

**4. At the time of E-hearing held on 4 February, 2022**

- 4.1. Advocate of MSEDCL requested additional time for filing reply and further stated that their Appeal against APTEL Order in Case No 264 of 2018 was listed for hearing today before the Hon'ble Supreme Court. Therefore, he requested for adjournment. Advocate of RPL did not object to the same but requested the Commission to list this matter at the earliest possible.
- 4.2. Considering request of MSEDCL and in the interest of justice, the Commission adjourned the hearing. MSEDCL was directed to file its reply within two weeks with copy to be served on other party. RPL was allowed to file the rejoinder, if any, within a week thereafter.

**5. MSEDCL in its submission dated 22 April, 2022 has stated as follows:**

- 5.1. RPL has filed Original Petition in Case No 264 of 2020 seeking determination of compensation on account of Change in law impact in terms of the Remand judgment and an amount of Rs.462.63 Crores was claimed. While on the other hand, RPL has filed the above Application claiming Rs.712 Crores against the alleged amount of Rs.950 Crores.
- 5.2. The Commission vide its Order dated 16 November, 2021 specifically observe that the scope of present remand proceeding is restricted to claims arising out of shortfall in coal supply and it cannot be extended further to include other claims. It is a settled position of law that the interim prayers are ancillary to the main prayer and cannot travel beyond the main prayers. Reliance is placed on *Hon'ble Bombay High Court (Panaji Bench) Judgement of John Vergese Vs. Gracy Vergese [2006 SCC OnLine Bom 764]*
- 5.3. MSEDCL has challenged the order/Judgment of the APTEL passed in Appeal No. 264 of 2018 vide Civil Appeal No. 1805 of 2021. Hon'ble Supreme Court on 14 February 2022 directed to pay 50% of the outstanding amount to RPL. MSEDCL will comply with the Orders and thus the present matter before this Commission has become infructuous.
- 5.4. RPL has filed Petition in Case No. 144 of 2021 seeking entitlement to procure coal from alternate sources and its payments in line with the APTEL Judgment dated 13 November, 2020 in Appeal No. 264 of 2018. The adjudication of the said Case No. 144 of 2021 is still pending before the Commission. Therefore evidently, the issue, as far as Cost of Alternate Coal or issue of procurement of alternate coal is concerned; the same is sub judice before the Commission in Case No. 144 of 2021. Therefore, the same issue cannot be agitated by the RPL at two different proceedings before the same forum at the same time.
- 5.5. RPL had submitted its Claim/ computation of Rs 1157.47 Cr vide Letter dated 25 November, 2021. MSEDCL vide letter dated 23 December 2021 raised the compliances in the bills and again requested for the same vide letter dated 1 February, 2022 in reply to RPL Letter dated 28 December, 2021. RPL vide letter dated 12 February, 2022 provided

some of the data however remained silent on majority of the discrepancies such as non-consideration of surplus FSA coal in some of the months for calculation, erroneous consideration of scheduled generation before SDD, non-provision of benchmark indices for imported coal, erroneous non consideration of unapproved components in landed cost of FSA coal etc which were again raised vide MSEDCL Letter dated 23 February, 2022. RPL has not furnished the information yet.

5.6. Civil Appeal No. 1805 of 2021 has not been heard on merits post issuance of the notice before Hon'ble Supreme Court. MSEDCL is in the process of getting the matter listed.

5.7. Shortage of Domestic Coal and import of coal has already been raised by the RPL before the Commission in Case No. 144 of 2021 and is pending adjudication. Choice of Fuel and the transportation and procurement is whole and sole responsibility of the bidder.

**6. At the time of E-hearing held on 26 April, 2022**

6.1. Advocate of RPL stated that as directed by the Hon'ble Supreme Court in its judgment dated 14 February, 2022 MSEDCL has not paid 50 % of the claimed amount. He further stated that, revised claims are submitted vide supplementary bill dated 25 November 2021 and till date MSEDCL is making excuses for scrutinising the records. Such delay in payments by MSEDCL is affecting the performance of RPL and hence he requested the Commission to give directions for immediate payments.

6.2. Advocate of MSEDCL stated that MSEDCL is complying with the Hon'ble Supreme Court Judgment. Process of verification and compilation is going on. If RPL has an issue with the methodology adopted by MSEDCL while computing the claims, it may approach Hon'ble Supreme Court as matter is sub-judice before the Supreme Court.

**Commission's Analysis and Ruling:**

7. RPL has approached the Commission through the present Petition seeking directions to MSEDCL for payment of 75% of the amount (Rs 712 Cr) due as an interim relief in terms of remand Judgment of APTEL in Appeal No 264 of 2018. RPL stated that it is not able to perform its obligations under PPA and losing capacity charges despite all of its units are technically available for supply of power due to non-payment of the dues in time timely. MSEDCL has also rejected its request for giving concurrence for procurement of imported coal and assured payments thereof. Such approach of MSEDCL is depriving RPL from performing its obligations.

8. While opposing such contentions, MSEDCL stated that payments could not release without verifying the documents. Amount has been paid to RPL as per computations of MSEDCL. If RPL has the issues with the payment, it may approach the Hon'ble Supreme Court, where the matter is now sub-judice, and not before this Commission. MSEDCL further stated that the issues for concurrence for procurement of imported coal and the

dispute about payments have already been raised by RPL in Case No 144 of 2021 which is pending before the Commission for adjudication.

9. In this regard, the Commission notes that present Petition has been filed on 27 October, 2021 when remand proceeding subsequent to APTEL judgment in Appeal No. 264 of 2018 was reserved for Orders before the Commission. Thereafter, vide its Order dated 16 November, 2021 in Case No 240 of 2020 the Commission issued Order in remand proceeding as per Judgment of APTEL in Appeal No 264 of 2018. In said Order, while quantifying the claims, the Commission observed differences in the factual figures as well as methodologies adopted by RPL and MSEDCL while computing the Change in Law claims. Therefore, in that Order dated 16 November, 2021 the Commission directed RPL to re-compute its Change in Law claim as per methodology approved in that Order and raise supplementary bill on MSEDCL with all supporting documents. MSEDCL was directed to pay undisputed amount to RPL within due date of raising supplementary bill. Relevant extract of the Order is reproduced below:

*“2. Change in Law compensation allowed in Order dated 3 April, 2018 needs to be recomputed based on change in methodology approved in this Order. RattanIndia Power Ltd shall recompute its Change in Law claim and raised the supplementary bill as required under the PPA on MSEDCL with all supporting documents. Said bill shall be paid as per provisions stipulated in the PPA.*

*3. Implementation of Order is subject to Final Judgment of the Hon’ble Supreme Court in Civil Appeal No. 1805 of 2021 (DFR No. 7007/2021).”*

While issuing above Order, the Commission was aware that MSEDCL has filed an appeal against APTEL Judgment in Appeal No. 264 of 2018 and hence any decision of the Commission would be subject to final Judgment of the Hon’ble Supreme Court in Civil Appeal No. 1805 of 2021.

10. Thereafter, on 14 February, 2022 Hon’ble Supreme Court in its Order in Civil Appeal No. 1805 of 2021 directed MSEDCL to pay the 50% of the outstanding claimed amount as an interim relief to Respondent No. 1 in that matter i.e. RPL. Relevant extract of the same is reproduced below:

*Although, Mr. Vikas Singh, learned senior counsel appearing on behalf of the appellant vehemently opposed the prayer for an interim order, yet, taking into consideration the fact that the issues involved in the instant appeal are similar to the issues involved in Civil Appeal Nos.4143/2020, 684/2021, 687-688/2021 and 677-678/2021, **we direct that respondent No.1 is entitled to the sum equivalent to 50% of the outstanding claimed amount.***

Thus, Supreme Court has directed MSEDCL to pay 50% of outstanding claim amount to RPL.

11. Above said Order of the Hon'ble Supreme Court is in the matter of civil appeal against APTEL judgment in Appeal No. 264 of 2018 i.e. remand judgment of APTEL against which through present Petition, RPL is seeking direction for payment of 75% of due amount. As now Hon'ble Supreme Court has already directed MSEDCL to pay 50% of outstanding claimed amount arising out of same APTEL judgment, to maintain judicial discipline this Commission now cannot adjudicate on the relief sought in present Petition (direction for payment of 75% of due amount).
12. During the e-hearing, RPL contended that MSEDCL has not paid 50% amount as directed by the Hon'ble Supreme Court. Whereas MSEDCL stated that it has complied with the Order of the Supreme Court. In this regard, the Commission is of the opinion that both the parties are mandated to follow the Orders of Hon'ble Supreme Court in true letter and spirit. Further, since the said matter is sub-judice before the Hon'ble Supreme Court, parties may raise any such dispute before the Hon'ble Apex Court and it would not be appropriate for this Commission to intervene in the matter pending before the Apex Court.
13. The Commission also notes that issues of concurrence for import of coal and delay in payment restricting its ability to procure coal and declare availability raised by RPL in the present Petition is pending in Case No 144 of 2021 for adjudication. The Commission will address these issues in Order in that matter. Hence, same need not be addressed in the present case.
14. In view of above, the Commission is of the opinion that present case filed by RPL has become infructuous.
15. Hence following Order.


### **ORDER**

**Case No 153 of 2021 is dismissed.**

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

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

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

  
**(Abhijit Deshpande)  
Secretary**

