

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
**World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005**  
**Tel. 022 22163964/65/69 Fax 22163976**  
**Email: mercindia@merc.gov.in**  
**Website: [www.merc.gov.in](http://www.merc.gov.in)**

**Case No. 27 of 2021**

**Petition of Enel Wind Project (Amberi) Private Limited (formerly known as BLP Wind Project (Amberi) Private Limited) seeking directions to the Maharashtra State Electricity Distribution Company to make payment of outstanding dues including LPS.**

M/s Enel Wind Project (Amberi) Private Limited (EWPPL) ..... Petitioner

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

**&**

**Case No. 30 of 2021**

**Petition of M/s. IOTA MTech Power LLP seeking directions to the Maharashtra State Electricity Distribution Company Limited to make payment of outstanding dues for electricity supplied under the Wind Energy Purchase Agreement dated 27 March 2017.**

M/s. IOTA MTech Power LLP (IMPL) ..... Petitioner

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

**&**

**Case No. 31 of 2021**

**Petition of M/s. Parmarth Wind Energy Private Limited seeking directions to the Maharashtra State Electricity Distribution Company Limited to make payment of outstanding dues for electricity supplied under the Wind Energy Purchase Agreement dated 20 August 2014.**

M/s. Parmarth Wind Energy Private Limited (PWEPL) ..... Petitioner

Maharashtra State Electricity Distribution Co. Ltd.

..... Respondent

&

**Case No. 32 of 2021**

**Petition of M/s. Sidhidata Power LLP seeking directions to the Maharashtra State Electricity Distribution Company Limited to make payment of outstanding dues for electricity supplied under the Wind Energy Purchase Agreement dated 10 October 2014.**

M/s. Sidhidata Power LLP (SPL)

..... Petitioner

Maharashtra State Electricity Distribution Co. Ltd.

..... Respondent

**Coram**

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

**Appearance:**

M/s Enel Wind Project (Amberi) Private Limited (EWPPL)

: Shri. Vishal Binod (Adv.)

M/s. IOTA MTech Power LLP (IMPL)

M/s. Parmarth Wind Energy Private Limited (PWEPL)

M/s. Sidhidata Power LLP (SPL)

}  
}

: Shri. Shashwat Rai (Adv)

Maharashtra State Electricity Distribution Company Limited (MSEDCL): Smt. Deepa Chavan (Adv)

**COMMON ORDER**

**Date: 17 August 2021**

1. The Wind Energy Generators viz M/s Enel Wind Project (Amberi) Private Limited (**EWPPL**), M/s. IOTA MTech Power LLP (**IMPL**), M/s. Parmarth Wind Energy Private Limited (**PWEPL**) and M/s. Sidhidata Power LLP (**SPL**) have filed above cases under section 86(1)(f) read with section 86(1)(e) of the Electricity Act, 2003 (EA-2003) and

relevant provisions of Power Purchase agreement; seeking directions to the Maharashtra State Electricity Distribution Company Limited (**MSEDCL**) for making payment of outstanding amounts, applicable Late Payment Surcharge (LPS) along with penal interest of 1.25% per month for supply of power from the Petitioner's wind power projects.

2. The Commission notes that in all the above Cases, Petitioners are seeking similar relief on account of non-payment of dues for energy injection from their Wind Projects. Therefore, the Commission is deciding these four cases through this Common Order. In this Common Order; facts of Case No.30 of 2021, Case No.31 of 2021 and Case No.32 of 2021 have been considered in combined manner and since certain facts in Case No. 27 of 2021 are different from the other three cases, the same are stated separately.

### **CASE NO. 27 OF 2021**

3. The Petitioner EWPPPL has filed Petition in Case No.27 of 2021 on 16 March 2021.

4. **Major prayers of EWPPPL are as follows:**

“

1. *Direct the Respondent to make payments in respect of the outstanding monthly invoices of Rs. 36,87,12,775 /- (Rupees thirty-six crore eighty seven lakh twelve thousand seven hundred and seven five only), and towards outstanding and consequent Late Payment Surcharge (LPS) computed in terms of the PPAs till the date the unpaid invoices are actually paid upon by the Respondent, along with penal interest of 1.25% per month on the unpaid LPS;*

2. *Direct the Respondent to pay on the invoices raised by the Petitioner in a timely manner henceforth in accordance with the terms of the PPAs;*

....”

5. **EWPPPL in its Petition has stated as follows:**

- 5.1. The Petitioner EWPPPL has filed the instant Petition as MSEDCL has not only failed to comply with its payment obligations under the Power Purchase Agreement (PPA) but is also in non-compliance of the directions passed by the Commission.

- 5.2. EWPPPL has developed and commissioned wind power projects with a cumulative installed capacity of 22.2 MW in Satara and Sangli districts between FY 2011-12 and FY 2012-13. The relevant details of the aforesaid Projects are set out in the table below:

Sr. No.	Project Location	Project Capacity	Date of PPA
1.	Village: Rewalkarwadi, Dist: Satara	4 MW	25.06.2012
2.	Village: Rampur Dist: Sangli	1.7 MW	02.07.2012
3.	Village: Malal and Yeldari Dist: Sangli	5.95 MW	27.07.2012
4.	Villages: Visapur, Rewalkarwadi and Ekambe Dist: Satara	5.6 MW	13.08.2012
5.	Villages: Visapur, Rewalkarwadi and Ekambe Dist: Satara	2.4 MW	13.08.2012
6.	Village: Yeldari and Mendhigir Dist: Sangli	2.55 MW	13.08.2012

- 5.3. As per Clause 2.01 of the PPAs, the sale of power under the PPAs shall be governed by Maharashtra Electricity Regulatory Commission (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2010 and the applicable tariff Order passed by the Commission. Tariff of EWPPL's project is governed by the Commission's *suo-motu* Orders dated 29 April 2011 and 30 March 2012.
- 5.4. EWPPL had previously approached the Commission by filing Petition in Case No. 125 of 2018, seeking inter alia payment of outstanding dues and LPS by MSEDCL. The Commission vide its Order dated 19 October 2018 directed MSEDCL to release the outstanding payments to EWPPL, including LPS, as per the plan submitted by MSEDCL, failing which MSEDCL shall be liable to pay an additional interest at the rate of 1.25 percent per month on any unpaid LPS.
- 5.5. In furtherance of the Commission's above said Order, EWPPL had also issued a letter dated 08 November 2018 to MSEDCL, setting out the details of the pending invoices and the outstanding LPS, and requested for compliance with the aforesaid Order passed by the Commission.
- 5.6. MSEDCL made payments towards the principal outstanding in relation to the invoices for the electricity supplied to them up to November 2018. However, in spite of explicit directives of the Commission MSEDCL has failed to pay any amounts towards the accrued LPS.
- 5.7. As of 31 December 2020, the total outstanding LPS amount along with the penal interest of 1.25% per month levied as per the Commission's Order for the period April 2012-March

2018 alone stands at Rs 9,70,55,157 (Rupees nine crore seventy lakh fifty five thousand one hundred and fifty seven only).

- 5.8. In addition to the non-payment of the aforesaid outstanding LPS amount, MSEDCL has also failed to make any payments whatsoever towards even the outstanding principal amount for the monthly invoices since August 2019. It is stated that as of 31 December 2020, the outstanding principal amount towards unpaid invoices stands at Rs. 36,87,12,775/- and the corresponding LPS pertaining the aforementioned unpaid invoices stands at Rs. 4,48,46,371/-.
- 5.9. MSEDCL has raised disputes regarding computation of LPS amount on fallacious grounds that there is a small mismatch in the date of payment of outstanding invoices between the EWPPPL's and MSEDCL's records. With a view to ensure expeditious payment of LPS, EWPPPL, without prejudice to its rights, agreed to accept the proposal of MSEDCL regarding such mismatch in dates and agreed to accept LPS payment as per MSEDCL's computation. However, despite EWPPPL agreeing to MSEDCL's computation of LPS, MSEDCL has continued to evade its obligations under the PPA and has failed to make any payment.
- 5.10. The Commission has specifically approved an amount of Rs. 13,284 crores towards purchase of non-solar renewable power by MSEDCL for FY 2020-21, by its MYT Tariff Order dated 30 March 2020. Similarly, the Commission approved an amount of Rs. 6,353.81 Crores towards purchase of non-solar renewable power for FY 2019-20 by the same Order. Therefore, even though MSEDCL is collecting Tariff from its consumers towards cost of energy supplied by EWPPPL, it is not making any payments whatsoever to EWPPPL for such supply of electricity.
- 5.11. The non-payment of monthly bills by MSEDCL has destroyed the financial health of the Projects and EWPPPL is facing unprecedented challenges in discharging its obligations towards its lenders, O&M contractors and other vendors, potentially compromising reliable supply of clean power. EWPPPL has therefore prayed for the urgent intervention of the Commission seeking appropriate directions to MSEDCL.
- 5.12. EWPPPL further seeks imposition of exemplary costs on MSEDCL for non-compliance with its obligations under the PPA.

**CASE NO. 30 OF 2021, 31 OF 2021 & 32 OF 2021**

6. The Petitioner IMPL, PWEPL and SPL have filed Petitions on 19 March 2021.

7. **Prayers of IMPL, PWEPL and SPL are as follows:**

**Case No.30 of 2021 (Case of IMPL)**

- A. *Direct the Respondent to pay a sum of Rs. 1,39,55,725/- towards electricity generated by the Petitioner in respect of January 2020, till November 2020;*
- B. *Direct the Respondent to pay a sum of Rs. 11,42,208/-to the Petitioner as interest on delayed payments in respect of month of September 2019 to November 2020*
- ...
- D. *Pending the hearing and final disposal of the present Petition, this Hon'ble Commission be pleased to direct the Respondent to deposit a sum of Rs. 1,50,97,933/- or such other amount as this Hon'ble Commission may deem fit in this Hon'ble Commission;*

**Case No.31 of 2021 (Case of PWEPL)**

- A. *Direct the Respondent to pay a sum of Rs. 12,19,16,662/- towards electricity generated by the Petitioner during the months of July 2019, till November 2020;*
- B. *Direct the Respondent to pay a sum of Rs. 1,34,39,125/-to the Petitioner as interest on delayed payments in respect of month of September 2019, to November 2020;*
- ...
- D. *Pending the hearing and final disposal of the present Petition, this Hon'ble Commission be pleased to direct the Respondent to deposit a sum of Rs.13,53,55,787/- or such other amount as this Hon'ble Commission may deem fit in this Hon'ble Commission;*

**Case No.32 of 2021 (Case of SPL)**

- A. *Direct the Respondent to pay a sum of Rs. 72,09,424/- towards electricity generated by the Petitioner in respect of January 2020, till September 2020;*
- B. *Direct the Respondent to pay a sum of Rs. 8,51,568/-to the Petitioner as interest on delayed payments in respect of month of September 2019 to September 2020;*
- ...

*D. Pending the hearing and final disposal of the present Petition, this Hon'ble Commission be pleased to direct the Respondent to deposit a sum of Rs. 80,60,992/- or such other amount as this Hon'ble Commission may deem fit in this Hon'ble Commission;*

**Common Prayer:**

*C. Direct the Respondent to pay interest pendente-lite till the eventual payment of the sum at 1.25% per month;*

**8. Petitioners in their Petitions submitted as given below:**

8.1. Details of contracted Wind Generation capacities are depicted in table below:

<b>Generator</b>	<b>Location</b>	<b>Capacity</b>	<b>Date of Commissioning</b>
IMPL	Villages Jath, Tal. Jath, Dist. Sangli	1 Nos. X 2000 KW (M/s. Inox Wind make)	31 October 2015
PWEPL	Villages Altur, Karugale and Kotoli Tal. Shahuwadi, Dist. Kolhapur	12 Nos. X 850 KW (M/s. Gamesa make)	29 March 2014
SPL	Villages Jath, Tal. Jath, Dist. Sangli	1 Nos. X 2000 KW (M/s. Inox Wind make)	31 March 2014

8.2. Upon the successful commissioning of the said wind power plants a Wind Energy Purchase Agreement came to be duly executed between MSEDCL and the respective Petitioners on following dates:

<b>Generator</b>	<b>Date of EPA</b>	<b>Tariff</b>
IMPL	27 March 2017	Rs.5.70/- Per Unit
PWEPL	20 August 2014	Rs.5.81/- Per Unit
SPL	10 October 2014	Rs.5.81/- Per Unit

8.3. As required by the contract, the Petitioners duly raised monthly electricity bills in respect of the electricity generated by them from the said power plants. But MSEDCL has miserably failed in making timely payments to the Petitioners. Significantly, till date, MSEDCL has neither raised any complaints nor objections whatsoever with respect to the said electricity bills.

- 8.4. In case of IMPL and SPL; upon follow up for payments, MSEDCL insisted upon furnishing an undertaking for waiver for LPS. As the IMPL and SPL were in dire need of funds, they provided undertakings. Pursuant to providing these undertaking, MSEDCL has cleared invoices till August, 2019.
- 8.5. The Petitioners refer to their formal communication with MSEDCL for release of payments dues. Details of the payments due are depicted in following table:

Generator	Amount Due	Period
IMPL	Principal- Rs. 1,39,55,725/-	Jan-20 to Nov-20
	LPS- Rs. 11,42,208/-	Sep-19 to Nov-20
PWEPL	Principal- Rs. 12,19,16,662/-	July-19 to Nov-20
	LPS- Rs.1,34,39,125/-	Sep-19 to Nov-20
SPL	Principal- Rs. 72,09,424/-	Jan-20 to Sep-20
	LPS-Rs. 8,51,568/-	Sep-19 to Sep-20

Despite the issuance of the reminder letters, MSEDCL has failed to make payments to the Petitioners in the manner as contemplated under EPA.

- 8.6. Due to continued non-payments, the Petitioners are under immense financial distress and are unable to service the term loan facility, employee cost and O & M contract fees.
- 8.7. The Hon'ble Supreme Court as well as the Commission, in a catena of judgements have consistently held that State authorities cannot fail in making contractual payments and must be fair in their commercial dealings. In support of their claim, the Petitioners have cited the Supreme Court Judgement in *Chairman, Tamil Nadu Electricity Board v. M/s Indian Wind Power Association and ors., (Civil Appeal 2397 of 2014)*.
- 8.8. Grave harm and/ or prejudice and/ or loss would be caused to the Petitioners if MSEDCL continues to fail to remit the amounts due and payable to it.
9. At the E-hearing held on 7 May 2021, the Commission noted that MSEDCL had not filed reply in the listed matters and sought adjournment to do so. The Commission adjourned the hearings directing MSEDCL to file replies and settle the undisputed claimed amount with Petitioners.



**10. MSEDCL in its Reply dated 31 May 2021 stated following:**

**Generalized submission:**

- 10.1. MSEDCL is going through financial crisis due to COVID-19 Epidemic and subsequent Lock Down imposed by Government Authorities. Due to these extraordinary circumstances MSEDCL's payment performance is adversely affected and it is a force majeure event.
- 10.2. Further, the Demand (Billing) from consumers is reduced from 2019-2020 (Rs.75,432.1 Crores) to 2020-21 (Rs. 69,626.8 Crores). Further, collection is also dropped from 2019-2020 (Rs.70,048.9 Crores) to 2020-21(Rs.64,653.1 Crores). Also, the collection efficiency has dropped from 96.20% in F.Y 2018-19 to 93.56% in F.Y 2019-20.
- 10.3. MSEDCL has already filed a Petition before the Commission for wind zone reclassification wherein it is observed that most of the wind generators under Group IV and are taking undue benefit of higher tariff due to wrong wind zone classification. In the Petition, MSEDCL has submitted the estimated financial impact for the period from FY 2010-11 to FY 2019-20 is Rs.1,949 Crores and interest for the same is about around Rs.993 Crores. This is an additional and undue benefit passed on to the petitioners over and above the RoE allowed as per the Tariff Regulations which is availed by wind contracting wind generators through Feed In Tariff stipulated by the Commission. MSEDCL in said Petition, which is sub juice before the Commission, has requested to the Commission to allow the recovery of such excess amount.
- 10.4. The financial position of MSEDCL is very precarious and total loan and the amount payable as on 31 March 2021 is Rs. 57,757 Crores which includes loans of about Rs 43000 Crores and payables of around Rs.14,757 Crores. The arrears/receivables from consumers including LPS is around Rs.66,193 Crores. MSEDCL has not only availed the allowable loan/Over Draft limits but has crossed the normative level of working capital loan. The same was done to also make payments to the generators and to reduce the burden of LPS. Moreover, the interest on working capital is also not allowed as pass through in tariff by the Commission, which in turn aggravates the financial position of MSEDCL.
- 10.5. Delay in timely payments to some generators are attributable to the circumstances which are beyond the control of the MSEDCL. Any default in payment is not willful but is only attributable to the circumstances and Cash crunch. The total payment of Rs. 3,516.33 Crores in FY 2017-18, Rs.5,807.77 Crores in FY 2018-19, Rs. 3,402.11 Crores in FY

2019 -20 and Rs. 877.67 Crores in F.Y 2020-21 Crores (till 31 March 2021) has already been made to various wind generators.

- 10.6. With regard to demand of penal interest of 1.25%, MESDCL has filed the Appeal [DFR No.2342/2019] before APTEL challenging Commission's Order dated 2 August 2019 in Case No 105 of 2019 and Appeal is still pending before Tribunal for final judgement.

**Case Specific Submission: Case No.27 of 2021:**

- 10.7. As per the payment plan dated 12 September 2018; MSEDCL committed to clear the outstanding dues for the generation month up to March-2018 by the end of March 2019. Accordingly, MSEDCL paid sum of Rs.33.14 Crores on 31 December 2018 & 31 March 2019 for generation month January-2017 and April-2017 to August-2018.
- 10.8. MSEDCL has also paid LPS of Rs 3.59 Crores for the period of Generation month August, 2015 to March, 2017 on 26 April 2021. Accordingly, MSEDCL has complied with the Commission's Order dated 19 October 2018 in Case No.125 of 2018. However, in the present case, EWPPPL claims LPS for the generation month period April-2012 to July-2015 which is not only time barred but also contrary to the conduct of mutual agreement on the issue between the parties. Hence, same may not be considered.
- 10.9. MSEDCL has also paid Principal outstanding of Rs. 3.39 Crores from Generation month September-2018 to November-2018 (Satara & Sangli location) and December-2018 (Sangli Location). MSEDCL has also released principal outstanding of Rs. 21.25 Crores for the generation month period December-2018 to December-2019 on 27 May 2021 out of claim Rs. 36.87 Crores. Balance amount will be released as per availability of fund. Therefore, in accordance with the direction of the Commission's Daily Order dated 07 May 2021, MSEDCL has made best efforts to clear the outstanding payments of EWPPPL, even without reconciliation of the claimed amount in the present dispute.

**Case Specific Submission: Case No.30, 31 & 32 of 2021:**

- 10.10. The present cases of the Petitioners namely IMPL, PWEPL and SPL are new cases, as against the other case in the batch which have a background of previous case before the Commission and therefore the Case No. 30 of 2021, 31 of 2021 & 32 of 2021 needs to be de-tagged from the batch, more particularly in the background of the necessity for reconciliation with the Petitioner qua their claims.

10.11. The payment liability and settlement by MSEDCL are depicted in table below:

Generator	Petitioner's Claim		MSEDCL Submission on claim settlement
	Amount Due	Period	
IMPL	Principle- Rs. 1,39,55,725/-	Jan-20 to Nov-20	Fresh Claim – Reconciliation pending
	LPS- Rs. 11,42,208/-	Sep-19 to Nov-20	
PWEPL	Principle- Rs. 12,19,16,662/-	July-19 to Nov-20	Rs.5,34,00,000/- Paid on 27.05.2021
	LPS- Rs.1,34,39,125/-	Sep-19 to Nov-20	
SPL	Principle- Rs. 72,09,424/-	Jan-20 to Aug-20	Fresh Claim – Reconciliation pending
	LPS-Rs. 8,51,568/-	Sep-19 to Aug-20	

11. At the E-hearing held on 18 June 2021, both parties reiterated their submission made in Petition/Reply.

12. MSEDCL in its common joint submission dated 25 June 2021 stated following:

12.1. MSEDCL made payments as per the availability of funds to the following generators in the following manner:

(Rs. in Crs.)

Case No.	Generation month claimed (Principal)	Principal amount claimed	LPS Generation month	LPS amount claimed	Payment of Principal Amount as per MSEDCL record (upto Dec-19)	Date of payment	Payment LPS as per MSEDCL record (as per MERC Order)	Date of payment
27 of 2021	December-2018 to November-2020	36.87	April-2012 to November-2020	13.24	21.25	27.05.2021	3.59	26.4.2021
30 of 2021	January-2020, to November-2020	1.39	September-2019 to November-2020	0.11	Fresh Claim – Reconciliation yet to happen			
31 of 2021	July-2019 to November-2020	12.19	July-2019 to November-2020	1.34	5.34	27.05.2021	Fresh Claim – Reconciliation yet to happen	

32 of 2021	January- 2020 to August- 2020	0.72	September- 2019, to August- 2020	0.08	Fresh Claim – Reconciliation yet to happen
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12.2. The Petitioner in Case No. 27 of 2021 has raised LPS claims, for the period not initially claimed in the earlier Case No. 125 of 2018. Period contemplated under the first Case No. 125 of 2018 for LPS claim was January-2017 and April-2017 to February-2018, but in the present Petition i.e. Case No. 27 of 2021 claims have been raised since FY 2012-13 till FY 2020-21. The claims from FY 2012-13 ought to have been raised in earlier proceedings in Case No. 125 of 2018.

12.3. The Case No. 125 of 2018 had culminated in Order dated 19 October 2018. As such, EWPL in the present proceedings filed in 2021 is precluded from raising purported LPS claims for the past period i.e. from FY 2012-13 till February, 2018. Order II Rule 2 of the Code of Civil Procedure, 1908 reads as under:

“

*2. Suit to include the whole claim. —*

*(1) .....*

*(2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

MSEDCL has also relied upon the leading case of *Naba Kumar Hazra Versus. Radhashyam Mahish, AIR 1931 PC 229*, the Judicial Committee of the Privy Council said following:

“

*The rule in question is intended to deal with the vice of splitting a cause of action. It provides that a suit must include the whole of any claim which the plaintiff is entitled to make in respect of the cause of action on which he sues, and that if he omits (except with the leave of the Court) to sue for any relief to which his cause of action would entitle him, he cannot claim it in a subsequent suit. The object of this salutary rule is doubtless to prevent multiplicity of suits. **The object of this salutary rule is doubtless to prevent multiplicity of suits.** (Emphasis added)*

Further, In *Deva Ram Versus. Ishwar Chand, (1995) 6 SCC 733*, the Apex Court also ruled following:

*“A bare perusal of the above provisions would indicate that if a plaintiff is entitled to several reliefs against the defendant in respect of the same cause of action, he cannot split up the claim so as to omit one part of the claim and sue for the other. **If the cause of action is the same, the plaintiff has to place all his claims before the court in one suit as Order 2 Rule 2 is based on the cardinal principle that the defendant should not be vexed twice for the same cause.** (Emphasis added)*

- 12.4. Claims raised under Case No. 27 of 2021 and Case Nos. 30, 31 and 32 of 2021 need to be reconciled. The process of reconciliation between the parties may result in disputes in terms of the period of computation and computation arising from differences in consideration of the date of receipt of invoices and the dates of payment. These are disputes between the parties. Therefore, payment per se cannot be directed in face of such disputes.
- 12.5. Furthermore, the Commission needs to bifurcate the defaulting period of MSEDCL in all related and other cases of default as pre-covid and post-covid, the cut-off dated being March, 2020.
- 12.6. Accordingly, MSEDCL has requested the Commission to dismiss the present Petitions.

### **Commission’s Analysis and Rulings**

7. The Commission notes that Case No.27 of 2021 is having background of previous Petition in Case No. 125 of 2018, which has been decided by the Commission by Order dated 19 October 2018. Whereas Case No.30 of 2021, Case No.31 of 2021 and Case No.32 of 2021 are new cases and do not have any past orders in their favor. The Commission is deciding these cases considering merits of the matter.

#### **Case No.27 of 2021**

8. Details of payments due as of 31 December 2020, as claimed in the Petition are depicted in table below:

<b>Generator</b>	<b>Amount Due</b>	<b>Period</b>
EWPPPL	LPS-Rs 9,70,55,157 /-	April 2012-March 2018
	Principle- Rs. 36,87,12,775/-	

	LPS- Rs. 4,48,46,371/-	Outstanding principal amount for the monthly invoices since August 2019
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9. MSEDCL in its Reply dated 25 June 2021 has stated that in compliance of the directives in Daily Order dated 7 May 2021, MSEDCL has released principal outstanding amount of Rs. 21.25 Crores out of claim of Rs. 36.87 Crores. Balance amount will be released as per availability of fund. Further, EWPPPL is claiming LPS for the period of April-2012 to March -2018. According to MSEDCL the claims from FY 2012-13 ought to have been raised by EWPPPL in its earlier proceedings in Case No. 125 of 2018. This claim is new and such claims are not admissible in terms of Order II Rule 2 of the Code of Civil Procedure, 1908. In support of argument, MSEDCL referred to the ruling of Hon'ble Supreme Court in *Deva Ram Versus. Ishwar Chand, (1995) 6 SCC 733*.
10. Considering arguments and submission on record, the Commission notes that EWPPPL is claiming dues payable for two different period. Firstly, EWPPPL claims LPS for the period of April-2012 to March-2018. Second payment of Principal and the applicable LPS, for outstanding monthly invoices since August-2019.
11. With regards to LPS for the period of April-2012 to March-2018, the Commission notes that that EWPPPL in its earlier Petition in Case No.125 of 2018 has prayed following:

“

a) Direct the Respondent to make payments in respect of **unpaid invoices** for the billing period ranging from **April 2017 to February 2018** and for the month of **January 2017**, cumulatively amounting to Rs. 17,60,19,452/- (Rupees seventeen crore sixty lakh nineteen thousand four hundred and fifty-two only), along with **consequent late payment surcharge** computed in terms of the PPAs till the date the unpaid invoices are actually paid upon by the Respondent;”

It is apparent that LPS claim for April-2012 to March-2018 were not been sought in Petition in Case No.125 of 2018. The Commission has decided the Case No.125 of 2018 vide its Order dated 19 October 2018. EWPPPL in present Petition in Case No.27 of 2021 has raised belated claims for LPS. As per principles laid down by Supreme Court in various cases and Order II Rule 2 of the Code of Civil Procedure, 1908, such belated claims cannot be allowed as the EWPPPL did not include the same in original Petition.

12. The Commission further notes that MSEDCL has paid LPS liability coming out of Order in Case No.125 of 2018 on 26 April 2021 i.e after filing of the Case No.27 of 2021. Hence, liability in terms of penal interest at the rate of 1.25% on LPS amount is still pending. Mere pendency of Appeal [DFR No.2342/2019] before APTEL challenging levy of 1.25% penal interest cannot be a reason for non-payment of the liability. MSEDCL is bound to pay the LPS as per the directions (for the period covered in the petition and order) in Case No.125 of 2018.
13. With regard to outstanding principal amount for the monthly invoices since August 2019, Commission notes that out of claim of Rs. 36.87 Crores; on 27 May 2021 MSEDCL has released principal outstanding amount of Rs. 21.25 Crores. MSEDCL in its submission has presented COVID-19 pandemic scenario for disruption in its revenue stream and delay in clearing payments which it has submitted is not deliberate. Further, MSEDCL has termed COVID-19 pandemic as force majeure circumstance. The Commission notes that MSEDCL has initiated the payment of undisputed claim and only reconciliation of remaining amount is pending.
14. Considering above, MSEDCL is hereby directed to reconcile remaining outstanding dues within and liability towards penal interest at the rate of 1.25% on LPS paid out on 26 April 2021, within one month of this Order. MSEDCL shall intimate to Petitioners the date by which full payment will be effected.

**Case No.30 of 2021, Case No.31 of 2021 and Case No.32 of 2021**

15. The Commission notes that the Petitioners in Case No.30 of 2021, 31 of 2021 and 32 of 2021 are also seeking payment of outstanding principal, LPS and penal interest at the rate of 1.25%. The Commission during first hearing vide Daily Order dated 7 May 2021 directed MSEDCL to settle undisputed amount.
16. MSEDCL vide its additional submission dated 25 June 2021 reported that it has settled amount of Rs.5.34 Crores on 27 May 2021 in respect of PWEPL. The claims of IMPL and SPL needs reconciliation and are fresh claims.
17. The Commission expresses its concern on the failure of MSEDCL to settle undisputed amounts in respect of claims of IMPL and SPL in compliance with the directions issued in Daily Order dated 7 May 2021. Though the Commission is aware and has noted the concerns and difficulties of MSEDCL during the COVID-19 period, all out efforts are necessary so as to comply with the contractual obligations and also to reduce the adverse financial impact of

LPS (which is not a pass through for MSEDCL). Thus, the Commission deems it fit to direct MSEDCL to take lead and reconcile the amounts with the Petitioners within one month from the date of this order. MSEDCL shall also intimate to Petitioners the date by which full payment will be effected.

18. Hence, the following Order:

**ORDER**

- a. **The Case Nos. 27, 30, 31 and 32 of 2021 are partly allowed.**
- b. **Maharashtra State Electricity Distribution Company Limited is directed to further reconcile the statement of account with the Petitioners within one month and intimate the date by which such payment shall be made.**
- c. **Further, Maharashtra State Electricity Distribution Company Limited should note that if it deviates from its commitment given, penal interest will accrue at 1.25% per month on outstanding LPS amount.**

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(I.M. Bohari)  
Member

Sd/-  
(Sanjay Kumar)  
Chairperson

  
(Abhijit Deshpande)  
Secretary

