

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**CASE No. 71 of 2022**

**Petition of M/s. Mayura Steels Pvt. Ltd seeking directions to MSEDCL for payment of power injected into the grid and implementation of MERC (Renewable Purchase Obligation, its compliance and implementation of renewable energy certificate framework) Regulations, 2010.**

**Coram**

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

Mayura Steels Pvt. Ltd. (MSPL)	...Petitioner
V/s	
Maharashtra State Electricity Distribution Co. Ltd (MSEDCL)	... Respondent No.1
Maharashtra Energy Development Authority (MEDA)	...Respondent No. 2

**Appearance**

For the Petitioner	: Shri.Ashish Singh (Adv)
For the Respondent No.1	: Rahul Sinha (Adv)
For Respondent No.2	: None

**ORDER**

**Date: 15 September 2022**

1. M/s. Mayura Steels Pvt. Ltd. (MSPL) has filed the present Petition on 9 April 2022 seeking implementation of Regulation 3, 7, 9 and 10 of the MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificate Framework) Regulations, 2010 (RPO Regulations-2010) and under Section 86 (1) (e) of the Electricity Act, 2003 seeking directions to compensate for the power injected for the period of 25 March 2012 to 06 June 2018 along with interest.
2. **Main Prayers of MSPL are as follows:**

- a. *Direct MSEDCL to immediately compensate the Petitioner for the power injected by it for the period 25.03.2012- 06.06.2018 in the specific facts and circumstances of the present case;*
- b. *Hold and declare that the Petitioner is entitled to interest as per the Regulations of this Hon'ble Commission on the amounts unpaid till date of payment by MSEDCL;*
- c. *Direct MSEDCL to compensate the Petitioner in accordance with Annexure- O of the Petition;*
- d. *Initiate a thorough enquiry in the arbitrary manner in which the power injected by the Petitioner has been utilized for fulfillment of RPO without paying for the same;*
- e. *Direct MSEDCL to furnish a list of all wind generators whose energy has been utilized for fulfillment of RPO for the period 25.03.2012- 06.06.2018;*
- f. *Direct MEDA to furnish a list of all wind generators whose energy has been utilized by MSEDCL for fulfillment of RPO for the period 25.03.2012- 06.06.2018 which MSEDCL would have submitted to MEDA in view of mandate of RPO regulations;*
- g. *Pass such further orders as this Hon'ble Commission deems fit and proper in the interest of justice and good conscience."*

### 3. MSPL in its Petition has stated as under:

- 3.1 MSPL owns and operates a windmill with an installed capacity of (2 x 250 kW= 500 kW) located at Village Jinti, Tal- Patan, District Satara. From 01 July 2021, MSPL is using its power for Captive Use.
- 3.2 On 14 October 2008, the Government of Maharashtra issued policy for 'Power Generation from Non-Conventional Sources of Energy, 2008. The said policy contemplated certain benefits to wind power projects up to a quantum of 2000 MW.

### 3.3 Chronology of the events:

Date	Event
29.03.2011	MEDA issued the 'Clearance for Commissioning' of the wind turbines to MSPL
31.03.2011	The Wind turbines of the MSPL were commissioned.
29.06.2011	MSEDCL issued the Open Access permission to MSPL for captive use for the period 25 March 2011- 24 March 2012.

Date	Event
12.07.2012	MSPL requested MSEDCL to enter into an EPAs w.e.f 25.03.2012 for sale of entire power generated through the wind turbines exclusively to MSEDCL.
07.11.2012	MSEDCL vide its 'Office Note' which was approved by all the concerned authorities including the Managing Director of MSEDCL, approved purchase of power through an EPA to be entered for a period of 12 years starting 01.04.2012- 30.03.2024.
23.11.2012	MSPL submitted two copies of the EPAs along with all required documents to MSEDCL and requested MSEDCL to execute the EPAs at the earliest.
29.06.2018	MSPL addressed a letter to MSEDCL to sign the EPAs.
15.10.2018	MSPL again requested MSEDCL to sign the EPAs. Vide said letter, MSPL also agreed to accept payment @ APPC for the period 25.03.2012-06.06.2018.
02.01.2019	MSEDCL communicated that energy injected for the period 25.03.2012-06.06.2018 is treated as lapsed.
07.12.2019	MSPL addressed another letter to MSEDCL narrating the fact regarding misplacement of EPAs furnished by it.  The MSPL also agreed to accept payment @ APPC for the period 25.03.2012- 06.06.2018.
14.01.2020	MSPL made another correspondence pursuing the matter.
22.01.2020	MSEDCL issued a letter to MSPL once again reiterating its stand taken vide its earlier letter dated 02.01.2019.
31.01.2020	The MSPL addressed another letter to MSEDCL narrating all the facts including the fact of 'Joint Meter Readings' and issuance of 'Credit Notes' by MSEDCL for the period between 25.03.2012- 06.06.2018 and once again called upon MSEDCL to compensate it @ APPC.

3.4 Till date, MSEDCL has not paid for the energy injected for the period 25 March 2012- 06 June 2018.

### 3.5 Grounds for the Petition:

3.5.1 MSPL has injected power for the period 25 March 2012- 06 June 2018 after prior communication with MSEDCL, clearly expressing its willingness to sell its entire generated power to MSEDCL through an EPA. The said willingness of MSPL has never been objected by MSEDCL.

- 3.5.2 The 'Office Note' dated 07 November 2012 clearly spells out intention of MSEDCL to enter into a long-term EPA for 12 years for the period 01 April 2012- 30 March 2024. The same is approved by the competent authority including the Managing Director of MSEDCL. Hence, it is without any doubt that there was an express consent of MSEDCL in receiving the power for the period 25 March 2012- 06 June 2018 and it is based on this assurance and express consent that MSPL kept injecting power.
- 3.5.3 On 23 November 2012, two (2) copies of EPAs were submitted by MSPL along with all other required documents for execution of contract. As the EPAs were shared by MSEDCL itself after its 'Office Note' was approved, MSPL cannot be faulted for injecting the power for the period 25 March 2012- 06 June 2018 when MSEDCL's assurances and consents were in such express forms and manner.
- 3.5.4 MSEDCL while denying compensation vide its letter dated 02 January 2019 and 22 January 2020 has never denied/refuted the fact about admission by its officers about misplacement of EPAs and documents. Surely, defaults and wrong doings by officers of MSEDCL cannot lead to losses to MSPL.
- 3.5.5 MSEDCL never ever expressed its objection about the injection of power by MSPL. Rather, MSEDCL with its free will and consent carried out 'Joint Meter Readings' and issued 'Credit Notes' to MSPL certifying the energy injection.
- 3.5.6 MSEDCL has utilized the power injected by MSPL for fulfillment of its RPO. It is an admitted position that power can only be utilized for fulfillment of MSEDCL's RPO only after an EPA for the same is entered into and not otherwise under the GoM RE Policy, 2008.
- 3.5.7 MSEDCL has two (2) options to fulfill its RPO i.e. either by buying Renewable power or through REC's. However, MSEDCL has failed to provide any cogent reason as to how it has been fulfilling part of its RPO from the energy fed by MSPL's plant without paying for the same.
- 3.5.8 MSEDCL has categorically admitted in proceedings of Case No. 28 of 2020 (*M/s. Bothe Windfarm Development Pvt. Ltd Versus MSEDCL & Anr*) that it has utilized power so injected for fulfillment of RPO till 31 March 2017 without there being an EPA or without paying for the same. Hence, there is no room for any doubt that MSEDCL would surely have utilized the power injected by MSPL for fulfillment of RPO.
- 3.5.9 MSPL categorically stated that the only difference between the present matter and M/s. Bothe's & other similar such matters is that MSPL is not claiming execution of 13 years EPA. However, the claim for compensation for the period 25 March 2012- 06 June 2018 for the power so injected and utilized by MSEDCL for fulfillment of RPO is the same.
- 3.5.10 MSEDCL in its one of the filing before Hon'ble APTEL has categorically admitted that after FY 2017-2018 onwards, MSEDCL has transformed the accounting and billing

systems under centralized mode and incorporated IT Technology wherein various checks and balances were introduced in the centralized mode which eliminates error in accounting. Hence, it has not accounted the power from such wind generators from FY 2017-18 onwards.

3.5.11 The above unequivocal submission before APTEL clearly establishes the fact that MSEDCL's accounting procedure was such that it was accounting all power injected in the grid for fulfillment of RPO. Hence, there is no room for doubt that MSEDCL has also accounted the power injected by MSPL for fulfillment of RPO.

3.5.12 MSEDCL is mandated under the RPO Regulations to furnish a summary statement of energy procured from different RE sources on a monthly basis to the State Agency. MSEDCL and MEDA should furnish the said data to the Commission which would establish the correct RPO data.

3.5.13 MSPL needs to be restituted back to the same economic position. MSEDCL's action are in complete violation of RPO Regulations and hence the present petition ought to be allowed.

3.6 There is no delay in filing the present Petition and the same is filed well within the period of limitation. Moreover, there is no question of limitation when Regulatory Powers of the Commission are invoked.

3.7 The present Petition is not for dispute adjudication but for enforcement of Regulations of the Commission. There is no contractual dispute between parties leading to any claim for recovery. Hence limitation, if any, is inapplicable to the present proceedings.

**4. MSEDCL in its Reply dated 23 June 2022 has stated that:**

4.1 MSPL has no legal or valid agreement with MSEDCL for buying/purchasing RE power and as per the settled principle of law an injection of power into the grid without valid and subsisting EPA deserves no payment.

4.2 Hon'ble 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.

4.3 MSEDCL also referred to the Commission's Order dated 04 May 2022 in Case No.123 of 2021 (*M/s. Rajmal Lakhichand Jewellers v/s MSEDCL*) wherein the Commission denied the claims of compensation of energy injected into the grid without valid EPA. Further reference has been made to the APTEL Judgment dated 8 May 2017 in Appeal No 120 of 2016.

- 4.4 MSPL is claiming submission of two copies of EPA along with some documents for its units vide its letter dated 23 November 2012. There is nothing on record to suggest that the said EPA was ever accepted by MSEDCL.
- 4.5 Further, there is no document produced by MSPL as such to even show or suggest that MSEDCL had asked them to inject their power into the grid and the same would be purchased by MSEDCL. In fact, on this ground alone the present Petition deserves to be dismissed.
- 4.6 Claim barred by Limitation/delay and latches: -
- 4.6.1 The present Petition has been filed on 13 April 2022, thus, any claim of MSPL before 12 April 2019 is barred by the Law of Limitation.
- 4.6.2 Hon'ble Supreme Court vide its Judgment dated 16 October 2015 in the matter of '*Andhra Pradesh Power Coordination Committee and Others Versus Lanco Kondapalli Power Limited and Others*'. has categorically held that principles underlying the Limitation Act, 1963 are applicable to State Commissions when it functions as Statutory adjudicatory quasi-judicial /judicial authority in determining all claims or disputes, including those arising out of contract between licenses and generating companies. Hence, wherever any claim/dispute is raised before the Commission under Section 86(1)(f) then Limitation Act,1963 strictly applies, and 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 MSPL has miserably failed to even plead a case under the provisions of Limitation Act,1963.
- 4.6.3 Furthermore, the Hon'ble Madras High Court in the case of '*Government of Tamil Nadu & Anr. Vs. A.Rangasamy & Others reported in (2020) SCC Online Mad. 1071*' has held that the limitation period for claiming delay / loss of profits / overheard charges etc. would commence from date on which the delay actually commenced i.e. the inception of such delay. Additionally, the Hon'ble Madras High Court in the case of '*Tamil Nadu Electricity Board Vs. M/s. Engineering Projects India Limited reported in (2010) SCC Online Mad. 4094*' has held that the limitation period for any claim commences from date on which the delay actually accrued and not on the date of quantification.
- 4.6.4 The maxim '*Vigilantibus, non dormientibus, jura subveniunt*' (The law assists those who are vigilant, not those who sleep over their rights) clearly applies to the present case.
- 4.6.5 In view of the above, any claim of MSPL before 12 April 2019 are untenable in law being barred by Law of Limitation.
- 4.7 In the present case there is no such documents or proof which has been produced before the Commission in reference to the usage of alleged illegal energy injected into the grid by MSEDCL towards meeting its RPO target. Thus, the claim of MSPL with respect to the same deserves no consideration.

4.8 In similar such matter in Case No. 157 of 2021 (*Interocean V/s. MSEDCL*), the Commission vide its Order dated 04 May 2022 denied the compensation for energy injected by Petitioner Wind Generator.

4.9 The Commission has been conducting *Suo-moto* public hearing for verification of RPO data for each Financial Year and the same has been done also for the disputed period i.e. from 2012 to 2018. However, MSPL herein has chosen not to appear in any of these proceedings and raise its objection rather chose to file the present Petition at this belated stage which is not only barred by law of limitation but also suffers from delay and laches. MSPL through the present Petition is trying to reopen the settled RPO proceedings which cannot be allowed.

**5. At the e-hearing held on 28 June 2022:**

5.1 Advocate of MSPL submitted that the period of limitation applies only to the proceedings filed under Section 86 (1) (f) of the Electricity Act, 2003. The present proceedings are filed only for implementation of Regulations. Hence question of limitation does not arise. Further, he emphasized that in present proceedings MSPL is not praying for execution of EPA but only seeks compensation at the rate of APPC for energy injected during 25 March 2012- 06 June 2018.

5.2 Advocate of MSEDCL rebutted the contentions of MSPL by stating that MSPL has not been vigilant in its acts and on its own assumption injected power into grid. After a lapse of six years, MSPL followed up with MSEDCL for execution of EPA. By raising issue of RPO, MSPL is attempting to again re-open the case.

5.3 Considering rival contentions, the Commission sought clarification from MSEDCL on reasoning for not executing EPA despite approval of the Competent Authority and disconnection of Wind Generators without valid EPA.

**6. MSEDCL in its Additional submission dated 12 July 2022 has stated as under:**

**6.1 Rationale not executing EPA despite approval of the Competent Authority:**

6.1.1 The issue raised in this Petition is more than 10-year-old. All records in respect of issues deliberated in present Petition are not available with MSEDCL. However, from the Office Note dated 07 November 2012, it appears that, the EPA was to be executed for a period of 12 years. It is further, submitted that the said Office Note also categorically mentioned that “*if approved, the EPA will be entered into as per the MSEDCL procedure*”.

6.1.2 The EPA with RE generators has been executed as per provisions of the RPO Regulations-2010. The bare perusal of the said Regulation clarifies that a long-term EPA has to be entered for a period of 13 years that to from the date of COD itself. Further, the RE generator

has to choose the option of sale to Distribution Licensee or REC mechanism before entering into EPA.

6.1.3 Further, the Commission in its Order dated 14 July 2010 in Case No. 20 of 2010 has held that the EPA period under preferential tariff has to be of 13 years right from the date of COD. Accordingly, it is quite possible that the said approval might have been revisited by MSEDCL and might have been deferred.

6.1.4 In the present case the generator had opted for open access from the date of COD and has already availed open access for one year.

6.1.5 GoM RE policy 2010 had stipulated target of 2000 MW of wind energy which was fulfilled by MSEDCL during FY 2013-14. Subsequently, GoM RE policy 2015 was notified on 07.06.2015 under which MEDA Registration certificate was mandatory. Further in year 2017 the GoI, MoP, issued guidelines for procurement of wind energy through competitive bidding process and also GoM accorded approval to procure wind energy through competitive bidding route and signing of EPA at preferential tariff was discontinued since December 2017.

6.1.6 It is to submit that, the formalities for signing of EPA has to be completed within as time frame adhering to prevalent rules, regulation, policies etc. An approval has its own time within which all the formalities are required to completed by the parties.

6.1.7 Procedure for signing of an EPA:

As per the prevalent procedure following steps were required to be completed for successful execution of EPA.

- (i) Circulation of EPA draft to the petitioner for filling in the requisite details of the project and the project owner
- (ii) Submission of duly filled-in draft of EPA (2 Copies)
- (iii) Verification of EPA draft by MSEDCL.
- (iv) Seeking appointment of the authorized signatory of MSEDCL by the authorized representative of the project holder / project developer.
- (v) Submission of documents of the authorized signatories of the project holder such as Board Resolution, Power of Attorney, PAN Card, etc original & photo copies for verification, and photo identity documents of witnesses as may be required for execution of EPA
- (vi) To attend the office of the MSEDCL on the appointment date for signing & execution of the EPA along with two witnesses, company seal & stamp.

6.1.8 MSPL after submission of its EPAs, assuming the same to be true basis the acknowledgement of MSEDCL, did not take any actions or even send reminders for signing the said EPA before its communication dated 29 June 2018. This very much demonstrates



lackadaisical approach of MSPL who is now very keen to take the benefits under the said unsigned EPA.

6.1.9 EPA is a mutually agreed contract which needs to be signed and executed by both the parties. However, the petitioner in the present case did not fulfill his duty within a reasonable time for the reasons best known to him. Hence, the EPA could not be executed in line with the in principle approval accorded by the Competent Authority. Therefore, from the above it is clear that the Petitioner has failed to adhere to the timelines or procedure as required for entering into an EPA and thus, cannot approach the Commission at this belated stage seeking compensation for an act which was never agreed upon by the parties.

6.2 Disconnection of Wind Generators/ RE generators without valid EPA:

MSEDCL has been following the process of disconnection those generators who have been injecting power into the grid without an EPA, absolutely in a non-discriminatory manner. MSEDCL from time to time has communicated to its field offices regarding disconnection of windmills / RE generators not having valid contracts and are also monitoring the compliances thereof.

**Commission's Analysis and Ruling:**

7. The Commission notes that present Petition has been filed seeking compensation from MSEDCL for energy injected by MSPL's Wind Turbine during the period of 25 March 2012 to 06 June 2018. The EPA has not been signed between MSPL and MSEDCL. The said WTGs were commissioned on 31 March 2011 and were being used under captive mode till 24 March 2012. Based on submission made by parties, the Commission frames following issues for its consideration in present matter:

- a. Whether MSPL's claim is barred by the law of limitation?
- b. Whether MSPL has injected the power into grid with the consent of MSEDCL?
- c. Whether MSPL is eligible for compensation? If yes, then what are the modalities?

The Commission is addressing these issues in following paragraphs.

**8. Issue a: Whether Petitioner's claim is barred by the Law of Limitation?**

8.1 MSEDCL has objected that MSPL has not filed the Petition before the Commission within the limitation period. Claims of MSPL before 12 April 2019 are barred by Law of Limitation.

8.2 In reply, MSPL has stated that the period of limitation applies only to the proceedings filed under Section 86 (1) (f) of the Electricity Act, 2003. The present proceedings are filed for

implementation of RPO Regulations-2010 and hence period of limitation is not applicable in present proceedings.

- 8.3 In this regard the Commission notes that the provisions of the Section 86(1) (f) of the Electricity Act, 2003 reads as below:

“  
*Section 86. (Functions of State Commission): --- (1) The State Commission shall discharge the following functions, namely: -  
---  
(f) adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;---*”

- 8.4 In the present case, the Petitioner MSPL is the wind generator and MSEDCL is a Distribution Licensee. Relief sought is payment from MSEDCL for units injected by MSPL's Wind Turbine for the period of 25 March 2012 to 06 June 2018.
- 8.5 Although, the Petition is filed under Regulation 3, 7, 9 and 10 of the RPO Regulations-2010 and Section 86 (1) (e) [ promotion of co-generation and generation of electricity from Renewable Sources of Energy] of the Electricity Act, 2003, the issues agitated in the Petition are in the nature of dispute between the Generating Company and Distribution Licensees (MSEDCL).
- 8.6 The Provisions of RPO Regulations-2010 and Sections of the Electricity Act, 2003 cited in the Petition by MSPL would not be the criteria to decide the nature of dispute and applicability of the statutory provisions especially if the petition is filed under wrong legal provisions. The Hon'ble Supreme Court in its Judgement dated 12 February 2009 in Civil Appeal No. 943-944 (J. Kumaradasan Nair v. Iric Sohan, [(2009) 12 SCC 175) has held that mentioning of a wrong provision or non-mentioning of any provision of law would not be criteria to decide applicability of the law and jurisdiction of the court. Relevant para of the Judgment reads as below:

“  
*18. It is also now a well-settled principle of law that **mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law.** While exercising its power, the court will merely consider whether it has the source to exercise such power or not. The court will not apply the beneficent provisions like Sections 5 and 14 of the Limitation Act in a pedantic manner. When the provisions are meant to apply and in fact found to be applicable to the facts and circumstances of a case, in our opinion, there is no reason as to why the court will refuse to apply the same only because a wrong provision has been mentioned. In a case of this nature, sub-section (2) of Section 14 of the Limitation Act per se may not be applicable, but, as indicated hereinbefore, the principles thereof would be applicable for the purpose of condonation of delay in terms of Section 5 thereof.”*

*[Emphasis added]*

- 8.7 In light of the nature of reliefs sought in the present Petition and the Hon'ble Supreme Court judgement, argument of MSPL that present petition has not been filed under Section 86 (1) (f) and hence law of limitation is not applicable is devoid of any merits.
- 8.8 It is clear that the present Petition is a dispute between MSPL and MSEDCL regarding the purchase and payment of the injected units which may have been alleged to be considered for RPO obligation of MSEDCL. Hence, to adjudicate this dispute, the Commission has to use its adjudication power under Section 86 (1) (f) of the Electricity Act, 2003. Therefore, the Commission deems it fit to treat this Petition as petition filed under Section 86 (1) (f) of the EA, 2003.
- 8.9 The Hon'ble Supreme Court vide its Judgment dated 16 October 2015 in the case of *AP Power Coordination Committee vs. M/s Lanco Kondapalli Power Ltd.* has held that the provisions of the Limitation Act, 1963 shall be applicable to the State Commission where it executes its judicial powers under Section 86(1)(f) of the Electricity Act,2003. Taking the cues from above Judgement, the Commission deems it fit to apply principles encompassed in Law of Limitation while evaluating the claims in present matter.
- 8.10 As per Law of Limitation, any claim prior to three years from date of filing of Petition is barred by limitation. Accordingly, claims prior to 8 April 2019 should have been barred by limitation. However, Hon'ble Supreme Court vide Judgment dated 10 January 2022 has excluded period between 15 March 2020 till 28 February 2022 for the purpose of limitation. Relevant part of said Supreme Court Judgment is reproduced below:

*"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings"*

Accordingly, above said excluded period (15 March 2020 to 28 February 2022) cannot be counted in three years period stipulated in Law of Limitation. Hence, by adding such period to 3-year limitation period, MSPL becomes eligible to raise any claim from 24 April 2017 onwards only. Any claim before this date will be barred by Law of limitation and this Commission cannot adjudicate the same.

- 8.11 The Commission notes that although claim made in the present Petition is for compensation for wind energy injected into grid during the period of 25 March 2012 to 06 June 2018, main contention is that even after approval from competent authority, MSEDCL did not sign the EPA in the year 2012. In case EPA would have been signed, present dispute could have not arisen. Hence, main issue of dispute is non-signing of EPA in the year 2012. Said dispute has been raised after a long period of 10 years through present Petition. MSPL in its Petition has not justified such long delay in approaching to the Commission. Also there is no justification for no communication with MSEDCL after submitting draft EPA in

November 2012 till first reminder sent after 6 years in June 2018. If MSPL had followed up with MSEDCL promptly or approached the Commission at that point of time, the Commission could have dealt with it appropriately. As observed in earlier paragraphs, such actual cause of action and the dispute that occurred in the year 2012 is now time barred for adjudication.

**9. Issue B: Whether MSPL has injected the power into grid with the consent of MSEDCL?**

9.1 MSPL has contended that it has injected power for the period 25 March 2012 to 06 June 2018 after prior communication with MSEDCL. MSPL has relied upon the 'Office Note' dated 07 November 2012 approved by MSEDCL's Competent Authority which clearly spells out intention of MSEDCL to enter into a long-term EPA for 12 years for the period 01 April 2012- 30 March 2024. Further, on 23 November 2012, two (2) copies of EPAs were submitted by MSPL along with all other required documents for execution of contract. Hence, MSPL cannot be faulted for injecting the power pending signing of EPA.

9.2 MSEDCL has contended that the issue raised in this Petition is more than 10-year-old. All records in respect to issues deliberated in present Petition are not available with it. The bare perusal of the RPO Regulation -2010 clarifies that a long-term EPA has to be entered into for a period of 13 years that too from the date of COD itself and not for 12 years. Hence, it is quite possible that the said approval dated 07 November 2012 might have been revisited by MSEDCL and signing of EPA might have been deferred. MSEDCL also enumerated the formalities which required to be complied with by Petitioner for execution of contract.

9.3 The Commission notes that it is a fact that EPA has not been executed between the parties. Further as ruled in earlier part of this Order, issue of non-signing of PPA is time barred now. MSEDCL in its submission has pointed out that various other formalities which were required to be completed before executing EPA were not completed and hence it might be possible that post approval on office file from competent authority, decision of signing of EPA might have been revised. The Commission notes that relevant documents of communications between parties post submission of draft EPA by MSPL in November 2012 are not made available for scrutiny before this Commission. In any case, there is no communication express or implied to Petitioner that it could inject into the generated energy. Under such circumstance, the Commission holds that in absence of any document beyond internal file notings of MSEDCL there is nothing on record which can be considered written consent by MSEDCL to MSPL for injecting wind energy into the Grid.

9.4 Accordingly, the Commission rules that MSPL has injected the wind energy into the Grid without consent of MSEDCL.

**10. Issue C: Whether MSPL is eligible for compensation? If yes, then what are the modalities?**

10.1 MSPL has contended that it has supplied electricity to MSEDCL from period 25 March 2012 till 06 June 2018. Therefore, MSEDCL is duty bound to pay/ compensate it for the same. Hence, at the time of filing the Petition, MSPL has claimed Rs. 1.29 crore against the energy injected during the said period 25 March 2012 till 06 June 2018. MSEDCL has opposed such claim on the ground that energy injected into the grid is without valid EPA and hence need not be compensated.

10.2 The Commission in its earlier part of this Order has held that MSPL has injected wind energy into the grid without valid consent from MSEDCL. The APTEL, in its various judgments has ruled that 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”.*

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.*

In view of the above mentioned APTEL Judgments, MSPL is not eligible for any compensation for wind energy injected into the Grid without valid consent / EPA.

- 10.3 MSPL has argued that it needs to be compensated for the energy injected in the Grid which is used for RPO compliance of MSEDCL. MSPL has relied on the Commission's earlier Order in Case No. 28 of 2020 in the matter of Bothe Windfarms. In this regard the Commission is of the opinion that MSPL's case is different from case of Bothe Wind Farm. Unlike Bothe, MSPL did not setup its wind project for exclusive sale to MSEDCL, this is evident from the fact that for a year from date of commissioning, MSPL used these WTG for self-consumption. Whereas Bothe Wind Farms were set up for exclusive sale to MSEDCL. As facts of the matters were different, MSPL cannot rely upon Order in Case No. 28 of 2020. Besides, unlike Bothe, there is no prayer of petitioner asking for direction to MSEDCL to sign EPA as per the internal approval by competent authority.
11. MSPL has also requested for direction to MSEDCL / MEDA for providing list of Wind generators whose energy has been utilized by MSEDCL for fulfillment of RPO in the period of 25 March 2012 to 6 June 2018. In this regard, the Commission notes that RPO verification process for the period covering March 2012 to June 2018 has been concluded after due process of Public Consultation and Orders in those matters have attained finality. In case MSPL wants such details, it should have participated in those public hearing process and should have sought such details and filed its objection at that point of time. After completion of proceedings and Order having finality, such request cannot be entertained.


12. Hence, the following Order:

### **ORDER**

1. **The Case No. 71 of 2022 is dismissed.**

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(Sanjay Kumar)  
Chairperson

  
(Abhijit Deshpande)  
Secretary

