment of Appellate Tribunal for Electricity dated 30 May, 2007 being upheld by Hon'ble the Supreme Court in Civil Appeal no. 4304 of 2007 vide Order dated 28 February, 2020**

**Coram**

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

Eurotex Industries and Exports Limited : - Petitioner  
Vs  
Maharashtra State Electricity Distribution Company Limited :- Respondent

Appearance

For Petitioner :- Shri. Haresh Jagtiani (Sr Adv)  
For Respondent :- Shri. Ravi Prakash (Adv.)

**ORDER**

**Date: 12 July, 2021**

1. Eurotex Industries and Exports Limited (**Petitioner**) filed this Petition on 20 February, 2021 seeking appropriate orders/directions to Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) pertaining to restitution of benefits/ incentives wrongly denied to the Petitioner by holding it to be in arrears despite it being in compliance of the Order of the Commission dated 21 May, 2004 and of the Appellate Tribunal for Electricity (**APTEL**) dated 30 May, 2007 as upheld by Hon'ble the Supreme Court in Civil Appeal No. 4304 of 2007 vide Order dated 28 February, 2020 and for direction to MSEDCL to issue correct bills in compliance of the aforesaid Orders.
2. Petitioner's main prayers are as under:
  - a) *That this Hon'ble Commission be pleased to declare that no amounts shown as arrears in the bills for Connection 25101 9402196 from October 1999 to September*

2006, for Connection 25101 9402510 from October 1999 to March 2019 for Connection 25101 9402668 from November 1999 to till latest bill of December 2020 are due and payable by the Petitioner to the Respondent;

- b) That this Hon'ble Commission be pleased to declare that the Respondent has wrongly denied the Petitioner the various incentives by wrongly treating the Petitioner to be in arrears;
- c) That this Hon'ble Commission be pleased to declare that the Petitioner is entitled to refund of an amount of Rs. 10,36,76,259/- ( Rs. Ten Crore thirty six lakh seventy six thousand and two hundred fifty nine only) as per the tabular statement annexed as **Exhibit N** hereto and direct the Respondents to pay the same to the Petitioner including interest thereon at the rate of 18% p.a. from the date of the filing of this Petition till realization;
- d) That this Hon'ble Commission be pleased to direct the Respondents to issue rectified bills showing no arrears toward the contract demand charges for the period of October 99 to current monthly bills.
- e) That this Hon'ble Commission be pleased to direct the Respondents to pay to the Petitioner a sum of Rs. 5,00,000/- towards legal expenses incurred by the Petitioner in connection with this Petition;

**3. Petitioner in its Petition has stated as follows:**

3.1 Petitioner is High Tension consumer having Consumer No. 251019402196 and Consumer No. 251019402510. The Petitioner was granted permission by MSEDCL to install liquid fuel based Captive Power Plant (**CPP**) of 7 MW capacity at its Plant at Gokul Shirgaon vide letter dated 7 January, 1998. As per clause (iv) of the permission, the Petitioner had liberty to decide the level of its contract demand to the extent it desires after commissioning of the CPP and could reduce the contract demand by giving one month advance intimation. The CPP of the Petitioner was commissioned and was in regular operation from 28 August, 1998.

3.2 On 19 September, 1998, the Petitioner had applied for permission to draw power from its CPP installed at Plot E-23 for its new Unit at E-1, which was adjacent to Plot E-23 with just an internal MIDC road in between, through its own underground cable. As it was the supply of power to its own adjacent plot, it was not sale of energy and hence permission of State Government was not required under Section 28 of Indian Electricity Act 1910. At that point the total contract demand of the Petitioner was as follows:

Plot	Consumer No.	Contract Demand
E-23 Unit No. 1	251019402196	3500 KVA
E-23 Unit No. 2	251019402510	1800 KVA
E-1	251019402668	900 KVA

In this connection, no response was received by the Petitioner from MSEDCL (then MSEB).

- 3.3 The Petitioner on 23 September, 1998, applied for reduction of its contract demand from 5300 kVA to 3000 kVA as permitted to it in terms of the permission dated 7 January, 1998. However, despite duly exercising its right to reduce the contract demand as per its requirement after the commissioning of the CPP i.e. 3000 kVA, and giving the required advance notice, MSEDCL continued to raise energy bills at the old contract demand of 5300 kVA.
- 3.4 Vide its letter dated 16 October, 1999, the Petitioner informed MSEDCL that it was receiving higher bills despite reduction in contract demand since November 1998 and accordingly the Petitioner had paid Rs.41,04,312/- extra till the month of August 1999. The Petitioner requested that the amount paid in excess be adjusted against the bill of September 1999 and balance in the bill for October 1999 and further that from next month onwards to issue bill at the reduced contract demand of 3000 kVA only.
- 3.5 Vide a letter dated 30 October, 1999 MSEDCL contended that the Petitioner had extended power supply from unit No. 2 at E-23 to unit at E-1 without specific permission of MSEDCL and was asked to disconnect the supply.
- 3.6 Further, MSEDCL instead of adjusting the excess payment and issuing rectified bills, vide separate notices dated 18 November, 1999 called upon the Petitioner to pay the bills for October 1999 with interest by 24 November, 1999 or it would disconnect the supply at the two connections on Plot No. E-23.
- 3.7 MSEDCL's Circular No. 627 dated 2 September 1999 mandated CPP Holders to draw at least 25% of the energy from MSEDCL on their monthly consumption on the basis of the preceding 12 months' consumption before commissioning the CPP, and if not then to pay for such 25% at 110% of the tariff applicable from time to time. This condition was later withdrawn with effect from 28 April, 2000 by another Circular No. 38742 dated 19 September, 2000. The said Circular No. 627 also stated that reduction in contract demand would not be permitted to CPP Holders having a contract demand of less than 5 MVA.
- 3.8 Aggrieved by these actions of MSEDCL, the Petitioner first approached the High Court in its writ jurisdiction, but since the Commission was constituted by then, the Petitioner, approached the Commission by filing Case No. 35 of 2002. The said case was heard along with other Petitions challenging the said circular No. 627 imposing the take or pay obligation on the CPP holders.
- 3.9 The Commission vide its common Order dated 21 May, 2004 allowed the Petitioner to decide its contract demand, allowed to extend supply to Petitioner's Unit at plot E-1 through CPP and also Circulars of MSEDCL were quashed.
- 3.10 In spite of the Order of the Commission, MSEDCL continued to raise bills and treated the Petitioner to be in arrears. MSEDCL had preferred an Appeal being Appeal No. 29 of 2007 before the APTEL against the Commission's Order dated 21 May, 2004. The Commission's Order was upheld by APTEL in *toto* vide its Order dated 30 May, 2007.

MSEDCL preferred an appeal in Hon'ble the Supreme court as Civil Appeal No. 4304 of 2007 against the APTEL Judgment dated 30 May, 2007. No stay was granted by the Supreme Court on the operation of the Commission's Order dated 21 May, 2004.

3.11 The Supreme Court in its Judgment dated 28 February, 2020 has set aside the decision of the Commission to quash various circulars on the ground that the approval was required only for Circulars passed after the Commission was established and also did not grant the refund of any amounts paid there under on the basis that burden of such charge would already have been passed on to the consumers of the industries and allowing refund after so many years would amount to unjust enrichment.

3.12 However, the decision of the Commission, as upheld by APTEL vis-a-vis issues raised by the Petitioner, in particular regarding; (i) its right to reduce its contract demand as provided under the sanction letter and (ii) that no permission was required by the Petitioner for drawing of power from CPP installed at its Plot No. E-23 to its Unit at Plot No. E-1, have not been disturbed by the Supreme Court whilst disposing of the Appeal.

3.13 The Petitioner is hereby seeking restitution of the loss caused to it as well as the restitutions of the various benefits that the Petitioner has been entitled to but has been denied the same by the Respondent citing the pendency of the said appellate proceedings against the Order of the Commission. Till September 2006, MSEDCL refused to give effect to the reduction in contract demand as intimated by the Petitioner and continued to raise bills calculated on the basis of the cumulative contract demand of 5300 kVA at the two connections E-23 Unit 1 & E-23 Unit 2.

3.14 The wrongful arrears, as shown in monthly bill for all three connections are as given in the table shown below:

Connection No.	Bills showing arrears	Wrongful Arrears Amount (Rs.)
251019402510	March 2019	23,88,41,580/-
251019402196	September 2006	7,25,41,182/-
251019402668	November 2020	70,47,95,400/-

3.15 Also, based on such erroneous billing, showing the Petitioner to be in arrears, MSEDCL continued to deny several incentives/ benefits which were otherwise applicable to the Petitioner as per the prevailing policies, such as interest on security deposit, load factor incentive, bulk discount, prompt payment discount, Partial subsidy from Govt. of Maharashtra, etc amounting total of Rs 103676259/-

Connection No.	Various benefits Amount (Rs.)
251019402510	13617420/-
251019402196	78933685/-
251019402668	11125154/-
Total	103676259

3.16 The Petitioner had not paid any amount to MSEDCL towards the take or pay obligation imposed by the said Circular No. 627 of 2 September, 1999 and there was thus no question of refund to be made to the Petitioner on this count.

3.17 It is thus entitled to be restituted for all the loss caused to it due to wrongful treatment by MSEDCL to the Petitioner as being in arrears citing the pendency of the said Civil Appeal.

3.18 The Petitioner is thus constrained to approach the Commission for restitution of the loss caused to it by wrongful denial of benefits/ incentives by treating the Petitioner to be in arrears for charges already set aside by the Commission and such order being upheld by the Hon'ble Supreme Court.

3.19 Since the Order dated 21 May, 2004 is passed by the Commission, for the purpose of restitution, the Commission is the appropriate forum of first instance and has jurisdiction to decide the present petition. The territorial jurisdiction is also with the Commission.

**4. MSEDCL in its submission dated 28 April, 2021 has stated as follows:**

4.1 Petitioner is the consumer of MSEDCL having two separate connections in Plot E-23 for Unit 1 having contract demand of 5300 kVA and for unit 2 having contract demand of 1800 kVA.

4.2 On 20 December, 1997 Government of Maharashtra (**GoM**) issued a notification whereby it empowered MSEDCL to finalize the technical and commercial arrangements of Captive Power Purchasers.

4.3 On 7 January, 1998, a No Objection Certificate for installation of 7 MW captive plant specifying that N.O.C. was as per the present policy of the Appellant and any changes for interconnection etc. would be governed as per the boards' rules from time to time.

4.4 On 23 July, 1998, Circular No.602 was issued vesting power with the Board to permit the CPP holder for sale of their CPP power to any third party through Board's grid, grant of permission to those persons to use their CPP power for self-use only, and to charge wheeling and transmission loss charges. Under Electricity (Supply) Act 1948 MSEDCL was regulating the field of CPP by making various circulars providing the terms and conditions for their regulations.

4.5 On 23 September, 1998 and 28 October, 1998, the Petitioner sought clubbing of the Contract Demand for Unit Nos. 1 and 2 and subsequent reduction to 3000 kVA. As clubbing of the contract demand of the two units would increase the total contract demand to 5300 kVA i.e. beyond 5000 kVA, the same would necessitate the installation of an EHV line. Further on 5 November, 1997 the Petitioner had stated that it would be seeking reduction in contract demand only after 8-12 months of the date of commissioning of the

CPP. Petitioner was therefore not entitled to seek immediate reduction of contract demand and therefore, reduction in contract demand was not permitted.

- 4.6 On 25 May, 1999 Circular No.619 was issued by the Board on 18 June, 1999; Petitioner withdrew its earlier application for reduction in contract demand and re-submitted two applications there under. It sought reduction in contract demand of Unit No. 1 from 3500 kVA to Zero and increasing contract demand of Unit No. 2 from 1800 kVA to 3000 kVA. which was not permitted as per existing policy at that time.
- 4.7 Vide circular dated 2 September, 1999, it permitted CPP holders to reduce contract demand to 2.5 MVA or 50% of the contract demand of 5 MVA or above. As the Petitioner had two independent connections each having a contract demands of less than 5 MVA, it was not entitled to reduction in contract demand.
- 4.8 The Petitioner, subsequently set up Unit No. 3 on Plot No. E-1 for which the sanctioned connected load was 1130 KW and contract demand was 900 kVA. An independent electric supply connection was granted for the said unit on Plot No. E-1. NOC dated 7 January, 1998 issued to the Petitioner. It was specifically set out in conditions No. A1 and B5 that the proposed CPP would be used for the existing load only and that the Petitioner could not connect any additional load on the generating set. No sanction for connecting the additional load of the Unit at Plot No. E1 to the CPP was granted.
- 4.9 The Petitioner in the year 2003 approached the Commission vide its Case No. 35 of 2003, challenging all the MSEDCL circulars, payment sought under it etc. MSEDCL being aggrieved by the Order dated 21 May, 2004 of the Commission in this case, challenged the same before the APTEL vide an Appeal No. 29 of 2007 and again before the Supreme Court vide Civil Appeal No(s). 4304 of 2007. The Supreme Court vide its Judgment/Order dated 28 February, 2020 allowed the said Civil Appeal by setting aside the Order of the Commission and APTEL.
- 4.10 The refund sought by the Petitioner through the present Petition, has already been considered and decided by the Supreme Court vide its judgment dated 28 February 2020 passed in the Civil Appeal No. 4304 of 2007
- 4.11 The Petitioner is aggrieved by the electricity billings done by MSEDCL and thus, the case falls under billing dispute. Accordingly, Petitioner must avail the grievance redressal mechanism as envisaged under MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020. It is needless to state that it's a settled position of law that billing dispute does not fall within the jurisdiction of the Regulatory commission and thus, present Petition must be dismissed on this ground alone.
- 4.12 The amount of the refund sought by the Petitioner in the present Petition was applied to the Petitioner under the same circulars which were declared as legal, subsisting and correct by the Supreme Court vide its above-mentioned Judgment dated 28 February, 2020.

4.13 Petitioner by way of the present Petition is asking the Commission to clarify a Judgment passed by the Hon'ble Supreme Court, which if allowed would tantamount to nothing short of judicial impropriety / Indiscipline.

4.14 It is pertinent to mention here that the Petitioner herein were provided with all the benefits such as load factor incentive, Region based Efficiency based subsidy Credit Adjustment, Interest on security deposit, RLC refund, Textile subsidy etc. However, as the Petitioner herein till date had not cleared the arrears, the said benefits were rightfully adjusted against the said arrears, which has also been allowed by the Hon'ble Supreme Court vide its judgment dated 28 February, 2020.

**5. At the time of E- hearing held on 4 June, 2021:**

5.1 Advocate for Petitioner reiterated the submission made in the Petition. He further stated that the Hon'ble Supreme court Judgment dated 28 February, 2020 is restricted to the circulars issued by MSEDCL as per para 1 and para 24 of the said judgment. The other issues raised by the Petitioner i.e. reduction in contract demand and extension of supply which were upheld by the Commission and APTEL were untouched by the Supreme Court and are still in force. Thus, the Petitioner is entitled to restitution for the loss caused to it.

5.2 Advocate of Respondent reiterated the submission made in the Reply. He further stated that the Hon'ble Supreme Court has set aside the Orders of the Commission and APTEL and also set aside the Order concerning refund of amount recovered by then MSEB. Therefore, the issue of refund doesn't arise. Further the Petitioner has approached the Commission for grievance related to billing issues and the same is required to be agitated before the appropriate forum. The Commission has no jurisdiction to entertain the same.

**6. Petitioner in its additional submission dated 9 June,, 2021 has stated as follows:**

6.1 Findings of the Commission in its Order dated 21 May 2004 are in favour of the Petitioner on the two issues raised by the Petitioner, i.e. reduction of contract demand and its right to draw power from the CPP to its Own unit across the internal MIDC Road, have become final and binding and MSEDCL cannot treat the Petitioner to be arrears for such illegal demands that were set aside vide Order dated 21 May, 2004.

6.2 The Civil Appeal No. 4304 of 2007, preferred by MSEDCL against the Order dated 30 May, 2007 was an appeal under Section 125 of the EA, 2003 and the said Appeal could only be on substantial question of law and not against findings in favour of the Petitioner based on facts. Petitioner submitted that Section 125 of the EA, 2003 read with section 100 of the Civil Procedure Code, 1908 makes it clear that such an appeal to the Supreme Court could only be on a substantive question of law.

- 6.3 Perusal of the Judgment of the Supreme Court makes it evident that the Court has only considered the question of “whether MERC could set aside circulars passed by the State Government prior to the MERC being commissioned on the ground that there was no approval of the MERC”.
- 6.4 Perusal of paragraph 1 of the said Order dated 28 February, 2020 shows that before the Supreme Court, MSEDCL had restricted his challenge to the Order dated 21 May, 2004 and 30 May, 2007 only in as much as the said Orders quash various circulars in so far as they impose ‘take or pay’ obligation and minimum off take requirement on the ground that there was no approval of the MERC constituted in terms of the provisions of the Electricity Regulatory Commission Act, 1998. Further paragraph 24 to 28 clearly indicate that the Hon’ble Supreme Court has not dealt with the issues decided in favour of the Petitioner by the Commission, though same are noted whilst narrating the factual matrix of the case.
- 6.5 As regards the challenge by MSEDCL against setting aside of Circular no. 627 of 1999 which operated for a period from 2 September, 1999 to 28 April, 2000, the Hon’ble Supreme Court has applied the doctrine of unjust enrichment and looking at the time that has lapsed, rejected the refund of any amounts paid under this circular. The Petitioner had filed an affidavit before the Hon’ble Supreme Court stating that the Petitioner had not passed on any such liability on to its customers and thus there was no question of unjust enrichment as far as the Petitioner was concerned. The Petitioner having not paid any amount under the said Circular no. 627 is not seeking any refund of the amount paid there under.
- 6.6 The Petitioner has wrongly been treated in arrears and have been denied various benefits which it was otherwise eligible to. The Petitioner submitted that the Petitioner is thus invoking the inherent powers of the Commission along with its right to be restituted, which can only be decided by the Commission being the forum of first instance that decided the original lis. The Petition should be allowed and MSEDCL be directed to pay to the Petitioner the amounts as tabulated in the Petition.
- 6.7 The contention of MSEDCL that the entire decision dated 21 May, 2004 by the Commission and the Order dated 30 May, 2007 passed by the APTEL including the findings in favour of Petitioner on the aforesaid two issues have been set aside is clearly erroneous.
- 6.8 Further MSEDCL having admitted that the Petitioner was entitled to various benefits which MSEDCL adjusted towards arrears and having not traversed the claims of the Petitioner in this regard, the claims should also be allowed on ground of non-traverse.

**7. MSEDCL in its additional submission dated 9 June, 2020 has stated as follows:**

- 7.1 The issue of reduction of contract demand, more particularly, was not allowed, as demanded by the Petitioner, as the same was barred by the Circular 619 dated 25 May,



1999. Accordingly, issues raised by the Petitioner in Case No 35 of 2002 before the Commission, was covered under the various circulars viz. Circular No. 602 dated 23 July 1998, Circular No. 619 dated 25 May 1999, Circular No. 627 dated 2 September 1999 and Circular No. 651 dated 19 September 2000.

- 7.2 The bare perusal of the Order dated 30 May, 2007 passed by the APTEL also clearly suggests that apart from all the other circulars, as set-aside by the Commission vide its Order dated 21 May, 2004, the Circular No. 619 dated 25 May, 1999 and 627 dated 02 September, 1999 are the one which specifically deals with reduction in contract demand and as admitted by the Petitioner in paragraph 3(vi) of the present Petition, they have never paid under the Circular No. 627 dated 02 September 1999.
- 7.3 The Hon'ble Supreme Court has considered the entire case of Petitioner in detail and has also discussed the effect and purpose of each circular in question. Thereafter, vide its Order dated 28 February 2020, the Hon'ble Supreme court set aside the Orders passed by the Commission and the APTEL and further held that circular and the policy decisions issued before the establishment of the Commission were illegally set aside and in the peculiar facts and circumstances of the case setting aside the order concerning refund of amount recovered by MSEB.
- 7.4 The present Petition is asking the Commission to clarify the Judgment passed by the Hon'ble Supreme Court, or rather sit as an Appellate Court over and above the Hon'ble Supreme Court and decide/interpret the impugned Judgment which if allowed would tantamount nothing short of Judicial impropriety / Indiscipline.
- 7.5 Petitioner vide a Writ Petition No. 1180 of 2009, filed before the Bombay High Court, had sought reduction in contract demand in respect to Plot no. E-1. Further, the Petitioner in the said Writ Petition had also sought a prayer for non-coercive action against the Petitioner on the basis of the arrears on the said Plot no. E-1. Pertinently, the High Court, Bombay vide its Order dated 14 June, 2010 admitted the said Writ Petition and has also directed MSEDCL not to take any coercive step including cutting of the electricity supply to the Petitioner pending the hearing and final disposal of the said Writ Petition. Accordingly, the said issue cannot be agitated before the Commission when the same is sub judice before the High Court, and on this ground alone the present Petition deserves to be dismissed.
- 7.6 Further, the amount of the refund sought by the Petitioner in the present Petition, was applied/charged to the Petitioner under the same circulars which has been declared as legal, subsisting and correct by the Supreme Court vide its Judgment dated 28 February, 2020. Thus, more so, the refund sought by the Petitioner is unsustainable and bad in law.
- 7.7 The Petitioner is seeking to espouse the same case before the Commission, which has already being decided by the Hon'ble Supreme Court and thus, being hopelessly barred by the principles of Res-judicata. Further, the Supreme Court in catena of judgments has

held that if a matter was in issue directly and substantially in a prior litigation and decided against a party then the decision would be res judicata in a subsequent proceeding.

- 7.8 The bare perusal of the prayers suggests that the Petitioner is aggrieved by the electricity billings done by MSEDCL and is thus, falling under billing dispute. Accordingly, Petitioner must avail the grievance redressal mechanism as envisaged under MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020.

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

8. Petitioner has approached the Commission through present Petition based on the Hon'ble the Supreme Court Judgment in Civil Appeal No. 4304 of 2007 dated 28 February 2020 seeking appropriate Orders/directions to MSEDCL pertaining to restitution of benefits/incentives wrongly denied to the Petitioner by holding it to be in arrears and thereby issuance of corrected bill in compliance with the Judgment.
9. Petitioner stated that the Hon'ble Supreme Court restricted its Judgment to the various circulars relating to take or Pay and Minimum off take issued by MSEDCL and has not disturbed the decision of the Commission, as upheld by APTEL vis-a-vis issues raised by the Petitioner regarding reduction of its contract demand as provided under the sanction letter and no permission was required by the Petitioner for drawing of power from CPP installed at its plot no. E-23 to its unit at plot no. E-1. On that basis the Petitioner is seeking correction in electricity bills issued by MSEDCL. Petitioner approached the Commission on the ground that Original Order in Case No 35 of 2003 dated 21 May, 2004 was passed by the Commission, therefore for the purpose of restitution, the Commission is the appropriate forum of first instance and hence has jurisdiction to decide the present petition.
10. MSEDCL has opposed the contention of the Petitioner stating that the Hon'ble Supreme Court has considered the entire case of Petitioner in detail and has also discussed the effect and purpose of each circular in question. After detailed discussion, the Hon'ble Supreme Court has set aside the Orders passed by the Commission and the APTEL and has held that circular and the policy decisions therein issued before the establishment of the Commission were illegally set aside and further set aside the Order concerning refund of amount recovered by MSEDCL. Further, MSEDCL has also pointed out that the Petitioner has filed Writ Petition No. 1180 of 2009, before the Bombay High Court for reduction in contract demand and non-coercive action against the arrears for its Unit E-1 which is sub-judice for adjudication. Also, prayers of the Petitioner show that it is aggrieved by the billing done by MSEDCL and thereby it falls under billing dispute for which separate mechanism is available under the EA, 2003 and the Commission has no jurisdiction to entertain the same.
11. In view of above submissions, the Commission frames following issues for its considerations:

11.1. Whether this Commission has jurisdiction to adjudicate the matter?

11.2. Whether relief sought by the Petitioner can be granted?

The Commission is addressing above issues in the following paragraphs.

**12. Issue A: Whether this Commission has jurisdiction to adjudicate the matter?**

12.1. MSEDCL has objected that as Petitioner is aggrieved by billing issues, it should approach Consumer grievance redressal forum CGRF established under the EA, 2003 and this Commission has no jurisdiction to adjudicate in the matter. While opposing such contention, Petitioner has stated that as original Order dated 21 May, 2004 was passed by this Commission, hence for purpose of restitution as per said Order, this Commission has jurisdiction.

12.2. In this regard, the Commission notes that in its original Order dated 21 May ,2004, issue of jurisdiction was decided as follows:

*“73. Under Section 2(1) of the Electricity Regulatory Commissions Act, 1998, "utility" means any entity engaged in the generation, transmission, sale, distribution or supply of energy. The Commission is empowered under the provisions of Section 22(2)(n) of the ERC Act, to adjudicate upon disputes and differences between utilities. Further, it is a function of the Commission under section 86 of the Electricity Act, 2003 to adjudicate upon the disputes between the licensees and generating companies. In the present cases, therefore, both the MSEB and the Petitioners (CPP owners) are utilities within the meaning of the said Section 22(2)(n). Further, they are generating companies within the meaning of Section 86. The Commission also derives its jurisdiction in this matter under Section 22(2)(e) of the ERC Act, under which it can regulate the working of the licensees and other persons in the electricity industry and to promote their working in an efficient, economic and equitable manner.”*

Thus, the Commission had held that Petitioners were generators (CPP Owners) and hence it has jurisdiction under Section 86 of the EA 2003 to adjudicate dispute between generator and licensee.

12.3. MSEDCL in its appeal before the APTEL or subsequent appeal before the Hon'ble Supreme Court has never challenged above ruling on jurisdiction issue and hence the same has attained finality.

12.4. As, present Petitioner (who is also one of the Petitioner in above quoted matter and owner of CPP) has approached for implementation of directives in that Order dated 21 May, 2004 the Commission has jurisdiction to adjudicate present dispute.

13. Having ruled on jurisdiction as above, the Commission also notes that MSEDCL has contended that Petitioner by way of the present Petition is asking the Commission to

clarify a judgment passed by the Hon'ble Supreme Court, which if allowed would be tantamount to nothing short of judicial impropriety / Indiscipline. The Commission is conscious of judicial discipline and would not indulge into anything which is not permissible under the Law. As far as present matter is concerned, the Commission will not go beyond the judgment of the Hon'ble Supreme Court. Petitioner's claim and MSEDCL's response on above said Hon'ble Supreme Court judgment dated 28 February, 2020 has been summarised and ruled upon in following paragraphs.

**14. Issue B: Whether relief sought by the Petitioner can be granted?**

14.1. Based on the submissions made by parties, the Commission notes that main issue of dispute is whether Hon'ble Supreme Court in its Judgment dated 28 February, 2020 has set aside Commission's Order dated 21 May, 2004 in entirety or it is limited to illegal quashing of take or pay related circulars of MSEB. As per Petitioner, Hon'ble Supreme Court has not intervened in the Commission's ruling on reduction in contract demand and allowing sourcing of power through CPP located in different consumer premises at adjacent plot though its own underground cable and hence it is requesting for correction of electricity bills to that effect. Whereas, MSEDCL has contended that Hon'ble Supreme Court has set aside commission's Order dated 21 May, 2004 in entirety and has further directed not to refund any amount.

14.2. The Commission notes that in its Order dated 21 May, 2004 it has directed MSEDCL (then MSEB) as follows:

*“82. In summary, in view of the foregoing, the MSEB shall allow Eurotex the liberty to decide its level of contract demand, as clearly contemplated by their sanction letter dated 3.4.1997, and refund to Eurotex, by adjustment in energy bills or otherwise, any excess amount paid by them, on the basis of contract demand being 3000 KVA. Further, in the case of Eurotex, no prior permission of the MSEB is required for the extension of supply from their CPP at plot E-23 to their unit at plot E-1. Moreover, the condition imposed on the Petitioners to draw at least 25% of their energy from MSEB through the said Circular cannot be operative and must be deemed to be withdrawn from the date when it was imposed or sought to be imposed on them. In fact, the imposition of a take-or-pay condition on CPP holders by the MSEB through the said Circular and all other Circulars, viz., Circular No. 663 dated 5th October 2001 which provided for the supersession of certain Circulars, including Circular No. 602 dated 23rd July 1998, Circular No. 619 dated 25th May 1999, Circular No. 627 dated 2nd September 1999 and Circular No. 651 dated 19th September 2000, insofar as they purport to impose the take-or-pay obligation and minimum off-take requirement as also any additional tariff on CPP holders without the approval of the Commission, are hereby quashed and set aside. The amounts representing such additional tariff and notional drawal of energy as contained in the bills raised on the Petitioners shall be withdrawn by the MSEB, and payments made by the Petitioners to MSEB on that basis ought to be refunded by the MSEB by way of adjustment through energy bills or otherwise.”*

Thus, through above Order, in respect of Eurotex (Petitioner in present matter), the Commission directed MSEB to allow Eurotex to decide its Contract Demand and refund any excess amount by revising the bills on the basis of CD as 3000 kVA. It is also clarified that no prior permission of MSEB is required for sourcing power from their CPP at plot E-23 to their unit at plot E-1. Thereafter, the Commission quashed MSEB's circulars imposing take or pay obligations on CPP holders which were issued without approval of the Commission and directed MSEB to refund the petitioners any payment made on this account.

- 14.3. Aggrieved by above Order, MSEDCL challenged it before the APTEL and then before the Supreme Court in Civil Appeal No. 4304 of 2007. The Supreme Court has decided this matter vide its judgment dated 28 February 2020. Relevant part of Supreme Court Judgment is reproduced below:

*"1. The appeal has been preferred by Maharashtra State Electricity Distribution Company Limited (for short, 'the MSEDCL') against the order dated 30.5.2007, passed by Appellate Tribunal for Electricity (for short, 'the APTEL'), dismissing the appeal against the order dated 21.5.2004 passed by Maharashtra State Electricity Regulatory Commission (for short, 'the MERC'), quashing Circular No. 602 dated 23.7.1998, Circular No.619 dated 25.5.1999, Circular No. 627 dated 23.7.1998, Circular No. 651 dated 19.9.2000 and Circular No. 663 dated 5.10.2001, insofar as they purport to impose 'take or pay' obligation and minimum off-take requirement as also of any additional tariff for captive power plant holders on the ground that there was no approval of the MERC constituted in terms of the provisions of the Electricity Regulatory Act, 1998 (for short, 'the Act of 1998'). The aforesaid circulars dealt with Captive Power Plant Policy (for short, 'the CPP Policy'). The appellant-MSEDCL has been directed to make refund to respondent nos.3 to 7. The financial liability has been imposed upon the appellant-MSEDCL. The MERC was constituted on 5.8.1999. The appellant-MSEDCL has submitted all its circulars to MERC for approval and the MERC after four years has quashed the circulars with retrospective effect. The financial condition of the appellant-MSEDCL is not sound enough to sustain such kind of liability for refund. It was unable to pay a sum of Rs. 504 crores as against liability to other parties.*

.....

*24. The first question for consideration is whether the Commission could have quashed circulars issued by the appellant-MSEDCL before its formation. The Commission was constituted under the Act of 1998 on 5.8.1999. the circular issued before that could not have been quashed on the ground that MSEB had no power to issue them without the approval of the Commission. The decisions in that regard of Commission as well as of APTEL are liable to be set aside. In Binani Zinc Limited (spura), this Court held that before Commission came into existence, the power was to be exercised by the State Electricity Board. ....*

....

*27 As dispute pertains to the period from 02.09.1999 to 28.04.2000 and it is apparent from the additional affidavit filed by appellant MSEDCL that the Respondents used supply of electricity to manufacture their products. The cost incurred on the production has been passed on to the buyers/ consumers buying their products. Hence it would tantamount to unjust enrichment in case a refund is ordered. In the peculiar facts of the Case, as the Commission earlier opined in Order dated 10.01.2002 that CPP is a policy matter and it did not decide as to the merits of the subject matter as prayer for approval was made by the appellant- MSEDCL. The Commission observed that it would consider the matter in future , but later on, without considering on the merits the reasonableness of the demand, the Commission quashed the circulars. **It is apparent that the liability was passed on to the buyers/ consumers by the respondents 3 to 7 as electricity was used to manufacture their products sold in the market working out the price based on expenditure. It would not be appropriate in the peculiar facts of the case to direct refund to be made by the appellant MSEDCL of the amount recovered by it as it would tantamount to unjust enrichment. Thus in peculiar facts and circumstances of the case, it is not considered appropriate to remit the matter to decide the dispute on merits after two decades for the period from 2.9.1999 to 28.04.2000 during which circular dated 2.9.1999 was in force.***

*28 Consequently we set aside the Orders passed by the Commission as well as the APTEL and hold that circulars and the policy decisions issued before the establishment of the Commission were illegally set aside and in the peculiar facts and circumstances of the case we set aside the Order concerning refund of amount recovered by MSEDCL.”*

- 14.4. By relying upon para 1 and 24 of the Hon’ble Supreme Court Judgment (quoted above), Petitioner has contended that Hon’ble Supreme Court judgment is restricted to the circulars issued by MSEDCL but the other two issues namely reduction in contract demand and extension of supply from CPP to Unit E-1 raised by the Petitioner are untouched by the Supreme Court. Therefore, Petitioner contended that it is eligible for correction of electricity bills on this account. Whereas, MSEDCL has contended that Hon’ble Supreme Court has set aside Orders of MERC and APTEL on entirety and hence Petitioner’s present claims are not maintainable.
- 14.5. In this regard, the Commission is of the opinion that Hon’ble the Supreme Court in its Judgment at para 28 (quoted above) has clearly stated that Order of the Commission has been set aside and further observed that Circulars as well as policy decisions issued before the establishment of the Commission was illegally set aside. Thus, such judgment is not restricted to only ‘Circulars’ but also related to ‘policy decisions’ taken before constitution of the Commission. To get more clarity of the issue, the Commission has referred to the Civil Appeal filed by the MSEDCL before the Hon’ble Supreme Court based on which above Judgment has been passed. The Commission notes that MSEDCL in its Civil Appeal No. 4304 of 2007 has prayed for the following:

*“It is, therefore, humbly prayed that your Lordships may be graciously pleased to admit the instant Appeal, issue notice to the respondents herein and after hearing them, set aside the impugned final judgment & order dated 30<sup>th</sup> May, 2007 passed by the Appellate tribunal for Electricity, New Delhi in appeal No. 29 of 2007”*

Thus, through above prayer, MSEDCL requested the Hon’ble Supreme Court to set aside APTEL Judgment dated 30 May, 2007 in Appeal No. 29 of 2007. Said prayer is not restricted to only ‘take or pay’ related circulars but seems to be seeking total setting aside of APTEL Judgment. Further, amongst other grounds for above Civil Appeal, MSEDCL has also contended as follows:

*“7. Because the Appellate Tribunal failed to appreciate that so far as the case of respondent No. 3 is concerned, Govt. of India issues a letter dated 22.8.1994 clearly contemplating both the units of respondent No.3 as separate units and **as such the Tribunal erred in holding that there is no power vested in the appellant to refuse reduction of the contract demand.***

*8. Because the Appellate Tribunal also failed to take note of the Government of Maharashtra policy dated 20.12.1997 relating to the CPP which clearly provide for establishment of power plant and its utilization and the same being located on the same industrial plot. The Appellate Tribunal also erred in relying upon the sanction dated 3.4.1997 which was revoked by the appellant. **The Appellate Tribunal also failed to take note of the letter dated 13.10.1999 issued by the appellant to respondent No.3 in respect of unauthorized act of connecting supply from plot No. E-23 to plot No. E-1 without any sanction from the appellant. The unauthorized use breached the sanction issued u/s 44 of the Electricity Supply Act.**”*

From above quoted grounds of the Civil Appeal, the Commission notes that issues of reduction in contract demand and sourcing of supply from other Unit was challenged by MSEDCL before the Supreme Court. And as Hon’ble the Supreme Court in its judgment has set aside APTEL judgment based on Civil Appeal filed by MSEDCL, maybe without explicit finding in the issue in the Judgment by the Supreme Court, it cannot be claimed that APTEL/MERC Judgment has been set aside only with respect to ‘take or pay’ issue and not on other issues.

- 14.6. It is also important to note that Petitioner has also contended that as it has never paid the arrears amount therefore issues of loading it to its customers and getting undue benefit when MSEDCL refunding it does not arise. In this regard, the Commission notes that the Commission in its Order dated 21 May 2004 has directed MSEDCL to refund the bill amount by correcting bill after considering CD as 3000 kVA. However, the Supreme Court in its Judgment dated 28 February 2020 has clearly ruled that no refund shall be given to respondent no. 3 to 7 [present Petitioner is Respondent No. 3 in Supreme Court matter]. After such clear ruling by the Hon’ble Supreme Court, asking MSEDCL to correct the bills of the Petitioners and thereby refunding the arrears by

away of adjustment/correction in electricity bill, would tantamount to going against the Hon'ble Supreme Court Judgment.

14.7. Hence, relief sought by the Petitioner cannot be allowed in contravention of the Hon'ble Supreme Court judgment.

15. Hence, the following Order

**ORDER**

**Case No 17 of 2021 is dismissed.**

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

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

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

