

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 146 of 2021**

**Case of RattanIndia Power Limited seeking capacity charges and penalty thereof for inordinate delay in making payments from FY 2013-14 to FY 2018-19 and for refund of over injected power during FY 2013-14 to July 2016, in terms of liberty granted by the Commission in its Order dated 27.02.2018 passed in Case No. 138 of 2015**

**Coram**

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

RattanIndia Power Limited (RPL): -	Petitioner
Maharashtra State Electricity Distribution Company Ltd. (MSEDCL): -	Respondent No.1
Maharashtra State Load Despatch Centre (MSLDC): -	Respondent No.2

**Appearance**

For Petitioner: -	Shri. Venkatesh (Adv.)
For Respondent No.1: -	Shri. Ravi Prakash (Adv.)
For Respondent No.2: -	Smt. Juliee Wagh (Rep)

**ORDER**

**Date:- 3 August, 2022**

1. RattanIndia Power Limited (**RPL**) has filed this Case on 27 October, 2021 under Section 86 (1) (f) of the Electricity Act, 2003 (**EA, 2003**) in terms of liberty granted by the Commission in its Order dated 27 February, 2018 passed in Case No. 138 of 2015.

2. **RPL's main prayers are as under:**

- a. *Direct MSEDCL to make payment on account of loss of charges on account of breach committed by MSEDCL amounting to Rs. 613.16 Cr;*
- b. *Direct MSEDCL to release the payment of Rs. 27.43 Crores on account of illegal deduction for alleged over-injection in FY 2013-14 to July 2016 ;*

c. *Direct payment of Late Payment Surcharge on the payments sought in Para a to b above*

**3. RPL in its Petition has stated as follows:**

3.1 RPL owns and operates a 1350 MW (5x270 MW) coal fired power plant located at Amravati and has been supplying 1200 MW of power to MSEDCL since 3 March, 2013 under Power Purchase Agreements (PPA) dated 22 April, 2010 (450 MW) and dated 5 June, 2010 (750 MW) at levelized tariff of Rs.3.260/kWh pursuant to Case-1 competitive bidding process initiated by MSEDCL. The Commission had approved the aforesaid PPAs and adopted levelized tariff of Rs.3.260/kWh vide its Order dated 28 December, 2010 in Case No.22 of 2010 in accordance with the provisions of the Act and the Competitive Bidding Guidelines issued by the Central Government.

3.2 RPL has been supplying power to MSEDCL since June 2013. Details of the same are as below

S. No.	PPA Details	Scheduled Date as per PPA	Date of Commencement	MW Commenced	Cumulative Capacities commenced (MW)
1.	450MW 22.04.2010	22.04.2014	03.06.2013	245 MW	245 MW
			22.04.2014	205 MW	450 MW
2.	750MW 05.06.2010	05.06.2014	22.04.2014	45 MW	45 MW
			02.02.2015	245 MW	290 MW
			07.03.2015	245 MW	535 MW
			13.03.2015	215 MW	750 MW

3.3 Since the commencement of supply of power from RPL's Project, MSEDCL has been violating the terms of the PPAs and delaying making payments to RPL

3.4 MSEDCL failed to meet its obligation in timely manner under Article 8.4.2 of the PPAs, which provide for the opening of a Letter of Credit (LC) in favour of RPL to meet any shortfall by MSEDCL in payment towards the monthly or supplementary bills of RPL. In terms of the above, RPL has issued numerous letters dated 26 June, 2013, 23 April, 2014, 11 September, 2014, 22 September, 2014, 20 October, 2014 and 03 November, 2014 to MSEDCL to comply with the contractual requirement.

3.5 The difficulties of RPL were further compounded with the consistent delay by MSEDCL in clearing payment towards the invoices raised by RPL for supply of power in breach of explicit terms of the PPA. Under Article 4.4 of the PPAs, MSEDCL is obligated to pay the tariff for all the available capacity up to the Contracted Capacity and corresponding Scheduled Energy. In terms of the above, RPL has issued numerous letters dated 18 November, 2014, 05 December, 2014, 17 December, 2014, 12 January, 2015, 30 January, 2015, 05 February, 2015, 02 March, 2015, 20 March, 2015, 07 April, 2015, 29 April, 2015, 19 May, 2015, 15 June, 2015 and 01 February, 2015 to MSEDCL to comply with the contractual requirement.

- 3.6 In the absence of timely realization of outstanding dues from MSEDCL, RPL was prevented from making timely payments to its coal suppliers / railways and as a direct consequence, it could not maintain sufficient stock of coal and thus, was unable to declare the requisite availability of its generating plant. RPL was compelled to operate its Units at part load and at time, even under shut down. The inability of RPL to declare availability is directly attributable to MSEDCL.
- 3.7 Aggrieved by the above consistent violation of the PPAs, in 2015, RPL filed Case No. 138 of 2015 before the Commission. Pursuant to Daily Order dated 25 July, 2017 passed in Case No. 138 of 2015, a meeting was held between RPL and MSEDCL on 14 September, 2017, wherein after detailed deliberation, MSEDCL agreed to pay an amount of Rs. 152.75 Crores i.e. Rs 102.11 Crores towards Late Payment Surcharge (LPS), Rs. 37.5 Crores towards Contract year penalty and Rs. 13.14 Crores towards Deemed capacity charges to RPL as against total outstanding amount claimed by RPL.
- 3.8 The remaining balance amount payable by MSEDCL was Rs 50.6 Crores which was agreed to be released subject to an undertaking by RPL for surrendering its claim to earlier Capacity charge. On 05 April 2018, RPL, under duress and undue-influence, tendered an Undertaking to MSEDCL and agreed to accept Rs. 50.57 Crores as a full and final settlement against the total claim of Rs. 216.05 Crores which were raised by RPL vide its letter dated 18 March, 2016 and 30 May, 2016.
- 3.9 On 27 February, 2018 the Commission passed its final Order in Case No. 138 of 2015 granting liberty to RPL to approach separately on (i) Imposition of Contract Year Penalty; (ii) Deduction of Capacity Charges for deemed generation; and (iii) Non-payment for over-injection of power as the nature of each of these claims and disputes are different.
- 3.10 RPL has been constantly following up with MSEDCL through numerous letters and emails to make payment towards the outstanding amount. However, MSEDCL has failed to accede to the requests made by RPL and has till date not rectified the losses occurred on account of the breach committed by it. Therefore, in terms of Section 22 of the Limitation Act, 1963, the breach in the present matter is a continuing one and the present Petition is well within the prescribed limitation period. Further RPL has relied on the *Hon'ble Supreme Court in SMW(C) No. 3 of 2020 dated 23 September, 2021*.
- 3.11 MSEDCL has been in persistent breach of its obligations under the PPAs by not making timely payments against the invoices raised by RPL.
- 3.12 The rights and obligations of RPL and MSEDCL arising out of the PPA qua each other are mutual. The PPAs are 'reciprocal' in nature where both the parties perform their part obligation qua each other. The primary obligation of RPL is to supply Power to MSEDCL and MSEDCL is obligated to make timely payment for such power and comply with other obligations under the PPA. It is to be noted that these are reciprocal obligations which cannot exist independently. In this regard, reliance is placed on

Section 50-55, specifically Section 53 and 54 of the Indian Contract Act, 1872. RPL further placed reliance of Hon'ble Supreme Court Judgments in *M/s. Sikkim Subba Associates v. State of Sikkim: (2001) 5 SCC 629 (Para 16 A)* and *National Insurance Co. Ltd. v. Seema Malhotra: (2001) 2 SCC 151 (Para 15)*

3.13 The details of commencement of supply of power and availability under the respective PPAs since FY 2013-14 onwards:

Sr	PPA	Commencement of Supply	Availability						
			FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
1	450	22.04.2014	67.2%	46.2%	68.1%	86.5%	68.7%	71.3%	91.0%
2	750	13.03.2015	-	33.1%	66.8%	86.6%	68.7%	71.3%	91.0%

3.14 It is evident from the above table that RPL has not been able to achieve the Normative Availability in any of the year except FY 2016-17 and FY 2019-20. In the remaining years, RPL was not able to (rather could not) achieve Normative Availability due to the Default induced by MSEDCL by not making the adequate payment towards the invoices raised by RPL for supply of power. On account of the said breach, RPL could not procure adequate coal which has ultimately led to loss of Capacity Charges which otherwise could have been recovered.

3.15 The financial institutions had funded the RPL's Project in view of the strict and mandatory provisions of payment security mechanism. However, due to inordinate delay in payment and in the absence of LC, RPL was not able to repay its original Lenders on time. Pursuant to failure by RPL to service its dues to its Lenders on time, RPL was declared as a Non -Performing Asset (NPA). Accordingly, Lenders of RPL initiated a resolution process under the Scheme for Sustainable Structuring of Stressed Assets (SSA) in terms of the Reserve Bank of India's (RBI) Circular dated 13 June, 2016. After much pursuance, RPL proposed the option of settling the dues of the Lenders under a One Time Settlement scheme executed successfully on 31 December.

3.16 Deteriorating financial condition of RPL during FY 2014-15 to FY 2017-18 is quite apparent from the audited accounts and shown in the table below:

Particulars	FY 14-15	FY 15-16	FY 16-17	FY 17-18
Revenue	617	2541	1335	2015
Finance Cost	362	984	1017	997
<b>Loss for the year</b>	<b>(340)</b>	<b>(108)</b>	<b>(321)</b>	<b>(418)</b>

The aforesaid loss amount shown in table above is primarily on account of induced default due to non-payment/irregular payment of the outstanding amount by MSEDCL.

3.17 The situation can be gauged from the fact that RPL was not even able to service its debt obligation and hence, procurement of coal and payment of railway freight could not have been considered. On account thereof, RPL was not able to achieve requisite availability and has suffered loss of Capacity Charges directly attributable to MSEDCL. In this regard, a table depicting Year wise amount required for keeping coal stock for achieving

Normative Availability, Undisputed amount payable by MSEDCL and the actual disbursement by MSEDCL is provided below:

(Rs. Crores)

FY	Amount required for keeping coal stock for achieving 85% availability	Total Undisputed Amount payable by MSEDCL	Total Amount Paid by MSEDCL	Closing Balance of Outstanding	Closing Balance of Outstanding in % of undisputed billing amount
FY 13-14	393	294	185	110	37%
FY 14-15	1096	622	509	222	36%
FY 15-16	2647	2237	1828	632	28%
FY 16-17	2669	1660	2083	208	13%
FY 17-18	2749	1987	1734	461	23%
FY 18-19	2860	2051	2416	96	5%
FY 19-20	3032	2030	1963	163	8%
FY 20-21	2626	1267	1046	384	30%

3.18 It is pertinent to note that the outstanding amount consists only the undisputed amount and does not include the amount incurred by RPL in procuring alternate coal which till date MSEDCL has not paid to RPL. There was considerable delay in making payments against legitimate claims of RPL in all the years, but the situation worsened during FY 2015-16 and FY 2017-18 when the outstanding amount has gone over Rs 400 Cr. Details of month-wise outstanding amounts for the FY 15-16 and FY 17-18 are given as under

Rs. Crore

Sr	Month	Total Undisputed Amount payable by MSEDCL	Amount Paid by MSEDCL (Including LPS)	Closing Balance of Outstanding
	<b>Opening</b>			<b>222</b>
1	<b>Apr-15</b>	35	49	<b>208</b>
2	<b>May-15</b>	72	55	<b>226</b>
3	<b>Jun-15</b>	102	85	<b>243</b>
4	<b>Jul-15</b>	76	79	<b>241</b>
5	<b>Aug-15</b>	165	157	<b>250</b>
6	<b>Sep-15</b>	202	88	<b>364</b>
7	<b>Oct-15</b>	237	143	<b>458</b>
8	<b>Nov-15</b>	254	120	<b>593</b>
9	<b>Dec-15</b>	261	275	<b>580</b>
10	<b>Jan-16</b>	295	325	<b>549</b>
11	<b>Feb-16</b>	293	220	<b>623</b>
12	<b>Mar-16</b>	244	235	<b>632</b>

Sr	Month	Total Undisputed Amount payable by MSEDCL	Amount Paid by MSEDCL (Including LPS)	Closing Balance of Outstanding
	<b>Opening</b>			<b>208</b>
1	<b>Apr-17</b>	120	50	<b>278</b>
2	<b>May-17</b>	184	100	<b>362</b>
3	<b>Jun-17</b>	183	165	<b>380</b>
4	<b>Jul-17</b>	117	228	<b>268</b>
5	<b>Aug-17</b>	109	86	<b>292</b>
6	<b>Sep-17</b>	171	95	<b>266</b>
7	<b>Oct-17</b>	229	160	<b>335</b>
8	<b>Nov-17</b>	114	260	<b>189</b>
9	<b>Dec-17</b>	169	110	<b>248</b>
10	<b>Jan-18</b>	91	137	<b>202</b>
11	<b>Feb-18</b>	237	70	<b>368</b>
12	<b>Mar-18</b>	263	170	<b>461</b>

3.19 Availability declared by RPL is directly proportional/ linked to the outstanding amount payable by MSEDCL. That is to say, the availability of RPL in FY 2015-16 was 67.3% and the outstanding amount was Rs. 632 Crores. Similarly in FY 2017-18, the availability of RPL was 68.7% and the outstanding amount was Rs. 461 Crores. Therefore, the non-achievement of Normative Availability by RPL is not on account of RPL's failure but is induced on account of MSEDCL's breach in performance of its contractual obligations.

3.20 The loss of availability is directly attributable to MSEDCL as, *firstly*, MSEDCL failed to make payment to RPL towards the undisputed invoices and deprived it to procure coal for achieving Normative Availability; and *secondly*, when RPL sought the consent from MSEDCL for procurement of alternate coal, MSEDCL never provided the same on one ruse or the other. In such a situation, RPL, without any fault on its part, had to take a hit on Capacity Charges.

3.21 At various instances, RPL's Project was operated at part load / shut down due to insufficient coal stock. Accordingly, the actual availability was less than Normative Availability resulting into under-recovery of capacity charges and payment of penalty. A table capturing actual availability, under recovery of Capacity Charge and Penalty paid during FY 13-14 to FY 18-19 (excluding 16-17) is as under:

Sr	FY	PPA	Actual Availability under PPA	Under recovery of Capacity charge	Contract Year Penalty by MSEDCL
1	13-14	450	67.2%	21.52	25.17
2	13-14	750	-	-	
3	14-15	450	46.2%	84.53	
4	14-15	750	33.1%	-	
5	15-16	450	68.1%	31.56	
6	15-16	750	66.8%	26.34	

Sr	FY	PPA	Actual Availability under PPA	Under recovery of Capacity charge	Contract Year Penalty by MSEDCL
7	17-18	450	68.7%	73.66	11.29
8	17-18	750	68.7%	122.77	18.82
9	18-19	450	71.3%	66.53	7.53
10	18-19	750	71.3%	110.88	12.55
<b>Total in Rs Cr</b>				<b>537.80</b>	<b>75.36</b>
<b>Grand Total in Rs Cr</b>				<b>613.16</b>	

(Note: Rs 613.16 Crores has been derived after netting off for unavailability due to technical reasons for entire capacity of the plant.)

3.22 Further, the year wise coal stock and scheduled generation for the PPAs during FY 2013-14 to FY 2019-20 is as under:

FY	Sch. Generation net off Reserve Shutdown/Zero Schedule(MU)	Coal Required to achieve Normative Generation (MMT)	Coal Available (MMT)	Coal Shortfall (MMT)	Shortfall in value terms (Rs Cr)	Amount O/s (Rs Cr)
(a)	(b)	(c)	(d)	(e)=(c-d)	(f) = (e x cost of coal)	(g)
2013-14	1461	1.065	0.782	<b>0.283</b>	62	110
2014-15	4068	2.811	1.435	<b>1.376</b>	317	222
2015-16	8532	6.43	4.181	<b>2.245</b>	555	632
2016-17	8326	0.21	0.796	-	-	208
2017-18	6739	4.352	2.783	<b>1.569</b>	480	461
2018-19	5179	3.277	3.016	<b>0.261</b>	87	96
2019-20	2776	1.877	2.085	-	-	163

3.23 Despite the categorical mandate under Article 8.4.2 of the PPAs, MSEDCL had not even provided the requisite payment security mechanism which could have been resorted to by RPL to recover the undisputed amount. The LC was furnished by MSEDCL in 2018 only after a specific direction by the Commission in Case No 138 of 2015.

3.24 MSEDCL has not only deprived RPL in supplying the agreed quantum at a lower cost but has also burdened the consumer by passing an additional power purchase cost of Rs 600 Cr (approx.) by procuring expensive power from exchange

3.25 Issue regarding the impact of non-payment/delayed payment of outstanding amount vis-à-vis the loss in generation/availability has been dealt by the Hon'ble Tribunal in *Raghu Rama Renewable Energy Ltd. v. Tamil Nadu Generation and Distribution Corporation Limited* (Appeal No. 181 of 2013), where TANGEDCO sought to recover penalty from a generator for not achieving target PAF/generation after delaying monthly payments to the said generator.

3.26 The reciprocity of the PPA is reflected from the fact that the PPA is on a non-recourse basis and RPL requires the adequate cash flow for each month to effectively run its generating stations to its full capacity. If MSEDCL does not make adequate payments,

it is financially impossible for RPL on non-recourse financing basis to sustain operation on month to month basis to achieve the Normative Availability level.

- 3.27 In view of above, it is requested that MSEDCL be directed to pay RPL an amount of Rs. 613.16 Crores (excluding Late Payment Surcharge) on account of loss of Capacity Charges due to delay in making payment and default in complying with material PPA obligations.
- 3.28 Further, MSEDCL has arbitrarily and illegally deducted Rs. 27.42 Crore for the period FY 2013-14 to July 2016 from the invoices of RPL as excess Capacity Charge on account of an alleged over injection of power than the scheduled quantum by RPL specifying the following reason and without providing any calculation and justification for such deduction.

*Presently, M/s RPL is declaring the DC on daily basis and as per requirement, the power is being scheduled following MoD principle on 15 minute block basis finalized by SLDC by 23.00 Hrs. The balance power (if any) is mentioned as backed down quantum. SLDC also gives the instructions (before 4 time blocks) for revision as per the demand supply scenario and accordingly backing down quantum is finalized. SLDC issued backing down certificate based on differences between DC and schedule quantum. However in real time in the specific 15 minute block IPP generators are injecting the power less or more than the scheduled quantum. In this situation the backing down quantum of state generators connected to STU needs to be recalculated based on the actual injection instead of schedule. However presently SLDC is certifying the backing down quantum as per the schedule given before 4 blocks time period. This has resulted in payment of excess capacity charges by MSEDCL. Hence, for correct payment of capacity charges, the block wise injection of declared capacity is evaluated and accordingly the charges are recalculated which is amounted to Rs. 27,42,44,973/- (subject to final audit) for the period FY 2013-14 to July 2016 and will be recovered from invoices of M/s RPL subsequent month.*

- 3.29 RPL issued letters to MSEDCL on 22 December 2016, 12 May, 2017 and 4 July, 2017 objecting to the deduction and requested for detailed computation carried out to ascertain the alleged excess capacity charge payment on a monthly basis.
- 3.30 Generation of power at a constant quantum is not viable perpetually. Various components play a simultaneous role in the process of power generation. At time, due to a variation in quality of coal, the quantum, generated within one time block may either increase or decrease compared to that scheduled. Further, since RPL's plant is neither an inter-state supplier of electricity nor is supplying to any State Utility other than MSEDCL, final balancing and settlement mechanism is not applicable to it. Therefore, qua RPL, the settlement mechanism is to be conducted with respect to the actual power injected by it.
- 3.31 It is requested to direct MSEDCL to refund the amount of Rs. 27.43 Crores arbitrarily deducted on the alleged ground of over-injection of power.

- 3.32 Further in addition to the said amounts being payable to RPL it is submitted that RPL is also entitled to Late Payment Surcharge on the said amounts in terms of Article 8.3.5 of the PPA.
4. Maharashtra State Load Despatch Centre (MSLDC) in its submission dated 18 January 2022 has stated that the reliefs sought by RPL in the present Petition do not pertain to MSLDC and MSLDC has no submission in this matter.
5. **MSEDCL in its submission dated 24 January 2022 has stated as follows:**
- 5.1 RPL in its Petition has made a non-contractual demand for MSEDCL to make purported damages and/or losses suffered by RPL due to the non-payment and/or delayed payments made by MSEDCL to RPL of their outstanding dues under the PPAs executed between the parties. RPL has filed the present proceedings on the purported predicated basis that it is due to MSEDCL that RPL has failed to achieve its normative availability of coal, which led to the loss of capacity charges. It is trite law that it is RPL's sole responsibility to maintain its normative availability.
- 5.2 MSEDCL has placed reliance of Petition filed by National Thermal Power Corporation (NTPC) before Central Electricity Regulatory Commission (CERC) being Case No. 46/MP/2018, for revision of the Normative Annual Plant Availability Factor in respect of NTPC's Power Stations on account of shortage of coal availability wherein vide its Order dated 28 August, 2019 has not allowed any revision in Normative Annual Plant Availability Factor in respect of NTPC's Power Stations on account of shortage of coal availability.
- 5.3 The Commission vide its Order dated 19 June, 2018 in Case No. 151 of 2017 has held that it is the generator's responsibility of arranging fuel as contemplated under the PPA thereby disallowing the request of MSPGCL for consideration of normative availability as actual availability during the coal shortage period.
- 5.4 It is the responsibility of RPL to maintain their normative capacity and any consequential losses suffered thereby are to be borne by RPL. In any event, there is absolutely no contractual provision in terms of the Subject PPAs and/or applicable law in terms of which MSEDCL is bound to make good to RPL consequential losses suffered due to their lapse in maintaining normative availability. Any relief passed by the Commission in RPL's favor would be tantamount to rewriting and/or recasting contractual terms between the parties, which is impermissible, it being trite law that the Commission does not have the power to rewrite and/or recast any contractual obligations between the parties, including the Subject PPAs;
- 5.5 There is a detailed procedure set out under the Subject PPAs, entitling RPL to consequential compensation, should this Respondent breach any payment terms under the Subject PPAs. However, that does not entitle and/or give RPL any right to approach the Commission for demanding consequential damages suffered since RPL themselves

were unable to maintain normative availability on the purported basis that MSEDCL has failed to clear their outstanding dues.

5.6 Further, RPL had not lifted available coal during FY 2016-17 and therefore SECL had levied penalty on RPL. The Commission in its Order in Case No 146 of 2018 dated 23 October, 2018 held that the reason for non-lifting of coal is only due to non-scheduling of plant which is the commercial decision of RPL while submitting the bids.

5.7 MSEDCL has been making sincere efforts to clear the Petitioner's outstanding dues. RPL has grossly misrepresented and inflated their dues purportedly payable by MSEDCL. The summary of payments made to RPL is set out at the table herein below, that would categorically demonstrate that MSEDCL in fact has made a genuine effort to clear RPL's dues:

Year	Total Bills due during FY (in Crore)	Total Payment during FY (in Crore)	LPS Paid (in Crore)	% payment against dues except LPS
2013-14	237.83	184.68	-	78%
2014-15	604.26	509.49	-	84%
2015-16	1,901.23	1,828.09	-	96%
2016-17	1,837.01	2,082.84	-	113%
2017-18	1,804.14	1,631.60	102.11	90%
2018-19	2,210.24	2,357.15	7.91	107%
2019-20	1,938.28	1,938.03	25.06	100%
2020-21	1,180.27	1,045.89	-	89%
2021-22 upto Dec 21	2191.77	2249.56	107.01	103%
Total	13,905.03	13,827.33	242.09	99%

\*Note: - The LPS payment made to M/s. RPL till Mar 21 as per the PLR rate.

5.8 Further, during FY 2013-14 the % of payment with respect to outstanding dues was allegedly 37 % same was allegedly 36 % for FY 2014-15 however the normative availability during those FYs was 67% and 46.2%/33.1%. However, it can be seen from above table that, MSEDCL has paid up to 78% and 84 % of the outstanding payments of RPL for FY 2013-14 and FY2014-15 respectively. On the other hand, during FY 2016-17 the outstanding dues allegedly were 13% and availability was 87% whereas during FY 2018-19 the outstanding dues allegedly were 5% and availability was only 71.3 %.

5.9 It clearly shows that the shortfall in achieving Normative Availability during various FYs was only due to inefficiency in operating the plant. As on March 2021 the outstanding dues were allegedly 30% and availability was 99.95 %. It can be seen from above table that MSEDCL has paid 113% and 107% against due of RPL for the FY 2016-17 and FY 2018-19 respectively.

5.10 Despite having alleged outstanding dues of 30%, RPL managed availability of 99.95% for FY 2020-21. If the contentions of RPL regarding outstanding dues resulting in loss of revenue were to be considered true, it ought to have been resulted the same for FY 2020-21. RPL has declared 100 % capacity for FY 2020-21 in spite of allegedly having

insufficient funds to maintain adequate coal stock. RPL itself have requested MSEDCL not to release payments and they will not claim LPS for the period Sept 2018 to Sept 2019.

5.11 MSEDCL has paid towards LPS as per PPA due delayed payments. Seeking specific performance of PPA against the same delay is like seeking double benefit. The same cannot be tenable.

5.12 Further RPL has sought refund of amount due to over injection, were made in the financial year 2013-14 till July 2016. RPL has approached the Commission belatedly, and beyond the limitation period and accordingly being barred by Limitation Act. Any claim barred by limitation i.e a period of three (3) years cannot be adjudicated unless the principles underlying Section 5 and Section 14 of the Limitation Act, 1963 are satisfied. In the present case RPL has miserably failed to even plead a case under the provisions of Limitation Act.

5.13 The payment of capacity charges is largely dependent upon the available capacity declared by a particular generator, or the declared capacity. Basis the declared capacity, the SLDC issues schedule instructions to the generates, in accordance with the demand supply scenario, as also based on the position of generator in the MOD stack for economic dispatch of power as per MERC State Grid Code Regulations.

5.14 Once this schedule is fixed, the generator injects power as per schedule instructions given by SLDC, however, this injection by Generator may be more or less than the schedule provided by SLDC. To that end, backing down quantum is certified by SLDC based on the schedule instructions;

5.15 If the generator injects power less than the schedule as provided by the SLDC, the availability considered for making payment of capacity charges is as follows:

Backing down Quantum (including Zero schedule) + Injected Quantum

As the injected quantum is less than the schedule quantum Actual availability is less than the Declared Capacity. Accordingly, the actual availability is considered for payment by MSEDCL, and not the declared capacity.

5.16 On the other hand, if injection power by Generator is more than the schedule as provided by the SLDC, the availability considered for making payment of capacity charges is again calculated on the basis of the aforesaid formula.

5.17 As injected quantum by Generator is more than the schedule quantum, applying the above formula has resulted in payment of capacity charges towards capacity more than what the generator has declared, which is ostensibly not in accordance with their relevant and applicable Power Purchase Agreement(s). It is this excess payment towards capacity charges inadvertently made due over injection which ought to be recovered by MSEDCL.

5.18 It was exactly this explanation that was provided by MSEDCL to RPL as far back as in their letter dated 17 December, 2016 and the same is in accordance with the facts and PPA provisions. Had RPL been genuine about their claim, they had the opportunity to approach the Commission even in the past, but ostensibly elected not to do so.

5.19 In view of that, RPL is not entitled to any compensation qua its first two claims, and accordingly, the question of being paid a Late Payment Surcharge on the same does not arise.

**6. At the time of E-hearing held on 28 January 2022:**

6.1 After giving brief overview of the Petition, Advocate of the RPL requested additional time for filing its Rejoinder to MSEDCL's reply which was received by them two days before the hearing. Accordingly, he requested to adjourn the hearing to next date so that matter could be heard in entirety. Advocate of MSEDCL did not object to such request of RPL.

6.2 Considering request of RPL and in the interest of justice, the Commission adjourned the hearing. RPL was directed to file its rejoinder within two weeks with copy served on other party.

**7. RPL in its rejoinder dated 21 February 2022 has stated as follows:**

7.1 RPL is not disputing the fact that the responsibility to arrange/procure fuel lies with RPL. However, the said obligation to procure coal is premised on the fact that MSEDCL will make timely payments to enable RPL to make payment towards coal procurement. The PPA is predicated upon a contemporaneous obligation of both the parties elaborated under Article 4.4.1 of the PPAs. The Generator is obligated to procure coal and generate power, and MSEDCL, at the same time is obligated to make payments in a timely fashion as per the PPA. In case of MSEDCL causing a breach by not making payments in time bound manner, the same will undoubtedly lead to RPL's inability in purchasing coal and declaring availability as the obligations are contemporaneous as stipulated under Article 4.4.1 of the PPAs. Therefore, declaration of availability, being a direct function of availability of coal and water, becomes impossibility in case of non-payment/ breach by MSEDCL.

7.2 RPL has relied on various provisions under Indian Contract Act 1872, Section 51 for performance on reciprocal promises, Section 50 for timely performance of obligations, Section 53 for Compensation/consequential relief and entitlement of damages due to breach of other party in terms of Section 53.

7.3 The two main elements for generating power are fuel and water. The procurement of fuel was impossibility due to RPL's lack of finances as RPL was solely depending on monthly payments made by MSEDCL for procurement of fuel. In the present case, MSEDCL, being the sole Distribution Licensee failed to make the timely / monthly payments, which led to shortage of finances and subsequent inability to procure fuel for maintaining the