

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

Case No. 123 of 2021

Petition filed by M/s. Rajmal Lakhichand Jewellers seeking direction to MSEDCL for payment @ Rs. 2.52/unit for the power injected from 01 April 2020 to 31 August 2020

M/s Rajmal Lakhichand Jewellers (RLJ)	Petitioner
Maharashtra State Electricity Distribution Co. Ltd (MSEDCL)	Respondent No. 1
Maharashtra Energy Development Agency (MEDA)	Respondent No. 2

Coram

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

Appearances:

For the Petitioner	: Shri. Ashish Singh (Adv)
For the Respondent 1	: Shri. Ravi Prakash (Adv)
For the Respondent 2	: Shri. Manoj Pise

ORDER

Date: 4 May 2022

1. M/s. Rajmal Lakhichand Jewellers (RLJ), a Wind Generator has filed this Case on 07 September 2021 to Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) seeking payment @ Rs. 2.52/unit for the power injected from 01 April 2020 to 31 August 2020 under Section 86 (1) (E) of the Electricity Act, 2003 read with Regulation 92, 93 and 94 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004
2. **Prayers of RLJ in Petition are as follows:**

- (a) *Direct MSEDCL to account the power injected by the Petitioner for the period 01.04.2020 to 31.08.2020;*
- (b) *Direct MSEDCL to submit the data/information of all “Online Applications” made on the “Online Portal” of MSEDCL post 27.03.2020 and the date of EPA’s entered by MSEDCL with all such generators;*
- (c) *Direct MSEDCL to furnish a summary statement of energy procured from all Wind Turbines on a monthly basis post 01.04.2020 till 31.08.2020 which it has submitted to MEDA as per Regulation 10.3 of the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, Its Compliance And Implementation Of Renewable Energy Certificate Framework) Regulations, 2019 or in the alternative;*
- (d) *Direct MEDA to furnish a summary statement of energy procured by MSEDCL from all Wind Turbines on a monthly basis post 01.04.2020 till 31.08.2020 which is submitted by MSEDCL to it as per Regulation 10.3 of the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, Its Compliance And Implementation Of Renewable Energy Certificate Framework) Regulations, 2019;*
- (e) *Pass such further orders as this Hon’ble Commission deems fit and proper in the interest of justice and good conscience.*

3. Petitioner RLJ in its Petitions has stated as follows:

- 3.1 The present Petition is being filed by RLJ to MSEDCL seeking directions to MSEDCL to purchase the power injected by it at Rs. 2.52 per Unit for the period 01 April 2020 to 31 August 2020.
- 3.2 RLJ is a Wind Generator who owns and operates a Wind Turbine with an installed capacity of 1.25 MW at Location No. K-432, R.S No. 61, Chakala, Nandurbar, Maharashtra. RLJ has been selling its entire power to MSEDCL right from the date of commissioning till date. RLJ’s short term EPA for 1.25 MW capacity was valid for the period 01 January 2020 to 31 March 2020.
- 3.3 MSEDCL opened its ‘Online Portal’ somewhere around 27 March 2020 to enable RE Generators to sell their power to MSEDCL. However, on account of COVID-19, the entire nation went into a complete lockdown from 24 March 2020. Hence, RLJ’s office was also completely shut and continued to remain shut till 31 July 2020. Hence, it was unable to even apply on the ‘Online Portal’ of MSEDCL.

- 3.4 On 31 March 2020, RLJ sent an email to MSEDCL highlighting its difficulties owing to the lockdown and expressed its intent to sell power to MSEDCL in coming 12 months starting 01 April 2020.
- 3.5 MSEDCL at a belated stage in February-2021 declined to accept the request of RLJ. In August, the Government of Maharashtra started 'Mission Begin Again' which prompted re-opening of the office of RLJ. Thereafter, on 08 August 2020 it applied for sale of power to MSEDCL. MSEDCL only accepted the said application dated 08 August 2020 w.e.f. 01 September 2020 and denied execution of EPA w.e.f. 01 April 2020.
- 3.6 MSEDCL cannot in any manner whatsoever defeat the purpose, intent and objective of the Electricity Act, 2003 by adopting policies and measures which are detrimental to the development and promotion of Renewable Energy in the State that too in a situation of 'Pandemic' which crippled the entire nation. High handed approach which is not in consonance with the ground realities cannot and should not be allowed to continue to cause irretrievable losses to RLJ that too without any of its fault.
- 3.7 MSEDCL's insistence on making 'Online Application' post 27 March 2020 is a complete rejection of the difficulties faced by everyone because of the lockdown on account of COVID-19.
- 3.8 MSEDCL vide its belated communication on 09 February 2021 informed RLJ that it for making an 'Online Application', they will have to simply upload one document on 'Company's Letter head' and mentioning that all requisite documents would be submitted post the lockdown is lifted.
- 3.9 MSEDCL has failed to appreciate that RLJ's request and communication expressing its willingness to sell power to MSEDCL post 01 April 2020 was no different than that of the 'Online Application' as MSEDCL itself had relaxed the same.
- 3.10 MSEDCL's Corporate Office was completely closed till June, 2020 and in fact EPAs were only entered with generators who made 'Online Application' post 27 March 2020 only after the lockdown was lifted/partially lifted. Hence, MSEDCL failed to understand that there was no difference in the treatment which RLJ requested for, vide its letters and the treatment already given by MSEDCL to those generators who had applied on the 'Online Portal' post 27 March 2020. It is also an undisputed fact that MSEDCL had been issuing LOIs with retrospective effect to generators who made online application post 27 March 2020 during the lockdown. This clearly meant that even MSEDCL was honoring the 'Online Applications' retrospectively only i.e. "Accounting power first and then entering into EPAs at a belated stage.

- 3.11 MSEDCL's insistence that power cannot be accounted without an EPA or a valid contract is negated by the findings of the Commission in Case No. 24 of 2020 wherein the Commission has clearly held that MSEDCL enters into EPAs with retrospective effect. This clearly means that MSEDCL has all the ways to account power and then enter into EPAs. In fact, the same modus-operandi has been followed by MSEDCL even during the 'Online Application' process commencing 27 March 2020.
- 3.12 The Commission vide its Order dated 21 August 2020 in Case No. 155 of 2020 has clearly held that MSEDCL cannot discriminate between generators who made online applications and would have to necessarily buy power from them without exercising any discretionary power. In the present case, RLJ requested MSEDCL to account its power without 'Online Application' as it was unable to make the same on account of nationwide lockdown. This important issue should have been considered by MSEDCL with a more liberal approach.
- 3.13 MSEDCL has failed to understand that RLJ was willing to sell its power at the same tariff i.e. Rs. 2.52/Unit which was the tariff determined for 'Online Application'. Hence, there was no loss to be caused to MSEDCL.
- 3.14 MSEDCL has been defaulting in fulfilling Non-Solar RPO targets. It is also an admitted fact that MSEDCL had also filed a Petition being Case No. 21 of 2020 before the Commission citing lack of participation of wind generators due to low rate of Rs. 2.52 per Unit because of which MSEDCL has not been able to fulfill its Non-Solar RPO. Despite the above facts, MSEDCL has chosen not to purchase power of RLJ when it has willingly applied to sell the same exclusively to MSEDCL.
- 3.15 MSEDCL is mandated under the RPO Regulations to furnish a summary statement of energy procured from different RE sources monthly to the State Agency MEDA. MSEDCL should furnish the said data to the Commission. MSEDCL's actions are contrary to its own procedures and hence cannot be allowed as allowing the same would enable MSEDCL to make windfall gains/profits at the cost of the Petitioner.
- 3.16 MSEDCL never during the period 01 April 2020 to 31 August 2020 informed RLJ not to inject power as the same would not be considered. MSEDCL vide its letter dated 09 February 2021 informed RLJ that the power injected without EPA/contractual agreement would not be considered. MSEDCL after enjoying the benefits of the power so injected, accounting the said power and after selling the said power at a belated stage took a stand which is completely illegal.
- 3.17 If the stand of MSEDCL is that no power can be accounted which has been injected without a valid EPA/contractual agreement, then all power accounted by MSEDCL through the 'Online Application' post 27 March 2020 cannot be allowed to be accounted as the same was

accounted for a large period of time without a valid EPA/contractual agreement.

4. MSEDCL in its reply dated 25 October 2021 submitted as below:

- 4.1 The Commission vide its Order dated 15 November 2017 in Case No. 155 of 2017 has approved the purchase of RE power under short term through its portal. Since then, MSEDCL has been purchasing the wind energy at Rs. 2.25 per unit for Group I and at Rs. 2.52 per unit for Groups II, III and IV through the MoU route.
- 4.2 MSEDCL vide its email dated 27 March 2020, addressed to all RE generators, including RLJ herein, informed that MSEDCL had relaxed the condition for selling short term power to MSEDCL. It was also clarified that an interested generator could now apply one day in advance before the period of sale in place of one month as was required earlier. Requirement of uploading the documents was restricted to only to one document i.e. the interested seller had to apply online by uploading only one document on letter head of the company stating that all the requisite documents would be submitted once the lockdown was lifted.
- 4.3 On 31 March 2020; RLJ had issued the email to MSEDCL for considering its email as an application for short term power sale to MSEDCL for the period between April 2020 to March 2021. This alleged application was never approved by the MSEDCL either vide an email or through any other correspondence.
- 4.4 On 19 May 2020, RLJ, through the MSEDCL's portal, applied for the short term PPA for location no. K-431 for the period between 20 May 2020 to 30 September 2020. Pertinently, it was only on 08 August 2020, RLJ applied for short term PPA for location no. K-432 (relevant location in the present Petition) through the MSEDCL portal for the period between 01 September 2020 to 31 March 2021. This being the case, it does not lie in the mouth of RLJ to say that his case is a special case which needs consideration of the Commission under its extraordinary powers. RLJ herein has approached the Commission with unclean hands and on this ground alone the present Petition deserves to be dismissed with cost. For sufficing arguments, MSEDCL referred to Judgments of the Hon'ble Supreme Court in the matter of *Udyami Evam Khadi Gramodyog Welfare Sanstha and Ors. vs. State of U.P. and Ors.* [(2008)1 SCC 560) and *K.D. Sharma vs. Steel Authority of India Ltd. and Ors.* [(2008)1 SCC 560)
- 4.5 RLJ vide its letter dated 19 November 2020 and 27 January 2021, requested MSEDCL to consider its application for short term power purchase for location no. K-432 from 01 April 2020 to 31 March 2021 in place of period 01 September 2020 to 31 March 2021.
- 4.6 MSEDCL vide its letter dated 09 February 2021, in reply, informed RLJ that in light of Covid-19 pandemic MSEDCL had relaxed the condition of submission of requisite documents

required for processing short term power purchase applications. Further, the power injected into the grid without valid EPA/PPA/OA permission is considered as lapsed and there is no liability / obligation on MSEDCL.

- 4.7 MSEDCL has relied upon the Commission's Order in Case No.150 and 151 of 2020 dated 1 February 2021. RLJ despite knowing that it had no valid and subsisting PPA went ahead and injected the power into the system without knowledge of MSEDCL. The well settled principle of law laid down by the Hon'ble APTEL in M/s Indo Rama Synthetics Vs MERC is applicable in the present case.
- 4.8 RLJ in its Petition has wrongly relied upon the Order dated 03 July 2020 passed in Case no. 24 of 2020 to suggest that the Commission had held that MSEDCL enters into EPA's with retrospective effect. MSEDCL contended that the facts of the said case were entirely different from the present case in hand. The Commission in Case No. 24 of 2020 had categorically held the Petitioner therein was not entitled to claim any compensation for the energy injected by in the absence of any valid Energy Purchase Agreement.
- 4.9 Regarding contention of retrospective honoring the online application is concerned, for the said contention of RLJ to sustain he would had to first apply online for sale of power. However, in the present case it is an admitted position that RLJ has never applied through the online portal for the concerned period.
- 4.10 As far as contention regarding MSEDCL's default to meet the RPO target is concerned, it is submitted that MSEDCL is trying to meet RPO by various options available such as purchasing RE Power thorough Competitive bidding and through short term portal. Further, MSEDCL has the choice of Purchasing REC from market. The Commission vide its Order in Case No. 41 of 2021 has allowed Respondent herein to balance the cumulative RPO shortfall till March 2023.
- 4.11 Regarding submission of monthly RPO data by MSEDCL is concerned, it is submitted that MSEDCL has been submitting its RPO data to MEDA on monthly basis and to the Commission on yearly basis for approval. The scope of the present Petition is only restricted to the issue of non acceptance of power by MSEDCL in absence of EPA with RLJ and thus, the grounds and prayers raised by RLJ in reference to MSEDCL's RPO obligation and submission of data do not hold good in the present form and manner.

5. MEDA in its Reply dated 21 October 2021 submitted as follows:

As required in Reply to Prayer Clause (d), MEDA submitted following Circle wise wind generation data for fulfillment of non-solar RPO for FY 2020-21.

MSEDCL Circle wise wind power procurement details (Mus)					
MSEDCL Circle	April - 2020	May - 2020	June -2020	July -2020	Aug -2020
Ahmednagar	15.21	27.80	22.33	26.80	54.41
Amravati			0.06	0.086	0.20
Arurangabad	0.29	0.63	0.38	0.36	0.85
Beed	22.31	39.25	25.78	25.62	51.16
Dhule	33.02	8357	47.09	31.53	84.04
Kolhapur	1.66	3.07	3.08	4.27	8.82
Nandurbar	24.25	57.47	32.40	20.08	46.68
Nasik Urban	11.79	26.23	15.60	16.95	36.50
Osmanabad	34.52	30.56	49.56	46.22	75.51
Pune Rural	14.83	22.24	10.82	24.78	53.82
Sangli	85.95	133.46	229.86	221.96	368.49
Satara	87.95	136.79	214.23	236.09	404.90
Yavatmal	3.51	4.6525	3.85	2.95	7.50
Total Wind Power	335.30	565.72	655.05	657.69	1192.87

6. First E-Hearing in this matter was held on 29 October 2021. Considering the requests made by the advocate of RLJ, the Commission adjourned the proceedings in the matter. Subsequently, the matter was heard on 25 February 2022. During the hearing Advocate appearing on behalf of RLJ rephrased/amended prayer clauses and put forth the arguments accordingly. He claimed that MSEDCL shall compensate the RLJ for injected energy. He asserted that MSEDCL has utilized the injected energy for RPO settlement, without paying for it. MSEDCL reiterated its submissions. The Commission directed both the parties to submit their Notes of arguments.

7. **RLJ elaborated the following in its Notes of Argument dated 28 February 2022:**

7.1 During the hearing on 25 February 2022, RLJ had put forth its request to slightly change/amend its prayer clause (a) and also add a new prayer clause (aa) to the Petition. The new changed prayers w.r.t Clause (a) be read as under:

(a) *Direct MSEDCL to compensate for the power injected by the Petitioner for the period 01.04.2020 to 31.08.2020, in the specific facts and circumstances of the case; and/or in the alternative,*

(aa) *Hold and declare that MSEDCL is bound to compensate the Petitioner for the power injected during the period 01.04.2020 to 31.08.2020 as the same has been utilized by MSEDCL for claiming RPO;”*

7.2 RLJ contended that Generator of Unit No. K-432 is having address as Rajmal Lakhichand

Jewellers Pune, G -8 A Parmar Chambers Saduwasvani Chauk, Pune whereas Generator of Unit No. K-431 is at Rajmal Lakhichand Jewellers , 169 Johari Bazar Jalgaon. Partners of both the firms are separate legal entity with different PAN.

- 7.3 Pune was declared as RED zone (highly effected) due to high number of COVID 19cases. Moreover, the area where the RLJ is situated was declared a Containment zone (Restricted Area) for long time (i.e. up to first week of August, 2020) whereas the city of Jalgaon was under lock down only for short time. Pune started opening from the month of August only and immediately after that application was made for sale of power for the period of 01 September 2020 to 31 March 2021.
- 7.4 It is an admitted position that during the lockdown, MSEDCL itself was issuing ‘Conditional LOIs’ at a belated stage with retrospective period to generators who were making online application. For sufficing allegation, RLJ submitted a copy of LOI dated 30 May 2020 issued to one such generator for sale of power for the period 01 April 2020- 30 June 2020.
- 7.5 MSEDCL in its Reply does not wish to divulge any information with respect to data/information of all Online Applications made on the Online Portal of MSEDCL post 27 March 2020 and the date of EPAs entered by MSEDCL with all such generators. The said information would prove beyond doubt that MSEDCL had been entering into retrospective EPAs even in the matter of online application.
- 7.6 MEDA through its Reply dated 21 October 2021 has submitted a monthly RPO data for FY 2020-2021. RLJ prayed and requested the Commission to direct MSEDCL to furnish RPO data of all individual generators etc who have been considered for fulfillment of RPO in Nandurbar Circle which would have to necessarily collaborate with the monthly data filed by MEDA.
- 7.7 RPO verification proceedings have no link with the present issue as MSEDCL has already submitted its monthly RPO data to MEDA for the past period which has now been locked in. The said data has already been submitted by MSEDCL to MEDA in compliance with the RPO Regulations. Once the RPO data for the past months has been submitted then during the RPO verification proceedings, only the said data is verified and nothing else. Hence, the defense about RPO proceedings is nothing but a hoax or probably another attempt by MSEDCL to retrofit RPO data during RPO proceedings.
- 7.8 Renewable Purchase Obligation cannot be done free of cost that too without complying with the mandate of the MERC RPO (its compliance and implementation of REC framework) Regulations, 2010 which in effect mandates that there can be no fulfillment of RPO without paying a ‘Tariff’ to Generator. The entire purpose of MERC RPO (its compliance and implementation of REC framework) Regulations, 2010 is promotion of RE. However,

MSEDCL has failed to establish as to how it promotes RE when it has been fulfilling part of its RPO from the energy fed by RLJ's plant without paying for the same.

7.9 MSEDCL's action of utilizing power for RPO without entering into an EPA and without paying for the same is now an admitted fact. Hence, the dispensation in the Commission's Order dated 01 July 2020 in Case No. 28 of 2020 is applicable in the present Case. MSEDCL should necessarily corroborate the data of MEDA with individual generator data to substantiate that it has not utilized the power injected by Petitioner for fulfillment of RPO or else the new Prayer (aa) to the Petition ought to be allowed by the Commission.

8. MSEDCL in its written notes of arguments dated 14 March 2022 submitted as under:

8.1 RLJ in his submissions has clarified that the application for K-431 was made by an entity based out of Jalgaon and has different set of Partners than that of the present Petitioner. However, RLJ has failed to produce any document on record substantiating the same.

8.2 The condition of online submission of an undertaking upon the letter head of the sellers company was equally applicable to all the concerned sellers and thus, an exception cannot be created for defaulters like RLJ in the case in hand. Further, it may not be out of place to mention here that RLJ could have easily created a letter head on the computer and could have complied with the said online application conditions. However, RLJ chose not to comply with the said condition and thus, any clarification subsequent to the said non-adherence does not come to the rescue of RLJ.

8.3 MSEDCL issued the 'Conditional LOIs' during the COVID-19 period, as even MSEDCL was working within COVID protocol, and was issued only to those generators who complied with the submission of online application, unlike the RLJ in the present case.

8.4 Renewable energy quantum in grid energy mix is increasing and thus, discipline is required from grid safety and security point of view. The contracted quantum of MSEDCL with RE Generators is increasing day by day and in future also will increase due to aggressive RPO targets.

8.5 As per Wind-Solar Forecasting & Scheduling Regulations, 2018, MSLDC requires list of wind-solar generators with whom MSEDCL or any other utilities is having valid contracts either through Open Access or through sale of power. MSLDC then makes entry of these generators in REMC software for scheduling this power generated.

8.6 Any generator who is not having valid contracts either under OA or by sale to MSEDCL is not considered by MSLDC in its schedule. Thus, any generation by these Generators creates imbalance in the system and the deviation is being charged on MSEDCL.

- 8.7 The prayer sought by RLJ is nothing but in the nature of '*roving and fishing enquiry*' which is not allowed under law and thus, deserves to be outrightly rejected.
- 8.8 Further, the Court has the power to direct production of the document by any party at any time during the pendency of the matter, but before giving a direction to a party to make discovery of document in his possession or power or for production of documents, the Court has to be satisfied that the document in question is relevant for the proper adjudication of the matter involved in the case in hand.
- 8.9 In the case at hand, RLJ herein has miserably failed to show any reason in support of his prayer (b). It would be pertinent to note that the documents, which RLJ is asking for production, does not help the Commission in the proper adjudication of the present matter, as the case of RLJ does not fall within the ambit of those seller who had applied online for sale of their power, whereas in the present case that RLJ herein had not applied online for the sale of its power. Hence, the said prayer falls outside the scope of the issue in question.
- 8.10 MSEDCL clarified that it has not utilized or rather not considered the power injected by the RLJ for the period 01 April 2020- 31 August 2020, for its RPO obligation.
- 8.11 Further, the Commission in a catena of Judgments has held that it cannot force any Distribution Licensee to buy wind power from any particular RE generator. Further, today MSEDCL has various options to comply with its RPO obligation and is doing the needful for the same.

Commission's Analysis and Ruling:

9. RLJ is a wind generator who owns and operates a Wind Turbine with an installed capacity of 1.25 MW at Location No. K-432, Chakala, Nandurbar, Maharashtra. RLJ's short term EPA expired on 31 March 2020, and it was intending to sell the power post expiry of the EPA under short term agreement for the period 1 April 2020 to 31 March 2021. RLJ highlighted that due to complete lockdown on account of COVID-19 pandemic situation from 24 March 2020, it has not been able to file its application on MSEDCL's online portal for short term power procurement. But he has expressed his intent of selling power to MSEDCL by email dated 31 March 2020. MSEDCL has deliberately discriminated RLJ and not responded to its proposal. MSEDCL informed RLJ belatedly for short term procurement from 01 September 2020 to 31 March 2021 and has not recognized the power injected during the period of 1 March 2020 to 31 August 2020.
10. During the course of hearing, RLJ argued that it intends to rephrase and amend the prayer clause (a) of its Petition, but the facts remain the same. The Commission granted permission

to RLJ to argue based on facts and rephrasing/amending the prayer. Accordingly, RLJ sought compensation at the tariff of Rs. 2.52 per unit for the power injected by it during the period of 01 April 2020 to 31 August 2020. Advocate of RLJ has further asserted that the power injected by it has been counted by MSEDCL towards its RPO compliance.

11. In its reply, MSEDCL submitted that RLJ has deliberately not complied with set procedure of filing online application. Considering COVID-19 pandemic situation and to address hardship to wind generators, MSEDCL has taken proactive steps. MSEDCL relaxed the condition for selling short term power to MSEDCL and allowed an interested generator to apply one day in advance before the period of sale, in place of one month. Further, MSEDCL allowed generators to apply based on self-undertaking on letter head of company stating that all the requisite documents would be submitted once the lockdown is lifted. MSEDCL pointed out during the same overlapping time period (20 May 2020 to 30 September 2020) for another location K-431, RLJ applied for the short term PPA. The Commission notes that though during hearing, RLJ has urged that entities owning assets at location K-431 and K-432 are distinct and separate, no documentary evidence to that effect has been provided or bought on record by RLJ.
12. Having heard the parties and after taking on record various submissions filed by all parties, the Commission frames following issues for its consideration in the present matter:
 - (a) Whether RLJ is eligible for compensation for energy injected into the Grid ?
 - (b) Whether MSEDCL has considered the energy injected by RLJ for its RPO settlement?
 - (c) Whether request for directions to MSEDCL for data pertaining to other competing generators can be granted?

The Commission has dealt with all the above issues in the following paragraphs.

13. **Issue: a) Whether RLJ is eligible for compensation for energy injected into the Grid?**

- 13.1 The Commission notes that during the period 01 April 2020 to 31 August 2020, RLJ has injected the power in to MSEDCL's grid without valid EPA/PPA. RLJ has contended that MSEDCL belatedly on 9 February 2021 informed it that power injected by it without valid EPA/PPA/OA permission was considered as lapsed and there was no obligation /liability on MSEDCL for making any payment for the same. On the other hand MSEDCL relied upon its email dated 27 March 2020 to all prospective wind generators including RLJ by virtue of which all changed modalities and simplified procedures for short term power sale were duly informed. MSEDCL contended that RLJ has done procedural lapse and need not be compensated. MSEDCL relied upon APTEL in its Judgment dated 16 May 2011 in *M/s Indo*

Rama Synthetics Vs MERC.

- 13.2 The Commission finds that RLJ is taking shelter under COVID-19 pandemic situation and lockdown for noncompliance of due procedure for tying up generator under short term sale to MSEDCL. It is evident from material on record that MSEDCL has simplified the procedure considering pandemic situation. RLJ has communicated its intent to sell the power by email dated 31 March 2020, similarly it could have easily applied through e-portal created by MSEDCL on its website. RLJ's assertion that due to lockdown it could not arrange to provide the self-undertaking on letter head is not acceptable in the present era of information technology facilities. The Commission agrees with MSEDCL that the Letter head could have been prepared on the Computer itself by an authorised person of RLJ. Hence, the Commission is not inclined to consider Covid-19 pandemic situation as limiting factor for non-submission of application on MSEDCL portal which was a standardised simplified procedure applicable uniformly for all the generators.
- 13.3 The Commission notes that APTEL in its various judgments has ruled that an entity injecting any energy into the grid without a valid contract need not be compensated. APTEL in its Judgment dated 16 May 2011 in *M/s Indo Rama Synthetics Vs MERC* has explained the importance of PPA for injecting power into the Grid and thereafter held that no compensation shall be payable for energy injected without agreement. Relevant part of the APTEL Judgment is reproduced below:

*11 In our opinion the Section 70 and 72 of the Indian Contracts Act, 1872 will not be applicable in the present case. The present case is governed by the Electricity Act, 2003 which is a complete code in itself. In the electricity grid, the SLDC, in accordance with Section 32 of the Act is responsible for scheduling and dispatch of electricity within the state, to monitor the grid operations, to exercise supervision and control over the intra-state transmission system and to carry out grid control and dispatch of electricity through secure and economic operation of the State Grid. All the generators have to generate power as per the schedule given by the SLDC and the grid code in the interest of secure and economic operation of the grid. Unwanted generation can jeopardize the security of the grid. Moreover, in this case the injection of electricity was without the consent or knowledge of the distribution licensees and the energy generated by the appellant was booked to the distribution licensees for balancing the energy generated/injected with energy consumption in the energy accounting. Accordingly, the decision in *Haji Mohammed Ishaq WD. S.K.Mohammed and others vs. Mohamad Iqbal and Mohamed Ali & Co. Reported in (1978) 2 SCC 493* relied upon by the appellant will also not be of any relevance.*

.....

13 Thus, we do not find any substance in the claim of the appellant for compensation

for the power injected into the grid without any schedule and agreement”.

(Emphasis added)

13.4 Further, the APTEL in its Judgment dated 8 May 2017 in Appeal No 120 of 2016, has interpreted its earlier two judgments and concluded as follows:

“iv. The Respondent No. 1 had also quoted two more judgements of this Tribunal in appeal nos. 267 of 2014 and appeal no. 68 of 2014. In the judgement dated 15.4.2015 in appeal no. 267 of 2014 this Tribunal has held that the Appellant (M/s Cauvery Power Generation Pvt. Ltd.) is not entitled to claim payment of infirm power injected into the grid without the approval from the Respondent (TANGEDCO) for specific duration as mentioned in the judgement till TANGEDCO conveyed its consent to purchase infirm power. In the judgement dated 30.5.2016 in appeal no. 68 of 2014 this Tribunal has disallowed the payment by Respondent (TANGEDCO) towards injection of power from COD of the Appellant (M/s OPG Power Generation Pvt. Ltd.) till approval of third party sales by TANTRANSCO as the energy was injected to the grid without the consent/knowledge of the distribution licensee and SLDC. The crux of these two judgments is also that a generator cannot pump electricity into the grid without having consent/ contractual agreement with the distribution licensee and without the approval/scheduling of the power by the SLDC. Injection of such energy by a generator is not entitled for any payments.”

13.5 The above referred Judgments of the APTEL are fully applicable in the present matter. The Commission is of the opinion that the spirit of these Judgments is important to understand as it deals with injecting energy into the Grid without valid contract doesn't create any liability on the grid owner to compensate. The Commission would like to specifically mention that the infirm nature of Wind creates more problem for the grid owner when it is being injected without any identified buyer. As stated by the APTEL, such injected energy without valid contract would lead to deviation in drawal or injection into grid and levy of corresponding penalty under Deviation Settlement Mechanism (DSM) for ensuring grid discipline.

13.6 Further in States like Maharashtra where multiple Distribution Licensees and Open Access users are connected to a interconnected Intra-State Transmission network, it would be difficult to identify or pinpoint a single Distribution Licensee / OA user who has consumed such energy injected into the grid. Therefore, to maintain grid discipline and grid security, such injection of energy without any valid EPA needs to be discouraged. Hence, such injected energy should not get any compensation for the reasons given above including the fact that in the interconnected system, any single entity cannot be identified as a user of such uncontracted injected energy.

13.7 Accordingly, the claim of compensation of RLJ is hereby rejected.

14. **Issue: b) Whether MSEDCL has considered the energy injected by RLJ for its RPO settlement?**

14.1 RLJ has contended that MSEDCL has utilized the energy injected by its Wind Generator for meeting RPO.

14.2 MSEDCL in its submission submitted that the energy injected by RLJ from the period April 2020 to August 2020 has not been utilized by MSEDCL for its RPO. For sufficing the contentions, MSEDCL submitted the statement of Wind Generation in Nandurbar Circle, which has been considered by it for RPO settlement for disputed period i.e. for Months of April-2020 to August 2020. Relevant part of said table is reproduced below:

<i>Nandurbar Circle-Wind</i>	<i>Wind generation</i>				
<i>Name of Generator</i>	<i>Apr-20</i>	<i>May-20</i>	<i>Jun-20</i>	<i>Jul-20</i>	<i>Aug-20</i>
.....
<i>Rajmal Lakhichand Jewellers</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
.....
<i>Grand Total (units)</i>	<i>24253846.02</i>	<i>57470194.36</i>	<i>32400254.57</i>	<i>20078370.34</i>	<i>46682624.18</i>
<i>Grand Total (in MUs)</i>	<i>24.25384602</i>	<i>57.47019436</i>	<i>32.40025457</i>	<i>20.07837034</i>	<i>46.68262418</i>

14.3 After perusal of Wind Generation statement of Nandurbar Circle, it is evident that MSEDCL has not considered the power injected by RLJ for RPO settlement and its report matches with the MEDA statement dated 21 October 2021.

15. **Issue: c) Whether request for directions to MSEDCL for providing data pertaining to other competing generators can be granted?**

15.1 The Commission notes that RLJ in its Prayer clauses (b), (c) and (d) seeks directions to MSEDCL and MEDA (only in case of (d)) for furnishing certain data/summary statements.

15.2 The Commission notes that in any proceeding, for arriving at a logical conclusion certain data is required and the same need to be a part of that proceedings. Present case is filed by RLJ seeking compensation for energy injected by it. Hence, data related to the same is important and the same has been considered while providing ruling in earlier part of this Order.

15.3 In the opinion of the Commission, prayer seeking directions to MSEDCL to submit the data/information of all 'Online Applications' made on the Online Portal of MSEDCL post 27 March 2020 and the date of EPA's entered by MSEDCL with all such generators is beyond the scope of the main issue in the present proceedings and hence cannot be allowed.

15.4 There are legal options available for petitioner to seek such information including the Right to Information Act.

16. Hence, the following Order.

ORDER

1. The Case No.123 of 2021 is dismissed.

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

Sd/-
(Sanjay Kumar)
Chairperson

