

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 13 of 2022**

**Case of Mahati Hydro Power Vidharbha Private Limited seeking reimbursement of various claims pertaining to its 2x12 MW Gosikhurd Small Hydro Project.**

**Coram**

**Sanjay Kumar, Chairperson  
Mukesh Khullar, Member**

M/s Mahati Hydro Power Vidharbha Private Limited. (MHPVPL) .....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) ..... Respondent

Appearance:

For the Petitioner : Adv. Deepa Chawan

For MSEDCL : Adv. G. Saikumar

**ORDER**

**Dated: 26 May, 2022**

1. Mahati Hydro Power Vidharbha Private Limited. (**MHPVPL / Petitioner**) has filed a Case on 06.01.2022 under Section 61(d), 86(1)(b) and 86(1)(e) of the Electricity Act (**EA**), 2003 and Regulation 25 of MERC (Terms and Conditions of RE Tariff), Regulations, 2015 (**RE Tariff Regulations, 2015**) and the relevant provisions of Energy Purchase Agreement (**EPA**) dated 25.07.2016, seeking direction to MSEDCL for reimbursement Land Lease Charges paid to Government of Maharashtra's Water Resource Dept. (GOMWRD) and GST on Land Lease and Water Cess Charges required to be paid to GOMWRD for its 24 MW Gosikhurd Small Hydro Project (**SHP**).

2. **The Petitioner's main prayers are as follows:**

- i. *"To allow the reimbursement of the past claim of Land Lease Charges for the Gosikhurd Small Hydro Project which has been paid to GoMWRD along with the applicable taxes/duties thereon;*

- ii. *To allow the reimbursement of the claim towards Land Lease Charges for the Gosikhurd Small Hydro Project for the balance period of the EPA;*
- iii. *To allow reimbursement of applicable GST for the entire term of the EPA which is required to be paid to GoMWRD on the Invoice raised by them against Land Lease Charges and Water Cess;*
- iv. *To direct Maharashtra State Electricity Distribution Company Limited for reimbursement of various charges along with applicable taxes/duties paid thereon for Gosikhurd Small Hydro Project. which are not factored in the levelized tariff;---*

**3. The Petition states as follows:**

- 3.1. The Petitioner is a Company incorporated under the provisions of the Companies Act, 1956, engaged in generation of Hydro Electricity.
- 3.2. The Petitioner has been awarded 24 MW (2x12 MW) Gosikhurd SHP at Tehsil Pavani, District Bhandara, as per the Government of Maharashtra's (GoM's) Hydro Policy, 2005 (GoM Policy 2005) as amended from time to time after following the due process. Subsequently, on 10.01.2013, GoM's Water Resources Department (GOMWRD) entered into Hydro Power Development Agreement (HPDA) with the Petitioner for Gosikhurd SHP.
- 3.3. The Clause A-11 of the GoM Policy, 2005 stipulates the various charges that developers are required to pay to GoMWRD such as Water Royalty, Charges for the maintenance of the intake structure and Land Lease Charges. Similarly, the clause A-13 of the said Policy puts the responsibility of paying taxes and duties and other levies as made applicable by the State, Central and Local Governments, on the developer.
- 3.4. Pursuant to the GoM Policy 2005, EPA was signed with MSEDCL on 25.07.2016 for sale of 100% electricity generated from the Project. by virtue of the EPA, it is binding on the Petitioner to sell all the generated electricity from the Project to MSEDCL during EPA **tenure (upto 25.12.2030)** at the levelized tariff of Rs. 4.11/kWh as approved by the Commission vide Generic Tariff Order dated 28.04.2017 in Case No.33 of 2017 (Suo-Motu Generic Tariff Order applicable in the present case).
- 3.5. On 10.11.2015, MERC RE Tariff Regulations, 2015, came into force. The Regulation 25 of the RE Tariff Regulations, 2015 provides that the Tariff determined under these Regulations shall be exclusive of taxes and duties on generation and sale of electricity from renewable energy project as may be levied by the appropriate Government. Further, taxes and duties levied by the appropriate Government on generation and sale of electricity from renewable energy project shall be allowed as pass through on actual incurred basis. The Commission has duly approved the pass through of the taxes, charges, cess etc. in the RE Tariff Regulations, 2015. The action of MSEDCL by not reimbursing the same is contrary to the Regulations and the terms of the Agreement.
- 3.6. Clause 2.1.26 of the HPDA puts the responsibility of payment of all taxes, duties and cess on the developer. As per the provisions in the Article – IV of the HPDA signed with GoMWRD,

the Petitioner is liable to pay Land Lease Charges and Water Cess to the GoMWRD alongwith applicable taxes / duties thereon.

3.7. Further, as per the provisions of the EPA, MSEDCL has to reimburse these charges to the Petitioner. However, MSEDCL is reimbursing only Water Cess. MSEDCL vide letter dated 13.10.2021, has expressed its inability to reimburse other charges / taxes claimed by MHPVPL vide its letters dated 26.07.2021, on the ground that these charges are not approved by the Commission. Hence, the Petition is filed seeking reimbursement of the charges from MSEDCL.

3.8. The details of claims of the Petitioner are summarised as follows:

**a) Land Lease Charges:**

<b>Sr. No.</b>	<b>Period</b>	<b>Land Lease Charges - Rs **</b>
1	26 December, 2017 to 31 March, 2018	7,658
2	1 April, 2018 to 31 March, 2019	32,163
3	1 April, 2019 to 31 March, 2020	33,771
4	1 April, 2020 to 31 March, 2021	35,460
5	1 April, 2021 to 31 March, 2022	37,233
	<b>Total **</b>	<b>3,01,873/-</b>

*\*\* Total of Sr.No.1 to 5 is Rs. 1,46,285/-. However, in the Petition it is mentioned as Rs.3,01,873/-.*

**b) Details of GST on Land Lease Charges and Water Cess**

<b>Period</b>	<b>GST - Land Lease Charges -Rs</b>	<b>GST - Water Cess -Rs #</b>	<b>Total -Rs</b>
26 Dec, 2017 to 31 March, 2018	1,378	54,182	55,560
1 April, 2018 to 31 March, 2019	5,789	5,83,546	5,89,335
1 April, 2019 to 31 March, 2020	6,079	8,84,465	8,90,544
1 April, 2020 to 31 March, 2021	6,383	10,04,925	10,11,308
1 April, 2021 to 31 March, 2022	6,702	4,49,214	4,55,916
<b>Total</b>	<b>26,331</b>	<b>29,76,332</b>	<b>30,02,663</b>

**# GST on Water Cess charges is considered for payment upto August, 2021**

3.9. The Petitioner is only claiming reimbursement of principal amount towards various charges / taxes and no interest is being claimed on the amount already paid in the overall interest of consumers.

3.10. On 12.04.2017, the Parliament and State Legislative Assemblies introduced Goods and Services Tax (GST). Accordingly, GST liability has accrued from July 2017 onwards which

is payable under Reverse Charge Mechanism (RCM) for various payments made to GoMWRD, such as Land Lease Charges, and Water Cess.

3.11. The Commission and/or Hon'ble APTEL in various judgments have ruled that, any notification of new law or amendment of existing law or introduction / change in tax, duty or cess, subsequent to signing of PPA / EPA qualifies as Change in Law. Accordingly, the enactment of GST on 1 July, 2017 is post development after the signing and execution of EPA and it needs to be treated as Change in Law.

3.12. The Petitioner vide its letter dated 26.7.2021 has requested MSEDCL to reimburse the aforesaid charges viz. Land Lease Charges and GST on Land Lease Charges and Water Cess Charges. The above reimbursement claim to MSEDCL was made on the basis of the provisions of the EPA. In response, MSEDCL vide letter dated 13 October 2021 has replied as follows:

- a) The Commission vide its Order dated 14.07.2010 in Case No. 20 of 2010, in matter of determination of generic tariff, in reply to the Comments / suggestion raised by SHP Generator Dodson Lindholm Hydro Power Project Ltd., has not clarified regarding allowance of pass through of maintenance charges that are required to be paid to GoMWRD.
- b) The Commission has factored in the land charges for capital cost indexation while determining the generic tariff.
- c) As per the provision of the EPA, reimbursement of the charges needs to be approved by the Commission and to be billed through the supplemental invoices. Since the same are not approved by the Commission, these charges cannot be considered for reimbursement. Hence the supplemental invoices are returned to the Petitioner.

3.13. The Petitioner's counter on the above submission of MSEDCL is as follows:

- a) The Commission in its Order dated 9.11.2005, in Case No. 25 of 2004, ('Determination of Tariff on SHP Projects within Maharashtra) has considered and factored Land Lease Charges and the Intake Maintenance Charges, as specified in the GoM SHP Policy.
- b) However, while determining generic tariff for FY 2012-13, the Commission has not considered both the Land Lease Charges and the Intake Maintenance Charges in the tariff structure and hence same are entitled for reimbursement on pass through basis. Hence, these expenses need to be recovered from MSEDCL for past and balance period of the EPA as incurred.
- c) For SHP Projects land cost is not covered in the definition of the Capital Cost in the RE Tariff Regulations, 2010.
- d) The land lease charges are over and above the capital cost which are mandatory in nature and required to be paid under the provisions of HPDA and Hydro Policy, 2005.

3.14. The Petitioner has relied upon following Commission's Orders supporting its claims:

- a) **Service Tax Claims:** The Petitioner referred to the Commission's Order in Case No. 168 of 2020 dated 24.11.2020. (Case of MSPGCL seeking removal of difficulties with regards to payment of Rs.130.46 Crore against demand of Service Tax liability claimed by GOMWRD for the period of FY 2009-10 to FY 2014-15).
- b) **GST as Change in Law:** MHPVPL referred to the Commission's Order in Case No 124 of 2018 dated 3.08.2018. (Petition of Adani Power Maharashtra Ltd. for compensation in Tariff on account of Change in Law in respect of PPA dated 08.09.2008, 31.10.2010, 09.08.2010 and 16.02.2013 with MSEDCL).
- c) **Reimbursement of various charges:**
- MHPVPL relied on the Commission's Order dated 26.03.2021 in Case No. 208 of 2020 (Petition of M/s Ashoka Sthapatya Pvt. Ltd for determination of Tariff for sale of electricity from 1 MW Hydro Power Project to be commissioned at Morna dam, near Gureghar Village, Tal. Patan, Dist. Satara) wherein the Commission has allowed reimbursement / recovery of land lease rent, maintenance charges and water Cess on actual basis.
  - The Commission's Order dated 17.08.2021 in Case No. 63 of 2021, Case of Mahati Hydro Power Veer Project Private Limited for determination of Project Specific Tariff for Veer Hydro Electric Project (2x4.5MW) under Renovation and Modernisation, wherein the Commission has allowed reimbursement / recovery of various charges on actual basis.

3.15. Summary of claim of reimbursement of various charges and taxes from MSEDCL is as follows:

Sr. No.	Cost Parameter	Period of claim	Amount in Rs.	Reference of EPA	Reference of HPDA	Remarks/Status
a)	Land Lease Charges	26.12.2017 to 31.03.2022	3,01,873	6.5	4.1	Amount paid by MHPVPL to GoMWRD.
b)	Water Cess/Royalty Charges	26.12.2017 to 31.08.2021	1,65,35,178	6.3	4.3	MSEDCL has reimbursed the charges to the Petitioner.
c)	GST on Land Lease Charges and Water Cess	26.12.2017 to 31.03.2022	30,02,663	6.1.1, 6.1.2 and Article 8(A)	2.1.26	Amount Payable by MHPVPL to Tax Authorities.
	<b>Total amount Rs.(a-b+c) (Excluding charges</b>		33,04,536			Total Principal Amount for which

Sr. No.	Cost Parameter	Period of claim	Amount in Rs.	Reference of EPA	Reference of HPDA	Remarks/Status
	reimbursed by MSEDCL towards Water Cess as per above (b))					reimbursement is sought without any interest.

*Note: GST on Water Cess charges is considered for payment upto August, 2021*

**4. MSEDCL's Reply dated 24.03.2022 on the following issues is summarised as follows:**

**A) The Petitioner's claim is barred by the Commission's Order in Case No. 20 of 2010:**

- 4.1. Refund of water royalty charges as well as maintenance charges were claimed in Case No. 20 of 2010 (Case for determination of Generic Tariff under Regulation 8 of the RE Tariff Regulations,2010). However, in the said Order the Commission had allowed refund only towards water royalty charges and had not approved the prayer of refund for maintenance charges.
- 4.2. The relevant rulings of the Commission's Order dated 14.7.2010 in Case No. 20 of 2010 is as follows:

*“---1.23. WATER ROYALTY CHARGES FOR SHP PROJECTS*

*Stakeholder Comments/ Suggestions*

*Dodson Lindblom Hydro Power Private Limited submitted that the Draft Order has not stated about Water Royalty and Maintenance Charges that are required to be paid to the Water Resources Department, Government of Maharashtra. However, as per the earlier SHP Policy and also as per Government of Maharashtra Policy of September 2005, Water Royalty is a pass-through expense.*

*Commission's Ruling*

*The Commission clarifies that the water royalty charges imposed by the State Government have not been factored in while determining tariff and the same shall be allowed as 'pass through' as actually incurred.” ---[Emphasis Supplied]*

- 4.3. As per the aforesaid Commission's Order, MSEDCL has been duly reimbursing to the Petitioner, Water Cess Charges, which has also been admitted by the Petitioner.

**B) Claim of Land Lease Charges already included in Capital Cost Indexation of SHP:**

- 4.4. The Commission in its Order dated 29.4.2011 in Case No. 39 of 2011 (Case for determination of Generic Tariff for the second year of the first Control Period under Regulation 8 of the RE Tariff Regulations,2010) has specifically provided for a capital cost indexation and duly factored the land cost i.e., land lease charges. Admittedly, the RE Tariff Regulations, 2010 as

well as all subsequent Regulations and Commission's Generic Tariff Orders including Case No. 39 of 2011 are applicable and binding upon the Petitioner. Hence, the Petitioner is barred to claim the land lease charges separately.

**C) MSEDCL not obligated to refund amount under pass through mechanism in absence of approval by the Commission:**

- 4.5. The Petitioner is relying on the Clause 6.5 of the EPA, executed between the Petitioner and MSEDCL for reimbursement of land lease charges, maintenance charges, and taxes thereon.
- 4.6. However, when these charges were raised earlier in the Generic Tariff Order in Case No. 20 of 2010, same were specifically not approved by the Commission. MSEDCL, under the applicable contract, is not legally as well as contractually obligated to allow the reimbursements as sought by the Petitioner.
- 4.7. Furthermore, as Land Lease Charges as well as maintenance charges itself are not payable. Hence, GST and Service Tax on these charges are not payable.

**D) Response to the reply of MHPVPL to MSEDCL letter dated 13.10.2021:**

- 4.8. The Petitioner has relied upon the Order of the Commission in Case No. 25 of 2004 (Generic Tariff Order) to emphasize that land lease charges, and the maintenance charges are both factored in the tariff structure of the said Order. However, the said order is not relevant in light of subsequent generic tariff orders passed by the Commission for applicable control period as in the Case No. 20 of 2010 and 39 of 2011.
- 4.9. It is an undisputed and settled position of law that the subsequent orders would prevail as a binding precedent. In the present matter, as claimed by the Petitioner, tariff Orders applicable to the old control period would not be applicable.
- 4.10. The Commission vide its Order dated 29.4.2011 in Case No. 39 of 2011 has already factored the land cost in the Capital Indexation. Hence, the contention of the Petitioner that land lease charges do not form a part of the definition of Capital Cost in the RE Tariff Regulations, 2010 and land lease charges are over and above the capital cost is not true.
- 4.11. In view of the aforesaid facts, MSEDCL is not obligated to pay additional charges and the taxes as claimed by the Petitioner.

**5. In the Rejoinder dated 28.3.2022 on reply of MSEDCL, the Petitioner reiterated the submission as made out in the Petition with the following additional points:**

- 5.1. On the contention of MSEDCL that maintenance charges are barred by the Commission's Order in Case No. 20 of 2010, the Petitioner submitted that it has not claimed any maintenance charges in the Petition.
- 5.2. Para 1.7 read with para 4.3 of the Order in Case No. 39 of 2011 referred by MSEDCL only provide for indexation for Capital Cost and nowhere specifies that it includes land lease charges payable to GOMWRD.

- 5.3. The Clause 6.5 of the EPA dated 25.07.2016 provides for reimbursement of any other charges and amounts payable to the Seller, including but not limited to Water Cess payable to GOMWRD. The express word used in the “EPA” and particularly the term “*included but not limited to*” in the clause 6.5 widens the scope of the stipulated payments to be made to GOMWRD, to be a pass through.
- 5.4. The Land Lease Charges are payable to GOMWRD as per the relevant provisions in the HPDA and State Hydel Policy, but not factored in generic tariff Order in Case No. 20 of 2010 and Case No. 39 of 2011. Hence, Land Lease Charges along with taxes and duties are required to be allowed as pass through expenses on reimbursement basis.

**6. At the E-hearing through video conferencing held on 29 March, 2022:**

- 6.1. Advocate of the Petitioner re-iterated its submission as made out in the Petition and the Rejoinder. She also referred to the provision of the EPA, HPDA, RE Tariff Regulations, 2015 and Orders of the Commission in justification of its claim.
- 6.2. Advocate of MSEDCL re-iterated its submission as made out in its Reply.
- 6.3. The Commission pointed out that claims of the Petitioner belong to year 2017. In replies to the queries of the Commission, MSEDCL’s Advocate stated that these claims are barred by the law of limitation and the Petitioner is not entitled to recovery of such claims.
- 6.4. The Advocate of MSEDCL also referred to the various provisions of the EPA, HPDA, RE Tariff Regulations, 2015, Commission’s Orders stating that the Petitioner is not entitled to recovery of the claims over and above the generic tariff as determined by the Commission.
- 6.5. The Advocate of the Petitioner pointed out that submission of MSEDCL and written argument are entirely different and needs to be replied in writing.
- 6.6. The Advocate of MSEDCL agreed to the contention of the Petitioner and stated that it will file written argument note within a week.
- 6.7. As per the request of MSEDCL, the Commission granted a week time to MSEDCL to file its written argument. The Commission also granted a week time to the Petitioner to submit rejoinder if any.

**7. MSEDCL in its additional submission dated 6.4.2022 reiterated the submission with following additional points:**

**A) Incorrect reliance on RE Tariff Regulations, 2010:**

- 7.1. Claim of reimbursement of Land Lease Charges has arisen under EPA dated 25.07.2016 wherein RE Tariff Regulations, 2015 along with its first amendment in the year 2017(RE Tariff Regulations,2015) and subsequent RE Tariff Regulations, 2019 are applicable and not the earlier RE Tariff Regulations,2010.



**B) Claim for "Land Lease Charges" are part of the "Capital Cost" under Applicable RE Tariff Regulations:**

- 7.2. The land lease charges are not calculated based on per unit generation of power, akin to water cess, hence land lease charge is fixed nature of cost and not as variable cost. The claim of "Land Lease Charges" cannot be considered as separate and distinct from the "Land Cost" which is part of the "Capital Cost" under Regulation 13 of RE Tariff Regulations, 2015 as well as RE Tariff Regulations 2019, being fixed cost and not variable nature. Hence, while determining the generic tariff cost of the land has been factored in generic tariff and cannot be treated over and above generic tariff.

**C) Claims of the Petitioner Barred by Law of Limitation:**

- 7.3. The claims of the Petitioner are for reimbursement of "Land Lease Charges" from the period 26.12.2017 and GST thereon. In addition to the past claims, the Petitioner has sought reimbursement of the claim along with taxes for balance period of the EPA.
- 7.4. It is not the case that claim amounts as well as interest thereon were regularly being paid by the Petitioner to GOMWRD and in continuation were demanded from MSEDCL. Also, it is not the case that on account of denial of the claims by MSEDCL for past period, the Petitioner is constrained to file the Petition with a continuous cause of action for past claims beyond three years.
- 7.5. Land Lease Charges were duly paid by the Petitioner as per Clause 2.1.22 of the HPDA to GOMWRD as it was Petitioner's responsibility to do so. Further, the Petitioner has paid Land Lease Charges to GOMWRD without claiming from MSEDCL. The Petitioner raised the claim first time on 26.7.2021 before MSEDCL. Hence, for the past periods beyond three years (earlier than 13.10.2018) from the date of MSEDCL's rejection of reimbursement claims i.e. on 13.10.2021, are evidently being hit by law of limitation and cannot be taken up now at such a belated stage for any consideration. MSEDCL even on merits of the claims from 31.10.2018 onwards as allegedly raised in the Petition are disputing for the aforementioned reasons and therefore should not be construed as being admitted under dealing the limitation issue for prior period thereto.
- 7.6. The Petitioner has filed the Petition upon imposition of service tax by the Central Excise Department through issuance of show cause notices upon the Petitioner and thereafter upon payment of such taxes by adopting the amnesty scheme, Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. The Petitioner is not seeking enforcement of any of its right under the EPA from the Commission for reimbursement of such charges. Had that would have been the case, the present Petition or the claims would have been pressed for reimbursement from MSEDCL right in the year 2017 itself.
- 7.7. In as much as the claim towards the taxes is concerned, upon adopting the amnesty scheme, the Petitioner has admitted the liability of taxes. Further, admission of tax liability under the scheme was a commercial decision of the Petitioner to avoid further imposition of interest and penalty. Since there is an admission of liability qua service tax, the same relates

back for its payment obligation right back from the year 2017 and the principal thereof i.e., "Land Lease Charge" from the year 2017.

- 7.8. The Petitioner for the past claims from year 2017 and taxes thereof had belatedly filed the Petition in January, 2022 seeking refund of claims barred under Limitation Law. Merely, because the taxes on "Land Lease Charges" are paid by the Petitioner in January, 2020 does not change the onus of liability for the payment of the same in the year 2017. Though the taxes were paid in delay by the Petitioner while adopting the amnesty scheme, wherein the Petitioner was given benefit of non-payment of interest and penalty thereof. It does not mean that right to claim reimbursement for both principal amount as well as taxes thereupon would also arise from the date of self-chosen delayed payment date, ignoring the date of actual payment of Land Lease Rent and the actual obligated date of payment of taxes thereupon.
- 7.9. Law of Limitation bars such delayed claims. Further, assuming though not admitting, liability to pay, if any arises then the same would be limited to past three years from the date of MSEDCL's rejection of claim vide letter dated 13.10.2021. Therefore, no claim three prior from 13.10.2021 can be considered.
- 7.10. It is well settled law that a party who have slept over his rights cannot be given advantage at a belated stage. Further, in the various Judgments, the Hon'ble Supreme Court has categorically laid down that a person who was not diligent in exercising his rights and allowed third party rights to accrue, cannot be permitted to agitate the right after an inordinate delay. Reliance is being placed on Maqbool Fatma (Smt) Vs. Deputy Custodian General reported as (1996) 5 SCC 493 and on the case of Union of India v. Harnam Singh, reported as (1993) 2 SCC 162. The Hon'ble Court has ruled that law of limitation may operate harshly but it has to be applied with all its rigor and the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.

**D) EPA mandates to be diligent with Applicable Laws:**

- 7.11. Article 4.3 of the EPA not only mandates rather obligate the Petitioner to always conform with all material applicable laws diligently. Hence, the Petitioner cannot plead non-conformity with applicable laws.
- 7.12. The applicability of service tax component was admitted by the Petitioner while adopting the amnesty scheme, therefore mandate of conformity with applicable laws squarely applies to the Petitioner and deviation whereof should not be permitted.
- 7.13. The requirement of diligence for the applicable laws immediately comes into play upon admission of the tax liability from the year 2017 for both the claims of principal amount as well as its tax component. For the non-diligences of the Petitioner from that relevant time, end consumers cannot be burdened with additional cost.

**E) Findings of Case No. 63 of 2021 cannot be relied as it is distinguishable on facts:**

7.14. The Petitioner relied upon the findings of the Commission in Order dated 17.8.2021 in Case No. 63 of 2021 where in the Commission has allowed the recovery of annual Land Lease Charge. In the said Order there was a distinct provision in the bidding document itself, which mandates for supply of 13% of power generated to the State Government free of cost, hence land lease charges were being paid and so being allowed to be reimbursed by the Commission. In view of the Petitioner's reliance on the said Order is incorrect, as the same fact is not involved in the present case.

**8. The Petitioner's Rejoinder dated 13.4.2022 on additional submission of MSEDCL is summarised as follows:**

**A. Claim for "Land Lease Charges" are part of the "Capital Cost" under Applicable RE Tariff Regulations:**

8.1 Generic tariff determined by the Commission is single part tariff and there is no breakup into fixed or variable charges. Therefore, the contention of MSEDCL that land lease charges are fixed in nature has no basis. The land lease charges are over and above the capital cost which are mandatory in nature and required to be paid under the provisions of HPDA and Hydro Policy, 2005.

8.2 Clause 6.5 of the EPA entered into by MSEDCL with the Petitioner provides for reimbursement of any other charges and amounts payable to the Seller, including but not limited to Water Cess payable to GOMWRD. The express word used in the "EPA" and particularly the term "included but not limited to" in the clause 6.5 widens the scope of the stipulated payments to be made to GOMWRD, to be a pass through. Hence, the Petitioner is entitled for recovery of Land Lease Charges.

**B. Claims of the Petitioner barred by Law of Limitation:**

8.3 Claim of the Petitioner is twofold i.e., reimbursement of Land Lease Charges paid to GOMWRD and taxes and duties thereon.

8.4 On 12.04.2017, the Parliament and State Legislative Assemblies introduced laws related to the Goods and Services Tax (GST). On the same date, the Maharashtra GST Act, 2017 also came into force for levy and collection of tax on intra-State supply of goods or services or both. Based on the GST Laws, Service tax was replaced with GST from 1 July 2017.

8.5 Accordingly, GST liability has accrued from December 2017 onwards which is payable under Reverse Charge Mechanism (RCM) for various payments made to GOMWRD, such as Land Lease Charges, and Water Cess.

8.6 The Petitioner as per HPDA has made payment to GOMWRD and is now seeking reimbursement of the said charges. It is settled position of law that a party that has performed its obligations under a contract cannot be deprived of the legitimate entitlement. The Petitioner referred to the Judgment of the Hon'ble APTEL in the matter of Power Company of Karnataka Limited Through its Managing Director and Another Versus

Udupi Power Corporation Ltd. In the said matter the Hon'ble APTEL held that supply of electricity by a generator to a licensee result in a continuing cause of action and therefore an exception to the Rule of Limitation, under Section 22 of the Limitation Act, 1963. Therefore, the claim of the generator being a continuous cause of action is not barred by limitation.

- 8.7 The Petitioner reiterated the provisions of the Commission's past Order in Case No. 168 of 2020 and 132 of 2021 justifying its claims. Claim of taxes is well settled position as per Orders of the Commission in Case No. 168 of 2020 and Case No. 132 of 2021 and are required to be reimbursed by MSEDCL and are within the period of limitation.

**C. Finding of Case No. 63 of 2021 cannot be relied as it is distinguishable on facts:**

- 8.8 MSEDCL has erroneously contended that since bidding document mandate supply of 13% power free of cost to the State Government, land lease charges were being paid in lieu thereof and hence being allowed to be reimbursed by the Commission.
- 8.9 The Commission while determining tariff based on RE Tariff Regulations in Case No. 63 of 2021 has allowed land lease charges as well as cost towards 13 % free power along with applicable taxes and duties. Accordingly, Case No 63 of 2021 is squarely applicable to the present case. Further the Commission in its Order dated 26.3.2021 in Case No. 208 of 2020 has also allowed reimbursement/recovery of various charges on actual basis where the issue of 13% free power was not involved.
- 8.10 The Orders of the Commission in Case Nos. 63 of 2021 and 208 of 2020 are related to project specific tariff. The Commission has used the tariff norms specified in the RE Tariff Regulations as was being done for determination of generic tariff as per respective RE Tariff Regulations. The additional charges (Intake maintenance and land lease charges and taxes thereon) being allowed by the Commission to be reimbursed in Case No 63 of 2021 and 208 of 2020 over and above the tariff determined by the Commission. Accordingly, the said ratio of the order is applicable to the present case. Hence the Petitioner is entitled to the reimbursement of the various charges and taxes from MSEDCL and the factum of generic or project specific will not dilute the applicability of the ratio of the Order.

**Commission's Analysis and Rulings:**

9. The Petitioner has a 24 MW (2X12 MW) SHP at Gosikhurd (Tehsil Pavani, District Bhandara). It has commissioned (COD) Gosikhurd SHP on 26.12.2017 and entered into the EPA with MSEDCL on 25.07.2016 to sell its generated power for the tenure i.e. upto 25.12.2030 as per the provisions of the RE Tariff Regulations, 2015 and the Commission's Generic Tariff Order dated 28.04.2017 in Case No. 33 of 2017. The Petition is filed seeking directions to MSEDCL for reimbursement Land Lease Charges along with taxes , Taxes on Water Cess already paid and to be paid to the GoMWRD under the EPA as an additional cost to applicable generic Tariff determined by the Commission. The Petitioner has claimed the recovery of Rs. 33,04,536/- from MSEDCL for the period upto 31.3.2022 as summarised in the Table at **Para 3.15 above** which