

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 160 of 2021

Petition filed by M/s. Bhabani Pigments Pvt. Ltd. seeking directions against Maharashtra State Electricity Distribution Company Ltd. for recovery of outstanding dues as well as Delay Payment Charges and interest thereon

Coram

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

M/s. Bhabani Pigments Pvt. Ltd (BPPL)Petitioner
Maharashtra State Electricity Distribution Co. Ltd.Respondent

Appearances:

For the Petitioner Smt. Meenakshi Jain (Rep..)
For the Respondent : Shri. Ravi Prakash (Adv.)

ORDER

Date: 15 April, 2022

1. M/s Bhabani Pigments Pvt. Ltd (**BPPL**), a Wind Generator, has filed a Case on 26 November 2021 seeking directions against Maharashtra State Electricity Distribution **15 April, 2022** Company Limited (**MSEDCL**) for recovery of Delayed Payment Charges (**DPC**), including interest on DPC, against invoices generated under the Wind Energy Purchase Agreement (**WEPA**) and Short Term Power Purchase Agreements (**STPPA**) with MSEDCL.

2. **Prayers of BPPL in Petition are as follows:**

- i. *Accept and allow this Petition;*
- ii. *Direct MSEDCL to comply with the terms of WEPA and STPPAs in letter and spirit including the obligation to make payment immediately towards Delayed Payment Charge due till date [a sum of Rs. 5,07,562/- (Rupees Five Lakh Seven Thousand Five Hundred Sixty Two only) is due for the delayed payment of invoices raised from January 2019 to May 2021 as specified in Table 1 and 2 for reference of Hon'ble Commission;*
- iii. *Direct MSEDCL to comply with the directions given by the Hon'ble Commission in the order dated 04.01.2019 and 28.08.2019 and to pay forthwith the penal interest at the rate of 1.25% per month for the delay in payment of past DPC towards the invoices raised from April 2008 to December 2018 [a sum of Rs. 2,72,940/- (Rupees Two Lakh Seventy Two Thousand Nine Hundred Forty only) is due as mentioned in Table 3 for reference of Hon'ble Commission;*
- iv. *Direct MSEDCL to pay compound interest for exorbitant delay in payment of DPC;*
- v. *Direct MSEDCL to pay carrying cost at the rate of 15% per annum for the delay in payment;*
- vi. *Direct MSEDCL to pay accelerated penalty / higher interest rates if the payments are not released despite Orders;*
- vii. *Allow the petitioner to revive this petition in case of further default by MSEDCL under the WEPA and STPPAs;*
- viii. *Award the cost of the petition in favour of the petitioner;*
- ix. *Direct MSEDCL to comply with the terms of WEPA and STPPA by honoring its commitments under WEPA and STPPAs and to make timely payment for the future invoices as per the terms of STPPAs;*
- x. *Call for the entire record relating to the case of Petitioner and after perusing the same, pass such appropriate order or direction;*
- xi. *Pass, any other appropriate relief, order or direction, which this Hon'ble Commission deems just and proper in the facts and circumstances of the present case, in favour of Petitioner.*

3. **The Petitioner has stated as follows:**

3.1 The Petitioner is engaged in the business of power generation and has installed 1.25 MW Wind Energy based Power Plant/Wind Turbine Generator (**WTG**) at Village Kaltek, District Dhule.

3.2 The Petitioner entered into a Wind Energy Purchase Agreement (**WEPA**) dated 18

December 2006, with MSEDCL for sale of entire electricity generated by the WTG, for a term of 13 years.

- 3.3 The Petitioner has been consistently supplying electricity to MSEDCL since commencement of WEPA and has been regularly sending invoices for the power supplied to MSEDCL as per the terms and conditions of WEPA. However, there has always been a delay on part of MSEDCL in making the payments. Due to this delay, MSEDCL becomes liable to pay DPC on the delayed amount as per the relevant provision of the WEPA.
- 3.4 MSEDCL was bound to make the payment of the due amount within 45 days from the date of receipt of the bills. In case, MSEDCL fails to make the payments within 45 days from the presentation of bills, it shall be liable to pay the DPC at the rate of 2% per annum above the State Bank of India short term lending rates, for the period of delay along with the principal billing amount.
- 3.5 MSEDCL failed in making timely payments of the bills i.e. within the credit period of 45 days from the date of receipt of the bills. The period of said delay from MSEDCL's end has accumulated up to 479 days. MSEDCL did not make a payment of DPC as agreed. Thus, MSEDCL is in non-compliance of the WEPA. MSEDCL has therefore made themselves liable to pay the DPC according to above-mentioned WEPA. The details of DPC are given below:

Table-1: Outstanding DPC from January 2019 to mid- November 2019

S. No.	Month	Invoice Submission date	Invoice Amount	Due Date for Payment	Payment received Date	Delay in days	SBI PLR +2%	DPC payable
1	Jan-19	14-Mar-19	366932	28-Apr-19	31-Oct-19	186	15.80 %	29544
2	Feb-19	10-Apr-19	534515	25-May-19	31-Oct-19	159	15.80 %	36789
3	Mar-19	16-May-19	427836	30-Jun-19	31-Oct-19	123	15.80 %	22780
4	Apr-19	27-Jun-19	709640	11-Aug-19	29-Nov-19	110	15.80 %	33791
5	May-19	16-Sep-19	1290006	31-Oct-19	29-Nov-19	29	15.70 %	16091
6	Jun-19	18-Sep-19	1432840	2-Nov-19	30-Nov-19	28	15.70 %	17257
7	Jul-19	25-Sep-19	2080368	9-Nov-19	30-Nov-19	21	15.70 %	18792
8	Aug-19	3-Oct-19	1555070	17-Nov-19	30-Nov-19	13	15.70 %	8696
9	Sep-19	20-Dec-19	682724	3-Feb-20	27-May-21	479	15.20 %	136186
10	Oct-19	4-Feb-20	309173	20-Mar-20	27-May-21	433	14.90	54649

							%	
11	Nov-19	15-Feb-20	72086	31-Mar-20	27-May-21	422	14.90 %	12418
							Total	386993

- 3.6 Pursuant to the expiry of long term WEPA, the Petitioner further entered into two short term PPAs (**STPPA**) with MSEDCL dated 23 October 2019 and 12 October 2020 for a period from 13 November 2019 to 31 October 2020 and from 3 November 2020 to 31 October 2021 respectively.
- 3.7 As per the payment clause of each of these STPPAs entered into between the Petitioner and MSEDCL, a credit period of sixty (60) days from the date of receipt of the invoice is available to MSEDCL for releasing the payments.
- 3.8 As per Regulation 22 of the MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2019 (**RE Regulations**) if the payment of the invoice is delayed beyond a period of thirty days from the date of billing, a Late Payment Surcharge on simple interest basis at the one-year Marginal Cost of Funds – based Lending Rate (**MCLR**) as declared by the State Bank of India as on 1st of the respective month plus 350 basis points per annum on the billed amount, shall be levied for the period of delay by the Project Entity.
- 3.9 Pursuant to the execution of the STPPAs, the Petitioner has been raising monthly invoices on MSEDCL for the energy supplied. However, MSEDCL has time and again failed to make timely payments of the principal amounts which made them liable to pay the DPC. The outstanding DPC details are given below:

Table-2: Outstanding DPC from mid- November 2019 to May 2021

S. No.	Month	Invoice Submission date	Invoice Amount	Due Date for Payment	Payment received Date	Delay in days	DPC @ 1.25% per month
1	Nov-19	12-Aug-20	65387	11-Oct-20	15-Dec-20	65	1771
2	Dec-19	20-May-20	183397	19-Jul-20	15-Dec-20	149	11386
3	Jan-20	20-May-20	176852	19-Jul-20	15-Dec-20	149	10980
4	Feb-20	20-May-20	142280	19-Jul-20	15-Dec-20	149	8833
5	Mar-20	20-May-20	220043	19-Jul-20	15-Dec-20	149	13661
6	Apr-20	12-Jun-20	242840	11-Aug-20	15-Dec-20	126	12749
7	May-20	19-Jun-20	672089	18-Aug-20	15-Dec-20	119	33324
8	Jun-20	24-Aug-20	387303	23-Oct-20	15-Dec-20	53	8553
9	Jul-20	24-Aug-20	219257	23-Oct-20	15-Dec-20	53	4842
10	Aug-20	18-Sep-20	752669	17-Nov-20	15-Dec-20	28	8781

11	Sep-20	14-Nov-20	188402	13-Jan-21	19-Mar-21	65	5103
12	Oct-20	14-Nov-20	142952	13-Jan-21	15-Jan-21	2	119
13	Nov-20	13-Jan-21	101247	14-Mar-21	17-Mar-21	3	127
14	Jan-21	10-Feb-21	79,094	11-Apr-21	12-Apr-21	1	33
15	Feb-21	11-Mar-21	1,32,116	10-May-21	11-May-21	1	55
16	Apr-21	12-May-21	2,56,618	11-Jul-21	12-Jul-21	1	107
17	May-21	17-Jun-21	1,75,256	16-Aug-21	18-Aug-21	2	146
						Total	120569

- 3.10 Thus, total outstanding dues from MSEDCL towards DPC is to the tune of Rs. 5,07,562/- (which consists of Rs. 3,86,993/- outstanding dues for the period - from January 2019 to mid-November 2019 during the long term WEPA and Rs. 1,20,569/- outstanding dues for the period from mid- November 2019 to May-2021 during the term of STPPAs).
- 3.11 The Commission in its recent common Order dated 7 September 2021 in Case Nos. 124, 125, 126, 148, 156, 173, 184, 185, 186 and 234 of 2020 has directed MSEDCL to pay DPC for delay in payment of principal amount under Short Term PPA. The Commission held that short term EPA/PPAs, which are being signed post expiry of generic tariff based long term EPAs, should include provisions of DPC and accordingly allow levy of DPC even though no such specific clause is mentioned in the Short Term PPA. Thus, MSEDCL is bound to pay the DPC in case of delay in payment under STPPAs.
- 3.12 The Petitioner made futile attempts to recover the principal amount as well as the DPC and sent multiple demand request letters to MSEDCL for making the payment as mandated by WEPA and STPPAs but Respondent intentionally neglected to pay the same.
- 3.13 The Petitioner had to file a Petition (Case No. 293 of 2018) in the past as well, for recovering the DPC from MSEDCL. The Commission, vide its common Order dated 4 January 2019 in Case No. 293 of. 2018 along with Case Nos. 229, 230, 231 and 256 of 2018 *inter alia* granted the reliefs sought by the Petitioner. The relevant extract of the Order is reproduced below:

“1. The Case Nos. 229, 230, 231, 256 and 293 of 2018 are allowed.

2. MSEDCL is directed to release the agreed/admitted payments to the Petitioners on account of the principal amount and towards interest on the principal amount (i.e. LPS/DPC) as per the plan submitted to the Commission. Reconciliation, wherever necessary, shall be completed within two weeks from the date of this Order and a reconciled Report of outstanding dues along with exact time limit by which the payment would be made in chronological order shall be submitted to the

Commission within two working days thereafter.

3. Further, MSEDCL should note that if it deviates from its commitment given in the plan, penal interest will accrue thereafter (beyond the date committed in the plan) at 1.25% per month on any LPS/DPC. MSEDCL to submit its Compliance Report as cited earlier in this Order to the Commission.”

3.14 Despite the Commission’s clear directions and several requests made by the Petitioner, MSEDCL, during reconciliation on 11 January 2019, did not inform the Petitioner any planned date for payment of outstanding principal and DPC amounts. Instead, MSEDCL mentioned in the joint statement that schedule of payment will be given after consultation with the Director (Finance), MSEDCL. And thereafter, MSEDCL made no communication regarding schedule of payment of outstanding DPC amount. The Petitioner sent multiple reminder letters to MSEDCL but MSEDCL purposefully ignored to provide any schedule of payment.

3.15 The Petitioner had to file a Contempt Petition against MSEDCL on 21 June 2019 (Case No. 155 of 2019) for flouting the Order dated 4 January 2019 passed by the Commission. Only after filing the contempt Petition, MSEDCL released DPC amount on 3 August 2019 for the invoices raised for the period from April 2008 to June 2018 and even after filing Contempt petition, MSEDCL just paid the DPC and did not pay any interest on DPC till date.

3.16 In Case Nos. 127, 128, 155 and 157 of 2019, the Commission allowed the contempt Petition of Petitioner (Case No. 155 of 2019 pertains to the Petitioner) vide its Order dated 28 August 2019 and directed MSEDCL as follows:

“2. Maharashtra State Electricity Distribution Company Limited is directed to further reconcile the statement of account with the Petitioners within two weeks and intimate the date by which such payment shall be made.

*3. 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 any Delayed Payment Charges.**”*

3.17 In accordance with the Commission’s Order dated 28 August 2019, the Petitioner again reconciled the account statements with MSEDCL on 13 September 2019; but MSEDCL reconciled only Principal (from January 2019 to March 2019) and DPC amount (from July 2018 to December 2018), and did not reconcile any interest on DPC. Even after reconciliation and multiple reminder emails, MSEDCL paid the reconciled DPC (for the period from July 2018 to December 2018) on 26 April 2021 i.e. after 591 days of reconciliation.

3.18 Because the nature of DPC is of a charge based on time value of money, for default in timely payment of charges, the delay in payment of DPC would further lead to attraction of penal interest. The Commission in its Orders dated 4 January 2019 and 28 August 2019 had ruled that MSEDCL had to prepare a plan for making the payment and if it deviates from its commitment, the outstanding DPC would also attract penal interest at 1.25% per month. MSEDCL has made an inordinate delay in paying DPC, therefore, MSEDCL is liable to pay interest on DPC. The details of outstanding penal interest on delayed payment of DPC are given below:

Table-3: Outstanding Penal interest on delayed payment of DPC

Particulars	Period	Amount of DPC received	Date of the Commission's Order	Due Date for DPC	DPC Receipt Date	Delay Days	Rate of Interest per month	Interest on DPC
A	B	C	D	E	F	G	H	$I = (C * H * G / 30)$
Order in Case No. 293 of 2018	April 2008 - June 2018	25,89,264	04/01/19	03/02/19	03/08/19	181	1.25%	1,95,274
Order in Case No. 155 of 2019	July-2018 - Dec-2018	3,23,046	28/08/19	27/09/19	26/04/21	577	1.25%	77,666
							Total	2,72,940

3.19 MSEDCL, in contravention of the Commission's Order and the provisions of WEPA and STPPA, has withheld the amount which lawfully belongs to the Petitioner and MSEDCL is liable to make the payment of compound interest in addition to penal interest till date to the Petitioner.

3.20 On 22 March 2021, the Petitioner received email from its O & M Contractor informing that MSEDCL did not release the funds to the Petitioner since the Petitioner did not sign the undertaking for 100% waiver of the interest amount. Such high-handed act of MSEDCL illustrates the willful disobedience of the Orders and directions of the Commission as well as a complete blatant and deliberate disregard to the provisions of the EA.

3.21 MSEDCL is trying to arm twist the Petitioner by insisting on the submission of such undertaking. Neither the WEPA and STPPAs nor the directions of the Commission, contain any such provision on the basis of which MSEDCL herein lay such terms of selectively releasing payments which are rightfully due and payable to the Petitioner under the WEPA and STPPAs.

3.22 DPC is a contractual obligation accepted by MSEDCL at the time of entering into the EPA and is obligated to pay the same to the Petitioner in the event of delay in payment. The Petitioner did not succumb to the pressure of waiving off DPC in return for release

of a part of its rightful dues and instead have chosen to approach the Commission vide the present Petition. Moreover, as all the wind energy generated from the Project is exclusively supplied to MSEDCL, the Petitioner has no other means to support its day to day operations and sustain itself but the payments to be received from MSEDCL under the WEPA and STPPAs. The Petitioner is dependent solely on the monthly payments to be received from MSEDCL for the sale and supply of electricity as per the terms of the EPAs to sustain and carry out its activities. Hence, continuous non-payment of the due amount for a period of more than a year inevitably resulted in severe financial distress for the Petitioner, thereby making its position even more vulnerable vis-à-vis MSEDCL which enjoyed an upper hand and dominant position.

- 3.23 MSEDCL has unjustly enjoyed the due amounts and has also deprived the Petitioner of the amount, for whom it was legally and undisputedly entitled to, by delaying the principal and the interest payments.
- 3.24 On account of continued default on the part of MSEDCL despite numerous reminders sent to it, finally the Petitioner sent legal notice-dated 10 September 2021 to MSEDCL. Despite service of legal notice, MSEDCL is sitting over the matter, neither it has replied nor has made any payment towards outstanding DPC and interest on DPC. Hence, the Petitioner was constrained to file the present Petition.
- 3.25 The duration of the delay in making the payments has been accumulating and directly hitting the financial condition of the project. The Petitioner has been facing countless hardship in fulfilling its financial obligations towards the project. The Petitioner is required to honour its financial obligations with other parties and make various payments for a smooth operation of the project. Hence, MSEDCL is required to adhere to the terms of the signed WEPA and STPPA for making all payment towards invoices in a timely manner and for paying the DPC and interest on DPC towards the delayed payments.
- 3.26 As per WEPA and STPPAs, MSEDCL has a liberty to make the payments within forty five days and sixty days respectively after receipt of invoices from the Petitioner. This period itself is a long duration when compared with other States where it is in the circa thirty (30) days or less.
- 3.27 The Petitioner has given enough opportunities to MSEDCL to perform its obligations under WEPA and STPPA, which it has failed and neglected to comply. MSEDCL neither made interest payments nor responded to the request letters / legal notice or made any attempt to resolve the issues arising out of their non-performance under WEPA and STPPAs.
- 3.28 Therefore, the Commission is requested to direct MSEDCL to comply with the terms of WEPA and STPPAs in letter and spirit including the obligation to pay the DPC as well as interest on DPC to the Petitioner. Moreover, the Petitioner is entitled to be paid the carrying cost on such outstanding amounts till the final repayment is made thereof.

3.29 Even the balance of convenience is in favour of the Petitioner as against MSEDCL which entitles the Petitioner to seek performance of obligations of MSEDCL as per WEPA and STPPA. The WEPA and STPPA, both are mutually agreed, valid and binding contracts between the Petitioner and MSEDCL, therefore, MSEDCL ought to abide by the terms of WEPA and STPPAs.

3.30 The Petitioner has been left with no choice but to approach the Commission for pleading against the default of MSEDCL, and hence, the Petitioner should not be burdened with costs of this Petition. The Petitioner submits that it is not getting paid as per the WEPA and STPPA despite performing all its obligations under the WEPA and STPPAs. The Petitioner, therefore, submits that all costs for this Petition, including the court fees, should be reimbursed by MSEDCL to the Petitioner.

4. **MSEDCL, in its reply dated 28 January 2022, submitted as under:**

4.1 The Petitioner had filed Petition (Case No. 293 of 2018) on 15 October 2018 against MSEDCL seeking adjudication of disputes on payment of outstanding amount and DPC. The Commission, vide its Order dated 4 January 2019 ruled as under:

- a) *MSEDCL is directed to release the agreed/admitted payments to the Petitioner on account of the principal amount and towards interest on the principal amount (i.e. DPC) as per the plan submitted to the Commission.*
- b) *Reconciliation, wherever necessary, shall be completed within two weeks from the date of this Order and a reconciled Report of outstanding dues along with exact time limit by which the payment would be made in chronological order shall be submitted to the Commission within two days thereafter.*
- c) *Further, MSEDCL should note that if it deviated from its commitment given in the plan, penal interest will accrue thereafter (beyond the date committed in the plan) at 1.25% per month on any DPC.*
- d) *MSEDCL is directed to submit its Compliance Report as cited earlier in this Order to the Office of the Commission.*

4.2 As per the above-mentioned directives of the Commission, reconciliation of outstanding dues was completed on 11 January 2019 and compliance report of the same was submitted to the Commission on 29 January 2019. Further, MSEDCL had also released the payment of principal amount of Rs. 98 Lakhs for generation month of October 2017 to September 2018 to the Petitioner.

4.3 Thereafter, on 21 June 2019, the Petitioner had filed a Petition against MSEDCL under Sections 142, 146 and 149 of the EA contending non-compliance of the Order dated 4 January 2019, passed by the Commission in Case No. 293 of 2018. The Commission vide its Order dated 4 January 2019 directed as under:

- “1. Maharashtra State Electricity Distribution Company Limited is directed to further reconcile the statement of account with the Petitioners within two weeks and intimate the date by which such payment shall be made.
2. 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 any Delayed Payment Charges.”

4.4 It is pertinent to mention here that MSEDCL had already released the said DPC of Rs. 26 Lakh on 3 August 2019 itself as was prayed in Case No. 293 of 2018 and thus had complied with the Commission’s Order dated 4 January 2019. Further, as per the direction of the Commission, reconciliation of outstanding dues was also completed on 13 September 2019.

PRESENT CASE AT HAND:-

4.5 The following is the comparative chart, enumerating Petitioner claim vis-a-vis outstanding as per MSEDCL:-

(Rs. in Lakhs)

Particular	As per the Petition		As per MSEDCL			
	DPC		Principal		DPC	
	Period	Rs.	Period	Rs.	Period	Rs.
WEPA	Jan 19 to Nov 19	3.87	-	--	Jan 19 to Nov 19	3.73
STPPA	Nov 19 to May 21	1.21	Nov-21	1.58*	--	--
Penal Interest @1.25% PM	Apr 08 to Dec 18	2.73	--	--	--	--
Total		7.81		1.58		3.73

* Invoice of Nov- 2021 is due on 18.02.2022.

4.6 MSEDCL, despite facing financial crisis, has released all the principal payment under long term EPA and in case of Short Term PPA, the same has been released up to October, 2021. The outstanding DPC of Rs.3.73 Lakh will be paid as per availability of fund. Further, it is to submit that, as per the direction given by the Commission in Case No. 293 of 2018, MSEDCL had released the principal outstanding payment as per the payment plan, hence question of penal interest @ 1.25% per month as claimed by the Petitioner does not arise.

- 4.7 With respect to the STPPA, it is to submit that, till date, MSEDCL has released the payment upto October 2021 as per the terms of the STPPA.
- 4.8 MSEDCL has never denied the claim of the Petitioner. However, in present COVID scenario, MSEDCL is not in a financial position to meet out the outstanding payment as mentioned above. As per the payment plan submitted by MSEDCL on 25 June 2021, compliance report dated 3 December 2021 submitted to the Commission and its Email dated 29 November, 2021, MSEDCL will clear all the outstanding as stated therein. Further, without prejudice to the above, if MSEDCL is liable to pay any other payment to the Generator/Petitioner herein, the same will be paid to the Petitioner as per availability of funds.
- 4.9 The Commission may consider precarious financial situation of MSEDCL particularly in the current economic scenario with the ongoing pandemic situation which has badly affected recovery of dues MSEDCL from its consumers.
- 4.10 The Petitioner was very well aware of the Order dated 7 September 2021 and MSEDCL has already undertaken to make the payment by December 2021 in accordance with the payment plan submitted before the Commission and the compliance in respect of the same has been submitted to the Commission vide letter dtd. 30 December 2021.
- 4.11 In view of the above, present case may be dismissed with appropriate Orders.

5 At the E-hearing dated 15 February 2022 held through video conferencing:

- 5.1 The Parties re-iterated their respective submissions as made out in their Petition/replies.
- 5.2 The Commission observed that in its earlier Orders, the Commission had held that STPPAs, which are being signed post expiry of generic Tariff based long term EPAs, should include provisions of DPC and accordingly allow levy of DPC even though no such specific clause is mentioned in the STPPAs. Despite these clear directions, MSEDCL had not considered any DPC for the delay in payment of principal payment made by it under the STPPAs. Accordingly, the Commission directed MSEDCL to clarify its position on this issue.

6 MSEDCL, in its additional replies dated 17 February 2022, stated as follows:

- 6.1 MSEDCL is filing the present additional reply as per the directions given by the Commission during the hearing held on 15 February 2022 seeking clarifications of the payments due and payable by MSEDCL against the claims made by the Petitioner in the present proceeding.
- 6.2 The claims made by the Petitioner in the present Petition is as under:

Particular	As Per petition	
	DPC	
	Period	Rs. (in lakh)

WEPA	Jan 19 to Nov 19	3.87
STPPA	Nov 19 to May 21	1.21
Penal Interest @1.25% PM	Apr 08 to Dec 18	2.73
Total		7.81

6.3 As far as claim of the DPC for an amount of Rs. 3.87 Lakh of WEPA for the period between January 2019 and November 2019 is concerned, as per the calculations made by MSEDCL, an amount of Rs. 3.73 Lakh is payable to the Petitioner, however, same will be released to the Petitioner as per the availability of funds.

6.4 As far as the claim of DPC for an amount of Rs. 1.21 Lakh in respect of STPPA for the period between November 2019 to May 2021 is concerned, it is submitted that MSEDCL has worked out an amount of Rs. 118858.97/- as per the Order of the Commission in respect of applicability of DPC in short term PPA. Further, the payment of same may be allowed to be made as per the availability of funds.

6.5 The chart showing the claim as well as the calculation of MSEDCL is as under:

Particular	As per the Petition		As per MSEDCL	
	DPC		DPC	
	Period	Rs. (Lakh)	Period	Rs.(Lakh)
WEPA	Jan 19 to Nov 19	3.87	Jan 19 to Nov 19	3.73
STPPA	Nov 19 to May 21	1.21	Nov 19 to May21	1.18
Penal Interest @1.25% PM	Apr 08 to Dec 18	2.73	--	--
Total		7.81		4.91

6.6 Further, as far as the claim of penal interest is concerned, it is submitted that MSEDCL has complied the Orders and has paid the generator as per the payment plan (which was only in respect of Principal amount). Hence, MSEDCL is not liable to pay the penal interest @ 1.25% PM as claimed by the Petitioner.

Commission's Analysis and Rulings

7. Through this present Petition, the Petitioner is seeking direction to MSEDCL for payment of DPC for the period between January 2019 to May 2021 where the Petitioner has received the principal payment with certain delays. The Petitioner has also sought

direction to MSEDCL for payment of penal interest on DPC for the period between April 2008 to December 2018. In response, MSEDCL denied the claim towards the penal interest on DPC, however, it has accepted the claim for DPC for the period between January 2019 to May 2021 though with some difference in the amount. MSEDCL has agreed to pay the accepted amount as per the availability of funds.

8. In its defense, MSEDCL has highlighted its financial difficulties resulting from Covid 19 Pandemic situations, arrears and recovery issues and change in consumer mix. The Commission has noted the above issues in its Order in Case Nos. 97, 98, 99 & 125 of 2021 dated 27 October 2021 and observed as below:

“ 14. The Commission also notes that MSEDCL in its submission has highlighted financial difficulties due to low recovery from consumers during Covid-19 pandemic and change in consumer sales mix that has caused revenue loss of around Rs 7500 crore in FY 2020-21. In this regard, the Commission notes that in its MYT Order dated 30 March 2020, the Commission has already clarified that it will consider impact of increased working capital requirement due to Covid-19 circumstances during truingup in Mid-Term Review process, same is to be initiated in November 2022. Further, regarding MSEDCL’s claim of revenue loss of Rs. 7500 crore in FY 2020-21, the Commission notes that such claim seems to be ad hoc and premature as it has not considered the saving in ARR expenses such as reduced power purchase expenses, reduced R&M expenses and capex related expenses which would have accrued during lockdown period in Covid-19 pandemic. Therefore, reliance on such types of reasons without a detailed scrutiny cannot be addressed by the Commission and more over it cannot be a reason for non-payment of claims arising out of contractual obligations.

15. Further, the Commission notes that any delay in payment of principal amount under the PPA attracts LPS which is around 15% per annum. As per provisions of MYT Regulations, such LPS amount is not pass through in ARR and hence needs to be borne by MSEDCL itself. Under such circumstance, as a corporate entity, to reduce its financial losses, it should be priority of MSEDCL to pay all such dues within stipulated time so as to avoid payment of LPS. Under current market situations, finances are available at relatively lower rate (almost half of rate of LPS) which can be explored by MSEDCL to fulfil its contractual obligation and thereby reducing its losses. In the opinion of the Commission, it is high time for MSEDCL as a corporate entity to set right its priorities in making payment of dues.

16. The Commission also notes MSEDCL’s submission that it has crossed normative level of Working Capital requirement. In this regard, the Commission is of the opinion that while approving ARR and tariff, it has allowed all prudent expenses claimed by it including the full liquidation of its regulatory assets and

claims of the generators arising as a result of court cases. Further, the Commission has adopted Multi Year Tariff approach wherein tariff for each year of the Control Period (4 or 5 years) is declared in advance and it comes into effect automatically with 1st April of respective financial Year. Once such prudent ARR and tariff has been approved, MSEDCL has to make all out efforts to recover the same from its consumers. MSEDCL has expressed difficulty about the recovery of energy bills. It may be pointed out that there are sufficient enabling statutory provisions to ensure timely recovery and most importantly, non recovery cannot be the reason for not meeting the contractual obligations.”

Above observations are squarely applicable in present matter also.

9. Having addressed the issue of Covid 19 related difficulties raised by MSEDCL, the Commission now deals with the claims and counter claims of the Parties. Considering documents placed on record and arguments made by the Parties, the Commission needs to adjudicate on following issues in this matter:
 - a. **DPC for the period January 2019 to May 2021**
 - b. **Penal interest on the delayed payment of DPC for the period April 2008 to December 2018**

The Commission is addressing these issues in following paragraphs.

10. DPC for the period January 2019 to May 2021:-

- 10.1 In its additional reply dated 17 February 2022, MSEDCL has submitted a comparison of the Petitioner’s claim of outstanding dues and the corresponding amounts calculated by MSEDCL (reproduced at para. 6.5 above). It is seen from this comparison, that out of total claim of Rs. 5.08 Lakh. towards DPC for the period January 2019 to May 2021, MSEDCL has accepted the claim of Rs. 4.91 Lakh. Thus, there is only a difference of Rs. 17,000/- between the calculations of the Parties. Thus, MSEDCL has accepted a substantial percentage of the Petitioner’s claim. However, MSEDCL has stated that same would be released to the Petitioner as per the availability of funds. The Commission cannot allow such vague submission of MSEDCL, particularly in the backdrop of its obligations under respective EPAs and series of Orders passed by the Commission on the similar issue of non-payments/ delayed payments to the wind generators contracted by MSEDCL wherein the Commission had been insisting on specific plan and timelines for payment of outstanding dues, which was not only towards the principal amount but also for the DPC towards delayed payment of principal amount.
- 10.2 Case No. 293 of 2018 had been filed by the Petitioner seeking direction to MSEDCL for making payment of the entire outstanding amount (Rs. 51,06,326/-) due up to the issued invoice dated 27 July 2018. The Petitioner had also prayed that MSEDCL may be directed to make payment of the entire outstanding amount (Rs. 29,75,502/-) towards

DPC due till 30 September 2018. The Commission, vide its Order dated 4 January 2021, held as under:

“ 30. The Commission recognizes the fact that MSEDCL in compliance with the Commission’s earlier directions has worked out a time bound mechanism vide its letter dated 12 September, 2018, MSEDCL again reiterated the same plan in its submission dated 18 December, 2018 which is specified in para 25 of this Order, to clear the outstanding claims of all the Wind generators. The Commission expects the plan to be adhered to in a very just and fair and transparent manner to cover the payments of all the Wind generators in a chronological manner (Date wise seniority of outstanding dues) irrespective whether the Wind Generators have petitioned or otherwise. Commission did not limit the time period of making payment of DPC within 30 days as directed in its earlier Orders as cited in para 21 and 23 of this Order. Commission treats such payment mechanism an exception and one-time settlement as a practical and pragmatic way to clear long outstanding dues, given the financial situation of MSEDCL. MSEDCL is bound to make all ancillary payments like DPC, LPS etc. as are committed under PPA and so included in the payment plan, so as to bring financial discipline in its transactions with the generators.”

- 10.3 Further, at para. 31 of the aforesaid Order, MSEDCL was directed to reconcile the statement of accounts for the Petitioner not just for the principal amount, but also for the DPC which is evident from the extract of the aforesaid Order which is reproduced below:

“ 31.

..

In order to resolve issues of crystallisation of outstanding dues (disputes, if any), the Commission directs the parties involved from both the sides in the present Cases to sit together and reconcile the statement of account within two weeks from the date of this Order. At the time of reconciliation, MSEDCL shall inform the Petitioners the exact time limit in which the payment would be made to wind generators for their outstanding dues of principal and DPC amount. Further, MSEDCL should note that if it deviated from its commitment given in the plan, interest will be payable thereafter (beyond the date committed in the plan) at 1.25 % per month on any LPS/DPC. ”

- 10.4 However, MSEDCL chose not to include the timelines for DPC in its payment plan. In the present Petition, MSEDCL has admitted and clearly stated that its payment plan was only in respect of principal amount. While reconciling the account with the Petitioner, MSEDCL chose not to provide the exact time limit for payment to the Petitioner for both the principal amount as well as the DPC amount.

- 10.5 Considering the financial situation of MSEDCL, the Commission had been considering submission of payment plan by MSEDCL and its strict adherence by MSEDCL to be a pragmatic solution for addressing the issue and balancing the interest of wind generators as well as MSEDCL. However MSEDCL's response has not been upto the expected level as it has been giving priority for clearing the principal amount by providing the payment plan for principal amount only.
- 10.6 In the present case, although MSEDCL has paid the entire principal amount for the period January 2019 to May 2021, MSEDCL is yet to pay the DPC for this period and MSEDCL cannot provide a vague assurance for clearing the same. Accordingly, the Commission deems it appropriate to direct MSEDCL to release the agreed outstanding amount of DPC for the period between January 2019 to May 2021 within a month from the date of this Order. If MSEDCL deviates from this directive for payment of DPC, MSEDCL shall pay interest to the Petitioner at 1.25% per month on any DPC amount remaining to be paid. For the amount not agreed by the parties, the Commission is unable to give decision and directions in this order, as the details of the calculations and the points of disagreements have not been submitted by both the parties.
- 11. Penal interest on the delayed payment of DPC for the period April 2008 to December 2018:-**
- 11.1 The Petitioner has also claimed the penal interest on the delayed payment of DPC for the period April 2008 to December 2018 whereas it is the contention of MSEDCL that since it has paid the generator as per the payment plan, it is not liable for any penal interest.
- 11.2 In this context, the Commission notes that while making the claim for penal interest, the Petitioner has referred to the earlier Orders passed by the Commission on Petitions filed by the Petitioner in Case No. 293 of 2018 and Case No. 155 of 2019. Same is evident from the prayers of the Petitioner in the present Petition which is reproduced below:
- “ iii. Direct MSEDCL to comply with the directions given by the Hon'ble Commission in the order dated 04.01.2019 and 28.08.2019 and to pay forthwith the penal interest at the rate of 1.25% per month for the delay in payment of past DPC towards the invoices raised from April 2008 to December 2018 [a sum of Rs. 2,72,940/- (Rupees Two Lakh Seventy Two Thousand Nine Hundred Forty only) is due as mentioned in Table 3 for reference of Hon'ble Commission;”**
- 11.3 Further, while making the detailed submissions in its Petition on this issue, the Petitioner has relied upon the directions passed by the Commission in these Orders. However, it is observed that although in these Orders, the Commission had directed MSEDCL to pay the agreed payments as per the payment plan and also to undertake reconciliation of account with the Petitioner, nowhere the Commission has directed MSEDCL to release the DPC amount within a specific timeframe after issuance of those Orders. The main criteria of allowing such penal interest is MSEDCL's failure to pay outstanding DPC

within timeline stipulated by the Commission in respective Order for the Petitioner. In recent common Order dated 4 February 2022 in Case No. 107 of 2021 and batch, the Commission held as follows:

“ 14.9 The Commission notes that the interest on delayed payment of LPS is not part of EPA/PPA signed between parties. The Commission has ordered such levy of interest on delayed payment of LPS 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.

*14.10 As per the above dispensation, interest on delayed payment of LPS was applicable only if MSEDCL fails to pay 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 LPS within timeline stipulated by the Commission in respective Orders.***

14.11 In the present case also if MSEDCL deviates from directive for payment of LPS specified herein then MSEDCL shall pay interest to the Petitioners at 1.25% per month on any surcharge amount remaining to be paid.”

11.4 As mentioned earlier, in earlier Orders for the Petitioner in Case Nos. 293 of 2018 and 155 of 2019, there was no specific direction to MSEDCL to release the DPC within a certain timeframe after issuance of those Orders. Hence, the Commission is not inclined to allow the penal interest on DPC as prayed by the Petitioners. However, as mentioned at para. 10.6 of this Order, if MSEDCL fails to adhere to pay the DPC directed in this Order, it would be liable to pay the penal interest of 1.25% per month on any DPC amount remaining to be paid.

12. Hence, the following Order:

Order

- 1. The Case No. 160 of 2021 is partly allowed.**
- 2. Maharashtra State Electricity Distribution Co. Ltd. is directed to release outstanding agreed amount of Delayed Payment Charges for the period between January 2019 to May 2021 within a month from date of this Order.**
- 3. If Maharashtra State Electricity Distribution Co. Ltd. deviates from this directive for payment of Delayed Payment Charges, it would be liable to pay penal interest to**

the Petitioner at 1.25% per month on any Delayed Payment Charges remaining to be paid.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I. M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson

