

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 81 of 2021**

**Case of M/s Zaveri and Company (Gujarat) LLP for adjudication of disputes between M/s Zaveri and Company (Gujarat) LLP and Maharashtra State Electricity Distribution Company Limited**

M/s. Zaveri and Company (Gujarat) LLP

..... Petitioner

Maharashtra State Electricity Distribution Company Limited

..... Respondent

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

**Appearance**

For the

Petitioner

: Smt. Lakshmi Raman (Adv.)

Respondent

: Sh. Ravi Prakash (Adv.)

**ORDER**

**Date: 22 September, 2021**

1. M/s. Zaveri and Company (Gujarat) LLP (**ZCGLLP**), has filed the present Petition on 5 July 2021 under Section 86(1)(f) of The Electricity Act, 2003 (**EA**) seeking adjudication of dispute with Maharashtra State Electricity Distribution Company Limited (**MSEDCL**).
2. **ZCGLLP's main prayers are as follows:**

- a) *Direct the Respondent to comply with the terms of the WEPA in letter and spirit including the obligation to make payment of the entire outstanding amount immediately towards invoices due till date;*
- b) *Direct the Respondent to comply with the terms of the WEPA in letter and spirit including the obligation to make payment of the entire outstanding amount immediately towards Delayed Payment Charge due till date;*
- c) *Direct the Respondents to pay carrying cost at the rate of 1.5% per month of the delay in payment of the Late/Delayed Payment Surcharge by the Respondent;*

**3. ZCGLLP in its Case has stated as follows:**

- 3.1. ZCGLLP owns 7.50 MW (5 Nos. x 1.50 MW) Wind Electric Generator in Nashik District, Maharashtra. It entered into Energy Purchase Agreement (EPA) with MSEDCL on 23 June 2009. The EPA term was for 13 years.
- 3.2. ZCGLLP has been consistently supplying electricity to the MSEDCL. It has also been adhering to all the stipulated requirements mentioned in the respective EPA and has been regularly generating and sending invoices for the power generated and supplied to MSEDCL as per the terms and conditions of the EPA. However, since November 2019, MSEDCL has not made any payments of the amount due on account of supply of electricity to MSEDCL till date.
- 3.3. Due to the delay in making the payments of the amount due on account of supply of electricity to MSEDCL, it is liable to pay a Late Payment Surcharge (LPS)/ Delay Payment Charges (DPC) on the delayed amount as per Section 12.02 of the respective EPA.
- 3.4. MSEDCL “advised” ZCGLLP through third parties, not to claim LPS/DPC for their wind power project by forcing them to fill an undertaking. In the aforementioned undertaking MSEDCL asked ZCGLLP to waive off 100% of the interest against outstanding dues in respect of all invoices raised for generation of power from their wind power project. MSEDCL further assured through third party that once the undertakings were signed, the outstanding dues would be paid within a period of two months. Feeling absolutely helpless, ZCGLLP were made to sign the said Undertakings on 3 August 2019, 3 October 2019, 26 November 2019, 24 February 2020, 29 June 2020 and 22 December 2020 stating that it would not claim the DPC upto 30 June 2020. However, till date no amount has been disbursed by MSEDCL towards the wind energy generated and used by it.

3.5. The Total Principal and DPC outstanding are as below:

Month/Year	Principal Outstanding (Rs.)	DPC (Rs.)
Apr-19	4,64,480	1,19,230
Oct-19	26,69,240	5,76,907
Dec-19	12,58,710	2,16,836
Apr-20	54,68,314	7,48,328
May-20	1,18,22,398	15,35,373
Jun-20	47,49,578	5,57,906
Jul-20	50,08,314	5,35,876
Aug-20	1,31,73,726	12,25,698
Sep-20	27,51,230	2,11,807
Oct-20	22,55,990	1,50,233
Nov-20	21,24,421	1,18,575
Dec-20	15,26,933	72,883
Jan-21	6,17,709	20,924
Feb-21	14,56,371	36,439
Mar-21	28,74,574	24,343
Apr-21	46,09,931	3,549
<b>Total</b>	<b>6,28,31,919</b>	<b>61,54,907</b>

3.6. MSEDCL has unjustly enjoyed the due amounts and has also deprived ZCGLLP of the amount, by delaying the principal and the interest payments. This illegal withholding by MSEDCL has caused serious financial losses especially during a time where a pandemic has made the financial position of ZCGLLP weaker.

3.7. With respect to the interest/ carrying cost on DPC, ZCGLLP has relied upon the following judgements:

- a. Rajasthan Electricity Regulatory Commission (RERC) Order in Petition No. RERC---543/15 of Sh. Madan Lal Paliwal, Nathdwara Vs. Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL)
- b. MERC Order in Case No. 150 of 2015 in the matter of Hindustan Zinc Limited vs Maharashtra State Electricity Distribution Co. Ltd.
- c. MERC Order dated 17 January 2018 in Case Nos. 73, 74 and 78 of 2017 and Order dated 15 June 2018 in Case No. 102 and 103 of 2018,

4. **MSEDCL in its reply dated 31 August 2021 has stated as under:**

4.1. MSEDCL has already paid the principal amount claimed by ZCGLLP in the invoices for the month of April 2019, October 2019 and December 2019 & April 2020 to June 2020. Further it is in process of making further payments of bills raised by ZCGLLP for the month of July 2020 to April 2021 (amounting to Rs.3,62,66,159/-) in terms of the payment plan already submitted before the Commission in the batch matters of Case Nos. 124, 125, 126, 148, 156, 173, 184, 185 and 186 of 2020.

4.2. The chart showing the payment done and outstanding to ZCGLLP is as below:

Statement of Outstanding and Payment details of Zaveri & Company (Gujarat) LLP (As per MSEDCL)					
Invoice Month	Invoice Submission Date	Due date	Invoice amount	Payment date	Remark
Apr-19	16-10-2019	29-11-2019	7163237.00	30-03-2020	Paid by MSEDCL on 30-03-2020
Oct-19	14-12-2019	27-01-2020	2669240.00	30-08-2021	Paid by MSEDCL on 30.08.2021
Dec-19	11-01-2020	24-02-2020	1258710.00	10-02-2021	Paid by MSEDCL on 10-02-2021
Apr-20	29-05-2020	12-07-2020	5469963.00	24-08-2021	Paid by MSEDCL on 24.08.2021
May-20	16-06-2020	30-07-2020	11822398.00	24-08-2021	Paid by MSEDCL on 24.08.2021
Jun-20	18-07-2020	31-08-2020	4758091.00	24-08-2021	Paid by MSEDCL on 24.08.2021
Jul-20	14-08-2020	27-09-2020	5014610.00	Not paid	Petitioners Dues will be cleared by the MSEDCL as per the payment plan submitted by the MSEDCL on 25.06.2021
Aug-20	18-09-2020	01-11-2020	13173726.00	Not paid	
Sep-20	29-10-2020	12-12-2020	2751230.00	Not paid	
Oct-20	25-11-2020	08-01-2021	2255990.00	Not paid	
Nov-20	23-12-2020	05-02-2021	2124421.00	Not paid	
Dec-20	13-01-2021	26-02-2021	1526933.00	Not paid	
Jan-21	18-02-2021	03-04-2021	617709.00	Not paid	
Feb-21	13-03-2021	26-04-2021	1456371.00	Not paid	
Mar-21	26-04-2021	09-06-2021	2874574.00	Not paid	
Apr-21	17-05-2021	30-06-2021	4470595.00	Not paid	
	<b>Total</b>		<b>69407798.00</b>		

4.3. ZCGLLP has claimed the DPC charges for the period of April 2019, October 2019, December 2019 and from the month of April 2020 to April 2021 in the present petition. In this regard, it is mentioned that ZCGLLP has submitted voluntarily undertakings in writing wherein it has voluntarily waived the DPC claims till June 2020.

4.4. Further, the Clause 20.04 of the PPA provides for waiver of rights and obligations of any party arising in connection with the PPA. Since ZCGLLP has voluntarily given written undertaking to waive the claim of DPC charges till June 2020 it cannot be permitted to turn around and claim the DPC for the period upto June 2020. Reliance is placed on the following judgements

- a. Hon'ble Supreme Court (SC) in the case of Ramdev Food Products (P) Ltd. V. Arvindbhai Rambhai Patel (2006) 8 SCC 726

- b. SC Case of All India Power Engineer Federation v. Sasan Power Ltd., (2017) 1 SCC 487

wherein Hon'ble Supreme Court has held that a party cannot be allowed to go back to the previous state once waiver has been made by such party -

- 4.5. For the DPC claim for the period between July 2020 and April 2021, it is submitted that the ZCGLLP may approach the MSEDCL for reconciliation.
- 4.6. ZCGLLP has further claimed carrying cost @ 1.25% per month on DPC charges in the Petition. Orders passed by the Commission in Case No. 102 of 2018, Case No. 105 of 2019 and Case No. 26 of 2019 imposing penalty @ 1.25% per month on DPC is not applicable in the present case. The above-mentioned Orders were passed by this Commission for the specific case wherein the penalty was imposed due to non-adherence of the time line specified therein. However, in the present case, ZCGLLP has not made out any case for non-adherence of the said timelines. Thus, the prayer regarding grant of 1.25% per month on DPC in the present case is devoid of merits and deserves to be dismissed.
5. At the e-hearing through video conferencing held on 1 September 2021, the representative of both the parties reiterated their submissions as made in the Petition/Reply, except issue of forcing the Petitioner to submit undertaking for waiver of DPC till June 2020. As Petitioner has not pressed such issues, MSEDCL has also not countered the same.

### **Commission's Analysis and Rulings**

6. ZCGLLP is a wind energy generator and has filed the present Petition seeking payments of its dues from MSEDCL. ZCGLLP in its Petition has alleged that to get payment of outstanding principal amount, it was forced to sign undertaking to waive off 100% DPC amount. Accordingly, ZCGLLP provided the undertaking to waive off 100% DPC till June 2020. Despite providing such undertaking, it has not received the principal payment from MSEDCL.
7. Whereas MSEDCL in its reply dated 31 August 2021 has submitted that it has made principal payment to ZCGLLP for certain months. Further, on the issue of forceful waiver of DPC, MSEDCL stated that ZCGLLP has submitted such undertaking voluntarily and waived the DPC claims till June 2020. The Clause 20.04 of the PPA provides for waiver of rights and obligations of any party arising in connection with the PPA:

*"Section 20.04 Waiver.*

*Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter or any other matter. Any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in*

writing. Such waiver shall not be deemed a waiver with respect to a subsequent default or other matter.”

8. For balance payment of bills from July 2020 to April 2021, MSEDCL stated that it shall be made as per the payment plan submitted by it to the Commission in other similar cases in Case Nos. 124, 125, 126, 148, 156, 173, 184, 185 and 186 of 2020.
9. Based on the claims of the Petitioners and MSEDCL’s submission on payment made to the Petitioners, comparative table is prepared as below:

Month/Year	Principal Outstanding as Claimed by ZCGLLP (Rs.)	Principal amount paid by MSEDCL (Rs.)	MSEDCL Comment on Principal Amount	DPC Amount Claimed by ZCGLLP (Rs.)	MSEDCL Comment on DPC
Apr-19	4,64,480	71,63,237	Paid on 30 March 2020	1,19,230	100% waiver submitted by ZCGLLP
Oct-19	26,69,240	26,69,240	Paid on 30 August 2021	5,76,907	
Dec-19	12,58,710	12,58,710	Paid on 10 Feb. 2021	2,16,836	
Apr-20	54,68,314	54,69,963	Paid on 24 August 2021	7,48,328	
May-20	1,18,22,398	1,18,22,398	Paid on 24 August 2021	15,35,373	
Jun-20	47,49,578	47,58,091	Paid on 24 August 2021	5,57,906	
Jul-20	50,08,314	Not Paid	Dues will be cleared as per the payment plan submitted by the MSEDCL on 25 June 2021	5,35,876	ZCGLLP may approach MSEDCL for reconciliation
Aug-20	1,31,73,726			12,25,698	
Sep-20	27,51,230			2,11,807	
Oct-20	22,55,990			1,50,233	
Nov-20	21,24,421			1,18,575	
Dec-20	15,26,933			72,883	
Jan-21	6,17,709			20,924	
Feb-21	14,56,371			36,439	
Mar-21	28,74,574			24,343	
Apr-21	46,09,931			3,549	

10. In view of above, the Commission notes that MSEDCL has made some payment towards principal outstanding till June 2020. For the payment of principal amount from July 2020 till April 2021, MSEDCL has submitted that the payment will be made as per the plan submitted on 2 June 2021 in similar Cases. With respect to DPC outstanding, MSEDCL has submitted that till June 2020, ZCGLLP has provided the voluntary waiver of 100% and for the DPC outstanding from July 2020 to April 2021, ZCGLLP shall approach MSEDCL for reconciliation. ZCGLLP in its Petition has submitted that it was forced to provide the DPC waiver so as to receive the Principal amount, however during the hearing ZCGLLP has not pressed this issue. Hence, the Commission is not dealing with this issue whether such DPC waiver undertaking was taken forcefully or given voluntarily, beside the fact that clause 20.04

of the EPA allows for providing such waivers. Regarding the interest on outstanding DPC, MSEDCL has submitted that such dispensation is not applicable in the present matter.

11. With above observations, the Commission notes that following issues needs to be decided in the present matter:

- a. Timelines for releasing outstanding dues.
- b. Payment of interest on delayed payment of DPC.

The Commission is addressing these issues in following paragraphs.

**12. Timelines for releasing outstanding dues:**

12.1. MSEDCL in the present matter has relied upon its payment plan submitted in other similar matters for payment of outstanding amount. The Commission in its various previous Orders in the similar matter has directed MSEDCL to commit firm timeline by which outstanding amount shall be paid to the wind generators. Recently, the Commission in its Common Order dated 7 September 2021 in Case Nos. 124, 125, 126, 148, 156, 173, 184, 185, 186 and 234 of 2020 has held as below:

*“60.1 The Commission in its respective Daily Order in these cases has directed MSEDCL to commit firm timeline by which outstanding amount shall be paid to the Petitioners. However, in reply MSEDCL has only submitted that outstanding dues till generation month of December 2020 will be paid within ensuing six months and timelines for payment of subsequent dues will be submitted latter based on availability of fund.*

*60.2 Such causal approach towards compliance of specific directives of the Commission in meeting its contractual obligations cannot be permitted. Although, considering financial issues highlighted by the MSEDCL in its reply, the Commission can allow payment of outstanding amount upto December 2020 by December 2021, MSEDCL needs to communicate specific date/s by which payment of outstanding principal amount, DPC will be paid to the Petitioners. If MSEDCL do not pay outstanding DPC amount within such communicated date, as ruled earlier in respect of these Petitioners, MSEDCL shall be liable to pay interest on outstanding DPC amount.*

*60.3 The Commission also notes contentions of Petitioners that they are required to repeatedly approach before the Commission of payment of their dues and then only MSEDCL is releasing partial amount. Such situation of generator approaching the Commission for directing Distribution Licensee to pay their legitimate dues under*

*contractual agreement is not at all desirable. MSEDCL is citing financial difficulties for such situation. The Commission in its recent Order dated 5 August 2021 on similar issues has made following observations:*

*“21. The Commission is aware of the financial difficulties of MSEDCL especially during the Pandemic period but it also notes that the payable amounts was much prior to the onset of Pandemic. The Commission would also like to advise MSEDCL about its contractual obligations and they being a state utility it is expected to lead by example, by working on options to sort out their Financial Difficulties. The least that is expected from them is timely reconciliation (if required) of amounts and payment plan which needs to be worked out transparently.”*

*In view of above observations, MSEDCL has to come out with timebound mechanism for reconciliation and payment of amount. If such mechanism and payment plan is made transparently available to all generators, then all future litigation will be avoided. Accordingly, MSEDCL is directed to act upon developing such transparent mechanism and upload the same on its website.”*

Above dispensation is squarely applicable in the present matter. Accordingly, MSEDCL needs to communicate specific date/s by which payment of outstanding principal amount, DPC will be paid to ZCGLLP.

### **13. Payment of interest on delayed payment of DPC:**

13.1. ZCGLLP by referring to Orders dated 17 January 2018 in Case Nos. 73, 74 and 78 of 2017 and Order dated 15 June 2018 in Case No. 102 and 103 of 2018 in the matter of other Wind Generators has requested for interest on delayed payment of DPC. MSEDCL has stated that imposition of such interest in the present matter is not applicable.

13.2. In this regard, the Commission notes that the interest on delayed payment of DPC is not part of EPA/PPA signed between parties. The Commission has ordered such levy of interest on delayed payment of DPC in Order dated 10 August 2016 in respect of M/s Hindustan Zinc Ltd as follows:

*“11. In view of the foregoing, the Commission directs MSEDCL to pay the late payment surcharge 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.”*

As per the above dispensation, interest on delayed payment of DPC was applicable only if MSEDCL fails to pay DPC/LPS to M/s Hindustan Zinc Ltd within 30 days as directed in above quoted Order. Similar dispensation is allowed subsequently to other Wind Generators. It is important to note that main criteria of allowing such interest is MSEDCL's failure to pay outstanding DPC within timeline stipulated by the Commission in respective orders. Thus, the Commission has given opportunity to MSEDCL to pay outstanding DPC within stipulated time failing which interest will be levied.

13.3. In the present there is no previous Order(s) of this Commission to pay interest due to failure of MSEDCL to meet its commitment (which was separately submitted to the Commission as a part of the proceeding before the Commission) on delayed payment of DPC. Admittedly, such provision is not part of EPA/PPAs signed between parties and the Commission has allowed it through regulatory Order only in case MSEDCL fails to meet extended timelines stipulated in the particular Order for payment of outstanding dues. As no such Orders have been passed in the past in respect of ZCGLLP, it will not be correct to go beyond the provisions of EPA and allow levy of interest for delayed payment of DPC in the past.

13.4. However, for any future delayed payment of DPC beyond the date/s communicated as directed in para 12 above, MSEDCL shall pay interest on outstanding amount of DPC at the rate of 1.25% per month.

14. Hence, the following Order:

### **ORDER**

**1. Case No. 81 of 2021 is disposed of in terms of rulings in para 10 to 13 above.**

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

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

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

  
(Abhijit Deshpande)  
Secretary

