



याचिका संख्या/Petition No 306/MP/2022
With
IA Nos. 20/2023, 85/2023 & 16/2024

कोरम/ Coram:

श्री जिशु बरुआ, अध्यक्ष / Shri Jishnu Barua, Chairperson
श्री रमेश बाबू व., सदस्य / Shri Ramesh Babu V., Member
श्री हरीश दुदानी, सदस्य / Shri Harish Dudani, Member

आदेश दिनांक/ Date of Order 19th of May, 2025

In the matter of

Petition under Section 19 of the Electricity Act, 2003 read with Regulation 20 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of Trading Licence and other related matters) Regulations, 2020 inter alia seeking punitive action against and revocation of trading license of M/s Kreate Energy (I) Pvt. Ltd.

And in the matter of

Uttarakhand Power Corporation Limited,
Victoria Cross Vijeta Gabar Singh Urja Bhawan,
Kanwali Road, Dehradun 248001
...Petitioner

Vs

1. Kreate Energy (I) Pvt Ltd.,
Unit No. 1002, 10th Floor, Antriksh Bhawan,
22, Kasturba Gandhi Marg, New Delhi 110001

2. Indian Energy Exchange Ltd.,
Plot No. C-001/A/1, 9th Floor,
Max Towers, Sector 16 B,



Parties Present

Shri Amartya Ashish Sharan, Advocate, UPCL
Ms. Madhu Saran, Advocate, UPCL
Shri Gopal Jain, Sr. Advocate, KEIPL

ORDER

The Petitioner, Uttarakhand Power Corporation Limited (hereinafter referred to as 'UPCL'), has filed the present Petition under Section 19 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Regulation 20 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading License and other related matters) Regulations, 2020 (hereinafter referred to as 'the Trading License Regulations 2020', against Respondent No.1, Kreate Energy (I) Pvt Ltd (hereinafter referred to as 'KEIPL') on account of willful and prolonged failure on its part to clear the dues of the Petitioner under various contracts between the parties and further for taking punitive action against KEPL i.e., revocation of the trading licence granted to the Respondent, KEIPL. The Petitioner has made the following prayers:

- (a) *Initiate appropriate proceedings under Section 19 of the Electricity Act, 2003 read with Regulation 14 of the 2009 Regulations for revocation of the inter-State trading licence granted to the Respondent No. 1/KEIPL;*
- (b) *Revoke the inter-State trading licence of KEIPL;*
- (c) *Alternatively, direct KEIPL to cure its continuous, prolonged and willful default committed under the terms and conditions of its licence read with 2009 Regulations, failing which its licence shall be revoked;*
- (d) *Suspend the trading licence as an interim measure; and*
- (e) *Pass any other or further order(s) as this Commission may deem fit and proper in facts and circumstances of the present case.*

Prayer in IA No.20/2023



- (a) *Allow the present application and implead (i) Indian Energy Exchange Limited as the second party Respondent to the above captioned Petition; and (ii) Power Exchange India Limited as the third-party Respondent to the above-captioned Petition; and*
- (b) *Pass any other or further order(s) as this Commission may deem fit and proper in acts and circumstances of the present case.*

Prayer in IA No.85/2023

- (a) *Invoke the powers under Section 19(4) of the Electricity Act and direct that the trading license of the Respondent may be permitted to remain in force subject to the further terms and conditions that*
- (i) *The Licensee shall acknowledge that it is liable to pay outstanding dues to Uttarakhand Power Corporation Ltd consisting of a principal sum of Rs. 24.99 Crores as well as applicable Late Payment Surcharge (in terms of the agreements between the said Parties) calculated up to the date of payment and shall neither seek waiver or forbearance from Uttarakhand Power Corporation Ltd. with respect to said sum nor institute any proceeding disputing or seeking reduction of the said liability;*
- (ii) *The Licensee shall pay an upfront sum of Rs. 5 crores to Uttarakhand Power Corporation Ltd. within a period of one week from the date when this term of its trading License takes effect.*
- (iii) *The Licensee shall propose, and upon acceptance of such proposal, fulfill, a payment plan for the payment of the sum remaining due to Uttarakhand Power Corporation Limited after payment of the upfront amount aforesaid; provided that the tenure of such payment plan shall not exceed a period of 6 months.*
- (b) *Pass any other or further order(s) as this Commission may deem fit and proper in facts and circumstances of the present case.*

Background

2. The Petitioner, Uttarakhand Power Corporation Limited ('UPCL'), a Government of Uttarakhand Undertaking, is a distribution licensee within the meaning of Section 2(17) of the Act. Respondent No.1 M/s Kreate Energy (I) Pvt Ltd (KEIPL), incorporated under the Companies Act, 1956, was granted a Category-II Inter-State trading licence by the Commission initially in the name of "Mittal Processors (P) Ltd (MPPL)". By the Order of the Commission dated 12.03.2019 in Petition No. 250/RC/2018, the name of the trading licensee was changed from 'Mittal Processors (P) Ltd (MPPL)' to 'Kreate Energy (I) Pvt. Ltd'. MPPL was originally granted a Category 'A' licence for inter-State

trading of electricity under the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2004. Subsequently, MPPL's trading was re-categorized as a Category III licence under the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2009. The Commission, vide order dated 11.02.2013 in Petition No. 256/RC/2012, upgraded the MPPL's licence from Category 'III' to Category 'II'. Respondent No. 2 - Indian Energy Exchange Ltd (IEX), registered under the Companies Act, 1956, operates an exchange for the trading of electricity products. The Petitioner had floated a tender for the sale of surplus power, wherein the Respondent, KEIPL, was the successful bidder. Subsequently, the Petitioner and Respondent, KEIPL, concluded an agreement dated 28.09.2016 ('2016 Agreement') which stipulated that the Respondent, KEIPL, would have to pay the weekly credit bills within 5 days from the date of submission of credit bills to UPCL, via RTGS/NEFT mode. The date of submission of the credit bill would be excluded from the aforesaid 5-day period.

3. Thereafter, on 17.8.2017, the Petitioner floated a fresh tender for the period between 1.10.2017 to 30.9.2018. However, due to the cancellation of the tender, UPCL had to extend the 2016 Agreement with Respondent, KEIPL, for a period of 3 months, i.e., from 1.10.2017 to 31.12.2017. The Petitioner again floated a fresh tender for the period from 1.1.2018 to 31.12.2018, and after completing the bidding process, UPCL and Respondent, KEIPL, executed an agreement dated 29.12.2017 ('2017-2018 Agreement') for the sale of power and purchase of REC (Non-solar and Solar) for the aforesaid period. After following the due process under the extension clause of the 2017-18 Agreement and with the approval of the Managing Director of UPCL dated 22.12.2018, the tenure of the 2017-18 Agreement was extended for another calendar year, i.e., until 31.12.2019 vide Supplementary Agreement 2 dated 26.12.2018 ('2019 Extended Agreement'). Subsequently, the Petitioner floated a fresh tender on 4.9.2019, i.e., prior to the expiry of the 2019 Extended Agreement. The Respondent KEIPL emerged as the successful bidder in respect of the said tender, and an agreement dated 28.12.2019 was executed between the Petitioner and Respondent No. 1 ('2020 Agreement'). The Petitioner had sold day-ahead surplus power on the Power Exchange

through the Respondent from October 2016 onwards under different Agreements executed with the Respondent, KEIPL, from time to time. However, the Respondent, KEIPL, did not pay the dues to the Petitioner despite receiving due consideration from IEX for the same.

Submission by Petitioner

4. The Petitioner has mainly submitted as under:

(a) On 6.7.2020, UPCL wrote to KEIPL with instructions to provide the statement of sale of power made by UPCL in the Indian Energy Exchange ("IEX") up to the month of June 2020 and to visit the office of the Commercial/Finance wing of UPCL for reconciliation and payment of the outstanding dues. In response, the Respondent vide its letter dated 10.7.2020, requested the Petitioner to grant time for the reconciliation on the ground that the Respondent's office was under lockdown due to COVID-19. The Respondent requested the Petitioner to share the details available with the Petitioner for the Respondent's records and further reconciliation.

(b) The Petitioner vide its letter dated 20.7.2020 informed the Respondent that as per records available with UPCL, KEIPL was liable to pay Rs. 60.78 crores to UPCL, excluding applicable Trading Margin and Late Payment Surcharge. The Petitioner requested the Respondent to depute an authorized representative to visit the Commercial/Finance Wing of UPCL and ensure payment of dues immediately without further delay. On the same day, the Petitioner sent the Respondent a separate e-mail attaching details of payments made by KEIPL from October 2016 onwards, as made available by the Finance Wing of UPCL.

(c) In response, the Respondent vide its letter dated 22.7.2020 informed the Petitioner that it was facing difficulty in collecting data pertaining to the relevant four-year period on account of COVID-19 and lockdown, and "Pending reconciliation of figures, it has already planned to continue paying ad-hoc payment based on the tentative accounts". The Respondent declined the request

of the Petitioner for sending an authorized representative to visit UPCL and stated that “there will not be any fruitful purpose served by such visit unless [Respondent was] also ready with the corresponding compiled figures from [the Respondent’s] records”.

(d) A number of letters were exchanged between the Petitioner and the Respondent between the period from 23.7.2020 to 07.8.2020 wherein Petitioner, in good faith, gave the Respondent several opportunities and ample time to collect data from its offices to enable the parties to reconcile the figures pertaining to the amount due from KEIPL to UPCL. However, KEIPL remained uncooperative and refused to expedite the required data collection or otherwise move the reconciliation exercise forward. Hence, the Petitioner was constrained to issue letter No. 2111/UPCL/Comm/KEIPL(K-1)/SE on 7.8.2020, whereby the Petitioner informed KEIPL that it was proposing to take the following actions: “(i) to finalize the dues ex parte as per record available with UPCL and terms and conditions of Agreements signed with M/s KEIPL (formerly M/s MPPL) from time to time; (ii) to liquidate [Bank Guarantees] available with it under running agreement and other agreements; (iii) to consider initiation of strict legal proceedings against M/s KEIPL for recovery of dues; (iv) to intimate/file petition in CERC as per the terms & conditions of agreements signed from time to time and as per the provisions of the Trading Licence Regulations 2020 and other applicable Laws/Regulations for taking punitive action against KEIPL for non-payment of dues of UPCL”. Vide the letter dated 7.8.2020, UPCL gave KEIPL a last and final opportunity to visit the UPCL office for a reconciliation exercise and to pay the pending dues.

(e) On 21.8.2020, the Petitioner wrote to the Managing Director of Respondent highlighting the fact that the Respondent had only paid an amount of Rs. 4.075 crores as against pending dues of Rs. 60.78 crores plus LPS between 14.7.2020 and 20.8.2020, which was a miniscule payment and indicated that Respondent was acting in bad faith with an intention to mislead UPCL. The Respondent was reminded that, since “KEIPL received regular payment from the

Power Exchange against sale of energy, it [was] against contractual obligation on part of M/s KEIPL to withhold said amount at its end and not pay it to UPCL”.

(f) On 22.8.2020, the Petitioner wrote an e-mail to the Head, Business Development of IEX, asking whether any payment against day-ahead/intra-day sale of power made by KEIPL in the said exchange on behalf of UPCL from October 2016 until the date of the said letter was pending at the level of IEX or not. In reply thereto, on 25.8.2020, IEX wrote an email to the Petitioner informing the Petitioner that there was no pending payment at the level of IEX towards Day Ahead and Intra Day sale of Power by UPCL through KEIPL. Thus, it became abundantly clear that KEIPL had received payment against the sale of power on behalf of UPCL, yet KEIPL had not in turn remitted the relevant amounts to UPCL in complete breach of the contracts of the parties.

(g) On 01.9.2020, the Petitioner issued a Demand Notice to the Respondent for the payment of the unpaid amount along with LPS/interest. Vide the said Demand Notice, the Respondent was put on notice that under KEIPL's contracts with Petitioner, the Contract Performance Guarantee provided by KEIPL could be forfeited for not performing its contractual obligations toward the Petitioner. The clarification received from IEX via e-mail on 25.8.2020 was highlighted for the Respondent's attention. The Petitioner, therefore, called upon and finally directed the Respondent to clear the unpaid amount, which was quantified at Rs. 77.33 crores (including LPS as on 31.8.2020) within 15 days of receiving the Demand Notice failing which UPCL would be constrained to initiate appropriate legal remedies against KEIPL at KEIPL's sole cost.

(h) On 2.9.2020, the Petitioner wrote to the power company undertakings of eight State Governments to alert them regarding the amounts due from KEIPL to UPCL and requested the said entities not to clear any payments due to M/s KEIPL. The Petitioner requested that the said entities transfer these amounts to the Government of Uttarakhand.

(i) On 3.9.2020, the Respondent issued a letter stating that “there seemed to be some discrepancies in the accounts” furnished by the Petitioner. Moreover, in complete disregard to the fact that Mr. Mittal had promised to provide a payment schedule by the evening of 2.9.2020, in this letter, Respondent unilaterally postponed the provision of a payment plan to a point in time after the Respondent would be able to identify the supposed discrepancy and after a proposed visit by Respondent’s officials to UPCL’s offices in the second week of September 2020. On 5.9.2020, the Respondent issued another letter, saying that the Respondent had identified some discrepancy with regard to the period between April 2020 and September 2020, “i.e., the COVID-19 period”. The Respondent attempted to offer excuses for its delay in clearing UPCL’s dues on the basis of (1) strain on cash flows during the “tough times” of COVID-19 and (2) KEIPL’s non-receipt of “substantial payment from utilities which are facing constraints”.

(j) Firstly, that by this time, i.e., September 2020, the Respondent had already waived any objection as to the amount due to the Petitioner by failing to participate in the reconciliation exercise between July-August 2020, even when the Respondent was informed that such conduct would lead to the amount being determined by the Petitioner ex-parte. Secondly, the reasons cited by the Respondent in the letter dated 5.9.2020 are flimsy and untenable in the face of the letters from IEX dated 25.8.2020 and 4.9.2020, wherein it was clarified that IEX had remitted all the amounts received against the sale of power on behalf of UPCL to KEIPL. Finally, the Respondent’s objection, being in respect of the limited period from April 2020 to September 2020, would relate to the dues of that period alone, and it would offer no reason for the Respondent to withhold payment in respect of the preceding period from April 2016 to April 2020.

Attempt at settlement between the parties

(k) The Respondent vide its letter dated 10.9.2020 informed the Petitioner that it had assigned an account of Rs. 5.86 crores, which was to be received by the Respondent from the Jammu & Kashmir Power Development Department (“J&K PDD”), in favour of the Petitioner. However, this amount of Rs. 5.86 crores has

not been credited to the Respondent at the time of drafting the instant Petition. KEIPL also proposed a payment plan which included:

S. No.	Particulars	Amount
A)	Assignment of the amount receivable from J&K PDD	Rs. 05.86 crores
B)	4 cheques of Rs. 75 lakhs submitted to UPCL officials in September 2020	Rs. 03.00 crores
C)	6 fortnightly payments of Rs. 1 crore from Oct-Dec 2020 via PDCs to be presented in October 2020 + 4 monthly payments of Rs. 3 crores from Jan-April 2020	Rs. 18.42 crores
D)	Assignments of Solar Plants and BG in lieu of the same <ul style="list-style-type: none"> Garg Acrylics Ltd, Bhatinda – Rs. 19.27 crores Garg Acrylics Ltd., Ludhiana – Rs. 4.09 crores 5 other solar plants – Rs. 3.06 crores 	Rs. 26.42 crores
	Total	Rs. 53.7 crores

(l) Pursuant to the payment plan proposed by the Respondent in its letter of 10.9.2020, the Respondent vide letter dated 14.9.2020 informed the Petitioner regarding (i) two additional post-dated cheques (“PDCs”) of Rs. 50 lakh each, drawable respectively on 20.9.2020 and 30.9.2020 (thus, the total amount recovered from the Respondent recovered in October became Rs. 5 crores); (ii) six post-dated cheques for the months of October-December, 2020 of Rs. 1 crore each. However, as regards the amount of Rs. 12.42 crores proposed to be cleared from January to April 2021, the Respondent requested ten days’ time to furnish those PDCs. Secondly, as regards the solar assets, the Respondent complained of difficulties in finding a prospective buyer on account of the pandemic. The Respondent proposed two alternatives: (1) pledge of assets in favour of UPCL along with transfer of right to realize revenue from them until the assets were sold; or (2) UPCL could obtain a bank guarantee on its own end in respect of the solar assets.

(m) On 23.9.2020, pursuant to certain discussions between the officials of the parties, the Respondent sent the Petitioner a letter enclosing a PDC of Rs. 82,20,997/- dated 31.3.2021. The date of this PDC was too late and not in accordance with the payment schedule proposed by the Petitioner. Furthermore, the Respondent attempted to undermine the discussions by stating in the covering

letter that “in case the solar assets are liquidated prior to the date of PDCs then the amount would be directly submitted to you and PDCs would be taken back” and that “the sole intent of submitting PDCs is to provide the Petitioner an adequate security till the time solar assets are liquidated”. This qualification was neither part of the discussions between the parties nor found mention in the Respondent’s own payment plan dated 10.9.2020. The PDCs provided were always meant to be an additional mode of clearing the dues over and above any amounts that were to be realized from the sale of the solar assets.

(n) On the same day, i.e., 23.9.2020, and then through another letter dated 29.9.2020, the Petitioner sent Respondent an updated reconciliation statement wherein the details of the various PDCs provided by the Respondent and the J&K PDD receivable assigned by Respondent to the Petitioner were included in the reconciliation statement. However, no response was received from the Respondent for either of these letters.

(o) The Respondent vide its letter dated 3.10.2020 issued an Open Access Charges Bill amounting to Rs. 20,13,280/- for supply of power from BSES Yamuna Power Ltd, Delhi to the Petitioner for the period from 11.11.2020 to 30.11.2020. The Petitioner adjusted the said amount against the pending dues of KEIPL and informed the Respondent about the same vide the Petitioner’s letter dated 15.10.2020.

(p) The Petitioner followed up with a letter issued on 6.10.2020, whereby the Respondent was put on notice that in failing to liquidate UPCL’s dues forthwith, the Respondent had committed criminal breach of trust and/or criminal misappropriation in respect of UPCL’s funds. The Petitioner also reminded the Respondent that “the amount of LPS on the outstanding dues was increasing on a daily basis pending the realization of PDCs submitted by the Respondent. The Petitioner further informed the Respondent that (1) the Respondent had not acted on its promise to furnish a revolving Bank Guarantee in favour of UPCL to secure the realization of PDCs; (2) the amount receivable from the J&K PDD had not been credited to the Petitioner; and (3) the total amount of the PDCs provided, up to

31.3.2021, came to Rs. 49.13 crores and was yet insufficient to meet KEIPL's liability of more than Rs. 75 crores (calculated as of 11.9.2020). The Petitioner requested the Respondent to submit the Bank Guarantee in favour of UPCL to secure the realization of the PDCs, and open an escrow account with UPCL as the sole beneficiary of the funds, which would be realized against the sale of the Respondent's solar assets. However, the Petitioner clarified that the Respondent's liability remained an immediate one and that all discussions regarding provision of the PDCs/Bank Guarantees, etc., up to this point were merely in the nature of collateral security.

(q) The Petitioner and Respondent's officials had a meeting on 13.10.2020 at UPCL's office regarding the opening of the Escrow Account with UPCL as the sole beneficiary for realizing the amount against the sale of Respondent's solar assets and regarding the mortgage of the solar assets in favour of UPCL.

(r) On 14.1.2021, the Respondent wrote to the Petitioner enclosing merely a partial reconciliation statement for the period between October 2016 to March 2017. In respect of its promise to mortgage its solar assets in favour of the Petitioner, KEIPL stated that "it has come out clearly that there being no physical or immovable assets, mortgage of the solar assets is not possible". For escrow, KEIPL wrote that it would have to cause certain amendments in the PPAs pertaining to the solar assets in order to change the account for receipt of payment, and that this would require the consent of the relevant PPA counterparty.

(s) Between 30.3.2021 - 31.3.2021, the date for presentation of 8 PDCs provided by the Respondent, for a total amount of more than 30 crores, was about to arise. Vide letter dated 26.3.2021, the Respondent unilaterally proposed a delayed schedule for encashment of the last set of PDCs. In good faith and with a view to maximizing recovery, the Petitioner presented the PDCs close to the dates proposed by the Respondent, and an amount of Rs. 7,88,14,111/- could be recovered between 31.3.2021 and 29.4.2021. On 29.5.2021, just 2 days before the date for presenting a cheque of Rs. 5 crores, the Respondent issued another

letter to the Petitioner seeking further “suitable extension” for clearing UPCL’s dues on account of second wave of the pandemic and the Respondent’s consequent difficulties in completing the sale of its solar assets. The Respondent made a payment of Rs. 1 crore to the Petitioner on 1.6.2021, thus bringing the total payments received from the Respondent between 3.9.2020 and 1.6.2021 up to Rs. 28,10,27,391/-.

(t) By June 2021, the Petitioner had extended the time for the Respondent to clear its dues to the limits of good faith and could no longer ignore the mounting burden of LPS dues in respect of which neither any security nor any payment had ever been provided by the Respondent. Therefore, the remaining 5 PDCs provided by the Respondent were presented by the Petitioner on or about the dates projected by the Respondent in its letter dated 26.3.2021 and were dishonoured on account of insufficiency of the funds.

(u) The Petitioner sought the advice of Shri S. V. Raju, Additional Solicitor General of India, who rendered a legal opinion in favour of prosecuting the Respondent and its officials. Relying on this opinion, the Petitioner was constrained to take action against the Respondent and its officials under Section 138 of the Negotiable Instruments Act for dishonour of a cheque. Accordingly, the Petitioner filed 5 Criminal Cases bearing No. 4415/2021 and 4417-4420/2021 before the Judicial Magistrate-I, Dehradun, arraying the Respondent and five persons actively involved in the management and day-to-day affairs of the Respondent as accused of the offence under Section 138 of the Negotiable Instruments Act, 1888.

(v) The Petitioner vide its letter dated 3.8.2021, issued an ultimatum to the Respondent for discharging its dues within 15 days, which were quantified as of 30.06.2021 as follows:

• LPS as on 30.06.2021	Rs. 23,54,46,199/-
• Amount due under bounced PDCS	Rs. 25,00,00,000/-
• Plus: Balance of principal amount	Rs. 2,61,74,999/-

(w) The Respondent has committed willful and prolonged default in clearing the dues of the Petitioner, which was required of the Respondent under Regulation 7(h) of the 2009 Trading Licence Regulations and Regulation 9(10) of the 2020 Trading Licence Regulations. The Respondent voluntarily accepted a legal obligation to pay the Petitioner for the sale of power via IEX/PXIL in accordance with clause 15 of each of the tenders, which provides for the terms and conditions of payment for the sale of power.

(x) At all times relevant, the Respondent was under an obligation to “ensure timely payment of dues” (under Regulation 7(h) of the 2009 Regulations) or to “make payment of dues by the agreed due date” (under Regulation 9(10) of the 2020 Regulations). In failing to make timely payment and allowing an enormous outstanding amount to accumulate, the Respondent committed a willful, prolonged, and as yet ongoing breach of the said Regulations.

(y) Under Section 52(2) of the Act, a direct obligation is cast on the electricity trader to discharge the duties relating to trading in electricity which are specified by this Commission. The Respondent’s breach can be characterized as ‘wilful’ because, as demonstrated by the letter from IEX dated 25.08.2020, there was no delay on the part of the exchange in remitting any amounts to the Respondent. The Respondent entered bids for selling power provided by UPCL on the Power Exchanges; the said bids were cleared and the power was sold; the Respondent received full payment in respect of the sale from the Power Exchange, but withheld the said amounts and did not forward the same to the Petitioner. Thus, the Respondent cannot persuade the Commission by arguing that it was not able to pay the Petitioner’s dues on account of COVID-19 or other force majeure factors. Given the structure of the transaction, the Respondent ought not to have had any difficulty in complying with the payment terms unless it was siphoning off or speculating using the payments received on behalf of the Petitioner.

(z) The Respondent’s breach of the Trading Licence Regulations indisputably qualifies as a ‘prolonged’ breach. In this regard, the Petitioner has placed reliance

on the fact that the Respondent's liability in respect of the principal amount began accumulating from the year 2018 and has not been discharged till date.

(aa) Such wilful and prolonged breach is one of the grounds for revocation of the trading licence both under Section 19(1)(a) of the Act as well as under Regulation 20 of the 2020 Trading Licence Regulations. In this regard, the Petitioner has placed reliance on the Commission's order in the case of Jindal Power Ltd. v. Global Energy Pvt Ltd (Petition No. 211/MP/2016). The Respondent's conduct warrants a finding by the Commission that it is not in a position to fully and efficiently discharge the duties imposed on the Respondent under the trading licence. There are sufficient grounds for the Commission to conclude that the financial position of the Respondent is preventing the Respondent from fully and efficiently discharging the duties and obligations under its trading licence. Revocation of the Respondent's trading licence would be in the public interest, and there is no discretionary factor weighing against such revocation.

Hearing dated 9.2.2023

5. During the hearing, the learned counsel for the Petitioner made detailed oral submissions. In response to the specific query of the Commission regarding the Petitioner having raised the issues with the Respondent only in July 2020, despite transacting with the Respondent since 2016, learned counsel stated that there had been certain delays in noticing the discrepancies. After hearing the learned counsel, the Commission admitted the petition and directed to implead IEX as a party to the Petition, file revised memo of parties, Respondents to file their reply to the Petition, and the Petitioner may file its rejoinder thereafter.

IA No. 20 of 2023

6. Pursuant to the direction given by the Commission order dated 9.2.2023, the Petitioner, vide its affidavit dated 15.2.2023, has filed the Interlocutory Application being IA No. 20/2023 impleading Indian Energy Exchange Limited as a party Respondent. In

the said IA, the Petitioner has further sought liberty to implead Power Exchange India Limited ('PXIL'), another electricity exchange wherein KEIPL is a member, as a party Respondent.

7. Pertinently, KEIPL, the existing Respondent to the Petition, is a member of IEX. Under the various contracts between UPCL and KEIPL, KEIPL undertook to trade electricity in the day-ahead/intra-day markets on behalf of UPCL via the electronic platform operated by IEX. That therefore, IEX qualifies as a proper party to the above-captioned Petition. The correspondences received from IEX, dated 25.8.2020 and 4.9.2020, respectively, were instrumental in UPCL's discovery of the default on the part of KEIPL.

Hearing dated 29.5.2023

8. During the course of hearing, learned counsel for the Respondent, KEIPL, citing the non-availability of the arguing counsel, requested time to place on record the Respondent's objections in the matter and prayed for adjournment. The Commission observed that vide Record of Proceedings for the hearing dated 9.2.2023, the Respondent was already allowed sufficient time of four weeks for filing the reply, and accordingly, the request of the Respondent for an additional four weeks and deferment of the hearing till such time is unreasonable. The Commission, however, deemed it appropriate to permit the Respondent to file its reply within a week as a last opportunity, and the Petitioner may file its rejoinder, if any, thereon within a week thereafter.

Reply by the Respondent No. 1 - KEIPL

9. The Respondent in its reply dated 6.6.2023 has mainly submitted as under:

(a) The Respondent had always diligently fulfilled its obligations under the contract, and the same is evident from the extensions of the contract done by the Petitioner from time to time. Accordingly, till the year 2020, the Respondent always made the payments on time, and no quarrel with respect to the payments came up between the parties.

(b) However, to the utter shock of the Respondent, the Petitioner suddenly, in the year 2020, vide letter dated 21.9.2020 and 23.9.2020, issued a reconciliation statement unilaterally and for the very first time, without any justification, imposed a Late Payment Surcharge (LPS) on the Respondent. As per the PPAs, the Petitioner and the Respondent, respectively, are obligated to carry out reconciliation every month. However, it is clear from the reconciliation statement issued by the Petitioner vide letter dated 21.9.2020, that the Petitioner, after much delay, latches and acquiescence for the very first time raises the issues of imposition of LPS for transactions dating back to 2016 and 2017 in the year 2020.

(c) The cause of action started from when the Invoices were raised for the said transactions that took place in 2016 and 2017. Whereas, admittedly, the Petitioner has approached the Commission only in the year 2022, i.e., after a deep sleep of more than 6 years. If such grievances as belatedly agitated by the Petitioner are considered by the Commission as a basis for allowing the prayers sought by the Petitioner, the same would completely kill the commercial prudence.

(d) As per the PPA, the levy of LPS has to be made either on the third day after issuance of the invoice, 5th day of receiving relevant invoices through fax and e-mail in case of purchase of REC (Solar & Non-Solar) and 5th day of receipt of incentive (if any) given to the Respondent by power exchange in case of purchase of REC (Solar & Non-Solar). It is clear that the imposition of a surcharge in the year 2020 on the transactions dating back to 2016 and 2017 is completely barred by law for being levied beyond the requisite 3 years of the limitation period.

(e) The contract agreement executed between the parties duly envisages a clause of arbitration. Inference that can be drawn from the above is that any dispute between the Petitioner and the Respondent in the subject matter of tendering/tender documents/agreement is to be resolved by seeking the indulgence of the Commission. The said clause further stipulates that all disputes apart from those related to tendering/tender documents/agreement, i.e., in terms

of the execution of the agreement, are to be resolved by way of arbitral proceedings.

(f) The alleged dispute between the parties herein being two-fold, i.e., with regard to the alleged payments to be made by the Respondent and the consequential prayer seeking revocation of the license of the Respondent, completely arising out of the alleged disputes, is a matter which is completely non-tariff in nature. Furthermore, in terms of the principles laid down by the Hon'ble APTEL, the Commission is bound to refer the said disputes to arbitration. The Respondent has relied on the APTEL Judgment in the matter of *Southern Power Distribution Company of AP Limited vs. Andhra Pradesh Electricity Regulatory Commission & Anr., Connected Appeal Nos. 397 of 2022 and 147 of 2021*.

(g) Without prejudice and/or any admission that as on date the Respondent has paid an amount of Rs. 45,80,31,139/- to the Petitioner till 31.10.2022. Despite the discrepancy in the manner of imposition of LPS made by the Petitioner, the Respondent, in the utmost *bona fide*, made the aforesaid payments after the Principal amount being claimed by the Petitioner in the month of 2020, along with the alleged LPS. The question of revocation in such circumstances does not survive as the matter is purely in terms of the disputed payment.

(h) The Respondent had provided 5 cheques to the Petitioner solely for the purpose of security, and the same was communicated to the Petitioner on several instances. However, the Petitioner had fraudulently and with dishonest intent encashed the said 5 cheques of the Respondent. Moreover, based on the wrong encashment of cheques, the Petitioner has filed 5 cheque bounce cases under section 138 r/w 141 of the NI Act, 1881 before the Dehradun District Court.

(i) The Respondent has taken a stand before the Ld. Magistrate that the complaints under Section 138 of the NI Act filed by the Petitioner are frivolous cases as the cheques issued were purely for security purposes and not for

encashment. Accordingly, the matter before the Magistrate Court, Dehradun is presently under adjudication.

(j) The Respondent always had its intention to make payments. The Petitioner has concealed the fact from the Commission that the Respondent has made payments to the Petitioner as late as 31.10.2022.

(k) The Petitioner making the security cheques as basis, blacklisted the Respondent which is completely beyond the principles of natural justice. It is submitted that the Respondent has preferred Writ Petition No. 1314 of 2023 against the Petitioner herein seeking quashing off the blacklisting letter dated 6.2.2023.

(l) With regard to a certain payment of Rs. 5.86 Crore to be received by the Respondent from the J&K PDD, the Respondent authorized the Petitioner vide letter dated 10.9.2020 to collect on its behalf. The Petitioner, for its ulterior motives, has concealed the said fact from this Commission. The Petitioner without wasting any further moment, vide letter dated 16.9.2020 reiterated that the Petitioner had requested the J&K PDD to put on hold all payments against the transaction being made by the Respondent in IEX or elsewhere and remit such payments to Government of Uttarakhand vide letter dated 2.9.2020 i.e. even before the Respondent had authorized the Petitioner to do so. The Respondent could not even approach this Commission to seek the delayed and awaited payments from J&K PDD. Subsequently, in the same letter dated 16.9.2020, the Petitioner referred to the said authorization given by the Respondent to collect money, thereby giving its bank details and further requesting the J&K PDD to make the said remittance to the Petitioner directly. In terms of the above, the Petitioner neither went on to recover the said money from J&K PDD on its own accord nor let the Respondent to seek money either from J&KPDD on its own or to seek indulgence of this Commission in pursuance thereof.

(m) The Respondent prayed that this Commission may be pleased to reject the Petition filed by the Petitioner and, in the alternative, refer the disputes, if any,

for arbitration in terms of the arbitration agreement under the contractual arrangement between the parties herein.

Rejoinder by the Petitioner

10. In response, the Petitioner vide its affidavit dated 9.6.2023 has mainly submitted as under:

(a) The Petitioner has invoked the Commission's powers under Section 19 of the Act.

(b) KEIPL's reliance on Clause 10 of the Agreement dated 28.12.2019 regarding monthly reconciliation is erroneous. Firstly, the said Clause is only found in the terms of the Agreement dated 28.12.2019 and not in the previous Agreements dated 28.09.2016 and 29.12.2017, respectively. Thus, the obligation to carry out reconciliation exercises monthly was in force only from 28.12.2019 and not before the said date. Secondly, Clause 10 of the Agreement dated 28.12.2019 must be read side-by-side with the regulations regarding trading licenses issued by the Commission, from time to time. Properly construed, the said regulations impose a statutory obligation on the trading licensee to clear its dues on a timely basis in accordance with the applicable contract, without requiring any specific demand/notice from its clients. Thus, even if no reconciliation exercise were carried out in accordance with Clause 10 of the Agreement dated 28.12.2019, this would not alter KEIPL's statutory obligation to make timely payments to UPCL. Thirdly, Clause 10 of the Agreement imposes the obligation of carrying out reconciliation exercises on both UPCL and KEIPL. Thus, KEIPL was equally bound to initiate reconciliation and to cooperate with reconciliation exercises initiated by UPCL. KEIPL has also offered no justification for its refusal to participate in reconciliation exercises despite UPCL's call.

(c) With reference to KEIPL's argument that the petitioner is seeking recovery of time-barred debt or that the petition is barred by delay, firstly, KEIPL has acknowledged its liability to clear the outstanding amount due to the Petitioner in full, on several occasions. Each such instance where KEIPL or its personnel/

directors have acknowledged their liability to clear the unpaid dues to UPCL would trigger a fresh period of limitation. Further, KEIPL has in fact made a partial payment towards the principal outstanding to UPCL. KEIPL cannot approbate and reprobate at the same time, admitting its liability to pay the principal amount while refusing to pay the Late Payment Surcharge which have arisen under the same contract.

(d) Sections 18 and 19 of the Limitation Act, 1963 are squarely applicable to the instant case. Therefore, on each occasion when KEIPL has acknowledged its liability to pay the principal due to UPCL or has failed to dispute the amount demanded by UPCL by participating in reconciliation exercises, by virtue of Section 18 of the Limitation Act, a new period of limitation would commence for the recovery of dues. Further, Section 19 in relevant part states “*Where payment on account of a debt [...] is made before the expiration of the prescribed period by the person liable to pay the debt [...] by his agent duly authorised in its behalf, a fresh period of limitation shall be computed from the time when the payment was made.*”

(e) Secondly, the KEIPL, while making part payment towards the amount outstanding to the Petitioner, has not specified the debt against which the amounts paid are to be applied. In such circumstances, the Petitioner can apply such payments for the discharge of time-barred debts, taking the assistance of Section 60 of the Indian Contract Act.

(f) Thirdly, the Petitioner submits, assuming without conceding that some part of the amounts due from KEIPL to UPCL are time-barred, the said fact would be irrelevant in the context of the present proceeding for revocation of licence under Section 19 of the Act. It is settled law that limitation can bar the remedy but not the right.

(g) The cause of the Petition stems from KEIPL’s breach of its statutory obligations under Sec. 52 of the Act, Regulation 7 (h) of Trading Licence Regulations 2009, and Regulation 9(10) of CERC Trading Licence Regulations

2020. In light of these provisions, KEIPL's submissions on limitation ought to be read as an admission of the fact that it has failed to discharge its obligations as an electricity trading licensee by making prompt payments to its client, i.e., the Petitioner.

(h) KEIPL incorrectly asserts that the accumulation of LPS is on account of the Petitioner's conduct. In fact, it has resulted from KEIPL's failure to implement the simple transaction envisaged in the PPAs between the Petitioner and KEIPL. The design of the PPAs was such that KEIPL would collect payment for UPCL's electricity sold on the Power Exchanges. Out of the amount so collected, KEIPL was to retain only the trading margin to which it is entitled under the regulations issued by this Commission, and the remainder was to be remitted to UPCL. In light of the Regulations, KEIPL was required to ensure timely payment to UPCL on its own motion in accordance with the contract terms without UPCL needing to raise specific demands/reminders at any time. KEIPL erroneously seeks to interpret Clause 6.3 of the Agreement dated 28.12.2019 to the effect that KEIPL would be liable to pay the LPS if and only if an invoice for payment of LPS is raised on the first day when the liability has arisen.

(i) KEIPL's arguments for referring the subject matter of the captioned Petition to arbitration deserve to be rejected. The Petitioner's prayer for revocation of KEIPL's trading license is non-arbitrable, and such a prayer cannot lawfully be granted by any arbitration tribunal. Section 19 of the Act is clear that "public interest" is a necessary factor for the Commission to consider while evaluating whether a license granted by it must be cancelled.

(j) The APTEL decision of *Southern Power Distribution Company of AP Limited v. Andhra Pradesh Electricity Regulatory Commission*, cited by KEIPL, in fact supports the Petitioner's case. In the said decision, the APTEL has specifically observed that cases that require the resolution of disputes that may involve the exercise of regulatory power ought not to be referred to arbitration. The judgment holds that the Commission, before referring a dispute to arbitration, has to carry out threshold scrutiny as to the arbitrability of the dispute. The

distinction between 'tariff' and 'non-tariff' disputes carved out in Southern Power (supra) as specific to the arbitration clauses under consideration on the facts of the cases disposed of by the said judgment. There is no such distinction in the present arbitration clause.

(k) KEIPL has unfairly stated that the Petitioner has not mentioned the payment already made by it. All payments until filing of the petition are duly reflected in the Petition body (Para 5.17, 5.37.3, 5.38.1, and 5.40). Similarly, KEIPL has wrongly stated that the Petitioner has concealed the letter dated 10.09.2020 from KEIPL to UPCL. As for the Petitioner's letter to J&K PDD dated 2.9.2020, the said letter was part of a batch of letters issued by the Petitioner to power companies of various State Governments. The letter mentions nothing about the amount receivable by KEIPL.

(l) KEIPL has averred that the PDCs by KEIPL were for the purposes of providing security only and that the Petitioner ought not to have deposited the said cheques. Assuming *arguendo* that this is correct, it would fall upon KEIPL to explain which other mechanism it had in mind for making up the shortfall of the due amount. The Negotiable Instruments Act 1881 provides for a presumption in favour of the holder of a cheque that the cheque was drawn for meeting a financial liability of the drawer. Furthermore, KEIPL is estopped from making such averments after it has specifically asked the Petitioner to present the cheques belatedly on specific dates.

(m) UPCL provided KEIPL ample time between 23.08.2022 and 06.02.2023 for ameliorating the situation and to avoid blacklisting. UPCL was in fact constrained to blacklist KEIPL because KEIPL personnel did not cooperate during the mediation process in connection with the Criminal Cases. KEIPL continued with its stance of denying liability to pay LPS. In these circumstances UPCL was left with no other option but to blacklist KEIPL.

Hearing dated 13.6.2023

11. During the course of hearing, learned counsel for the Petitioner submitted that the Petitioner had sold day-ahead surplus power on the Power Exchange through the Respondent for the month of October 2016 onwards under different Agreements executed with the Respondent from time to time. He further submitted that the Respondent sold power on the Power Exchange on behalf of UPCL. However, the Respondent did not pay the dues to the Petitioner despite receiving due consideration from IEX for the same. Learned counsel for the Respondent KEIPL prayed for adjournment on the ground of non-availability of the arguing counsel.

12. After hearing the learned counsel for the parties, the Commission observed that trading in electricity is a regulated activity under the Electricity Act, 2003, as trading is envisaged to promote competition and thereby serve the public interest. If the trading licensees are allowed to flout the terms and conditions of the agreements for purchase and sale of electricity in the course of trading, there will be chaos in the market, shake the confidence of the generating companies and distribution licensees/ consumers, and thereby affect competition, which is against the public interest. Therefore, public interest demands that such practices be strongly discouraged, and the licensees indulging in such practices are dealt with strictly in accordance with the law. Accordingly, the Commission directed the Respondent to cure its prolonged and willful default committed under the terms and conditions of the Trading Licence Regulations within a month. The Petitioner was directed to confirm whether the Respondent has complied with the above direction.

Additional Submission by Petitioner

13. In compliance with the direction of the Commission dated 13.6.2023, the Petitioner, vide its affidavit dated 25.7.2023, has mainly submitted that KEIPL was required to clear the dues of the Petitioner company, latest by 13.7.2023. However, as on date, KEIPL has not made any further payment to the Petitioner company for clearing its dues. Therefore, KEIPL continues to be in willful default as noted by this Commission at paragraph 4 of the Commission's order dated 13.6.2023. Further, KEIPL had sought to challenge the above-mentioned order of this Commission by way of a Writ Petition before the Hon'ble Delhi High Court [Writ Petition (Civil) No. 9120 of 2023]. However,

the Hon'ble Delhi High Court had dismissed the said Writ Petition as unconditionally withdrawn vide an order dated 12.07.2023. Therefore, this Commission may take suitable action against KEIPL in terms of the Act and its allied rules and regulations.

Reply by Respondent on Petitioner's Affidavit dated 25.7.2023

14. The Respondent, vide affidavit dated 31.7.2023, has mainly submitted as under:

(a) It is wrong to state that the Respondent has taken no steps in terms of the order dated 13.6.2023. The Respondent approached the Petitioner during the writ proceeding while offering an upfront payment of Rs. 2.5 crores (approx.) to show *bona fide*, putting its best foot forward to be able to resolve all the pending disputes amicably by providing a reasonable payment plan.

(b) After the Petitioner's non-acceptance to participate in the mediation proceedings before the Hon'ble High Court, the Respondent thereafter immediately took further steps by issuing a letter dated 24.07.2023 to put its offer in writing, thereby again offering an upfront payment of Rs. 2.5 Crore (Approx.). This shows that there is no "willful" default on the part of the Respondent and, on the contrary, the Petitioner has been utterly adamant, having not accepted the upfront payments offered to show *bona fide* on behalf of the Respondent. The Respondent is ready and willing to pay the amounts due and payable. However, as has been informed to the Petitioner vide letter dated 24.7.2023, the Respondent is facing extreme financial hardships due to the COVID-19 pandemic as well as the major coal crisis in the market.

(c) Revocation of the trading licence is the last resort in terms of the provisions laid under the Electricity Act. The same, once brought against the Respondent, shall leave no window for recovery of amounts that are due and payable and shall render the ultimate consumers/general public burdened with the same.

(d) The Petitioner has failed to perform reconciliation from time to time, following the due procedure envisaged under the terms of the contractual arrangement between the parties. Therefore, the Petitioner cannot now come forward seeking alleged

payments in terms of LPS, which, as per the calculations of the Petitioner, comes out to be higher than the principal amount itself. The same is not only beyond the provisions of the agreement but is also not tenable in the eyes of the law.

(e)The Respondent is already facing an application for the initiation of the Corporate insolvency resolution process pending before the National Company Law Tribunal, being case no. IB/521/ND/2022, since the last year, and is on the verge of getting insolvent. Despite the same, the Respondent has made its best efforts to discharge its liability by making offers to pay upfront, showing its bona fides to amicably resolve the dispute. It is pertinent to note at this juncture that if the present proceedings for revocation of the trading licence of the Respondent are precipitated, the same shall pave a path for insolvency of the Respondent, thereby leaving no scope for recovery for the Petitioner.

Hearing dated 16.8.2023

15. Matter was again heard on 16.8.2023. During the course of the hearing, learned senior counsel for the Respondent, KEIPL clarified that the intention of KEIPL is to resolve the issue and make the payment towards the principal amount involved in the matter. Learned senior counsel submitted that insofar as the principal amount is concerned, KEIPL has already issued a communication to the Petitioner dated 24.7.2023 offering up-front payment of Rs. 2.5 crore to strengthen its bona fide intent to make payment that is due and payable, and thus, KEIPL may be permitted to reconcile with the Petitioner. He sought permission to prepare & submit a payment plan for the outstanding principal amount of approximately Rs. 25 crore. Learned senior counsel further submitted that, insofar as the late payment surcharge is concerned, the Petitioner raised the issue of such charges on the invoices dating back to 2016-17 for the first time only in 2022. However, all these aspects can be deliberated and worked out with the Petitioner in a consultation process if the Commission so permits.

16. Learned counsel for the Petitioner submitted that, as such, there is no in-principle objection to the negotiation. However, the Commission may specifically recognize and permit the Petitioner to enter into such a private negotiation while stipulating the terms

of such a negotiation in its order. Learned counsel also submitted that KEIPL's offer of up-front payment may also be recorded in the order of the Commission.

17. Considering the submissions made by the learned senior counsel for KEIPL, learned counsel for the Petitioner, and KEIPL's offer for up-front payment of Rs. 2.5 Crore, the Commission permitted the parties, without prejudice to their rights & contentions in the present Petition, to enter into a negotiation/consultation process within two weeks to resolve the issue involved in the matter, and the parties will file the outcome of such negotiation/consultation process within two weeks thereafter.

18. The Respondent, KEIPL, vide its additional affidavit dated 14.8.2023, has placed on record the copies of letters dated 24.7.2023 & 9.8.2023 exchanged between KEIPL and UPCL.

Hearing dated 11.10.2023

19. During the course of the hearing, learned senior counsel for Respondent, KEIPL, prayed for a short adjournment on the grounds of personal difficulty. Learned senior counsel also submitted that the negotiation/consultation process between the parties did not fructify.

20. Learned counsel of the Petitioner, as such, did not object to the above request but urged for an early listing of the matter. The Petitioner also submitted that it has also moved an IA filed under Section 94 of the Act, seeking certain directions from the Commission in the matter, which may also be taken up for hearing along with the present Petition. Considering the request of the learned senior counsel for Respondent, KEIPL, and the learned counsel for the Petitioner, the Commission adjourned the matter as a last opportunity.

Petitioner's IA No. 85 of 2023

21. The Petitioner vide its IA No. 85 of 2023 dated 10.10.2023 has mainly submitted as under:

- (a) The negotiation/consultation process as authorized by this Commission's order dated 16.8.2023 has not been successful. The Applicant / Petitioner had



initiated the process vide a letter dated 18.8.2023 and had invited the Respondent for a reconciliation meeting at its office on 21.8.2023 and requested it to make an upfront payment as directed by this Commission in its order dated 16.08.2023. However, KEIPL responded on 20.8.2023, requesting a postponement of the scheduled meeting to 24.8.2023. Additionally, and shockingly, the Respondent sought to misrepresent the said Order dated 16.8.2023 in two respects. Firstly, the Respondent stated that no upfront payment had been directed by this Commission. Secondly, the Respondent wrongly stated that this Commission had left the issue of LPS to be argued and adjudicated at a later stage and that the “reconciliation” was meant to be with regard to the principal amount. The Respondent is estopped from contesting the quantum of the principal amount, having admitted the same several times. Moreover, this Commission had specifically directed the Respondent to clear its entire outstanding dues vide its order dated 13.6.2023. The Applicant / Petitioner states that the “reconciliation” envisaged in this Commission’s Order dated 16.8.2023 was meant to relate to: (a) the quantum of LPS payable by the Respondent (and not the obligation of the Respondent to pay LPS as such); and (b) the terms and conditions, esp. the tenure of the payment plan by which the Respondent would clear its outstanding dues.

(b) Shri Kulbhushan Mittal from the side of the Respondent attended a meeting at the Applicant / Petitioner’s premises on 24.8.2023. However, Shri Mittal did not carry any amount towards upfront payment, and no payment plan, even for the principal amount, was forthcoming from the Respondent. The Respondent followed up after the meeting of 24.8.2023 by addressing a letter to the Applicant / Petitioner on 29.8.2023. The letter stated that the Respondent was revising its offer of up-front payment to Rs. 3 (three) crores. However, the Respondent proposed that prior to or simultaneously with the proposal of a payment plan for the principal amount, the Applicant / Petitioner would have to withdraw all pending litigations and actions against the Respondent, including the captioned matter before this Commission. In addition, the Respondent, as usual, asked the Applicant / Petitioner to “waive off” the issue of surcharge.

(c) KEIPL's proposals were not acceptable to the Applicant / Petitioner. The same was communicated to the Respondent vide UPCL's Letter dated 15.9.2023. However, UPCL did make a counter-proposal to the effect that the payment terms proposed by KEIPL could be recorded in a consent order to be passed by this Commission under Section 19(4) of the Electricity Act, 2003. KEIPL has not responded to this last Letter from UPCL. It is thus clear that despite the efflux of more than a reasonable time, the negotiation/consultation process pursuant to this Commission's order dated 16.8.2023 has not been successful. In breach of its commitment before this Commission, KEIPL has not even offered any unconditional payment of the upfront amount.

(d) At this stage, the Applicant / Petitioner invites this Commission's attention to Section 19 of the Act. A plain reading of the above section, particularly, Section 19(4) thereof, this Commission is empowered, in suitable cases, to direct that the trading licence of an electricity trader would be permitted to remain in force subject to "such further terms and conditions" as this Commission thinks fit to impose. The Petitioner has prayed to invoke the said power with respect to KEIPL's trading licence. While invoking its power under Section 19(4) of the Act, this Commission may permit the trading licence of KEIPL to remain in force subject to the following further terms and conditions:

(i) The licensee shall acknowledge that it is liable to pay the outstanding dues to Uttarakhand Power Corporation Ltd consisting of a principal sum of Rs. 24.99 crores as well as applicable Late Payment Surcharge (in terms of the agreements between the said Parties) calculated up to the date of payment and shall neither seek waiver or forbearance from Uttarakhand Power Corporation Ltd. with respect to said sum nor institute any proceeding disputing or seeking reduction of the said liability;

(ii) The licensee shall pay an upfront sum of Rs. 5 crores to Uttarakhand Power Corporation Ltd. within a period of one week from the date when these terms of its trading licence take effect.

(iii) The licensee shall propose, and upon acceptance of such proposal, fulfill a payment plan for the payment of the sum remaining due to Uttarakhand Power Corporation Limited after payment of the upfront amount aforesaid; provided that the tenure of such payment plan shall not exceed a period of 6 months.

(e) There is no room for argument or doubt regarding the Respondent's obligation to pay the LPS on its outstanding dues. Clause 5(iv) of the 2016 Agreement between the Parties, and Clause 6.3 in both the 2017-18 and 2019 Agreements clearly fasten the liability for payment of LPS on KEIPL. The responsibility for raising credit bills has been with KEIPL in each of these Agreements. KEIPL also had a statutory obligation to make timely payments to UPCL under Regulation 7(h) of the 2009 Regulations.

(f) The present case is a fit case for invoking this Commission's powers under Section 19(4) of the Act. KEIPL has continuously and willfully defaulted in its obligations as a trading licensee, and ordinarily, the facts would warrant revocation of its license. However, directly proceeding to revoke KEIPL's licence in the present case would cause injustice insofar as the Petitioner's dues would remain unpaid, and the likelihood of future payment may also be diminished. Thus, the Applicant / Petitioner is praying that instead of revoking KEIPL's license, it may permit the Respondent's license to remain in force subject to the terms and conditions proposed above.

Hearing dated 18.10.2023

22. During the course of the hearing, learned counsel for the Petitioner submitted that the Petitioner has moved an IA (Diary) No. 457/2023, seeking directions under Section 19(4) of the Act, to the effect that the trading licence of the Respondent, KEIPL, be permitted to remain in force subject to certain conditions regarding payment of dues the Petitioner and that the said IA may also be taken up for hearing.

23. In response to the Commission having expressed strong displeasure towards the conduct of Respondent, KEIPL, including its failure to pay an upfront amount of Rs. 2.5 crores as indicated earlier, learned counsel for Respondent No.1 submitted that to indicate bona fide intent to make the payment that is due and payable, the Respondent has already brought a cheque for an amount of Rs. 3 crore and is ready & willing to hand it over to the Petitioner. Learned counsel submitted that out of the total principal amount of Rs. 60 crores, only Rs. 25 crores is outstanding, and the issue with regard to the late payment surcharge thereon is under dispute. Learned counsel submitted that discussions between the parties on the above aspect could not fructify as the Petitioner indicated that it would involve/require the approval of the State of Uttarakhand. Learned counsel, accordingly, urged that the Respondent be permitted to file its response to the IA as moved by the Petitioner, and no action may be initiated at this stage in regard to the revocation of the trading licence of the Respondent.

24. Considering the submissions made by the learned counsel for the parties and Respondent No.1 having handed over the cheque of Rs. 3 crores to the Petitioner during the course of the hearing, the Commission permitted Respondent No.1 to file its response to the IA, which will include the liquidation plan towards the outstanding principal amount (and, without prejudice to its contentions with regard to the outstanding late payment surcharge). The Petitioner was also permitted to file its rejoinder thereafter. The Petitioner was also directed to confirm the receipt of Rs. 3 crores from Respondent No. 1 under the cheque as handed over to it during the course of the hearing.

25. Pursuant to the direction of the Commission, the Respondent, KEIPL filed an affidavit dated 18.10.2023 to bring on record that as per the direction of the Commission, at the request of the Petitioner, with the aim to resolve the matter and to show *bona fide* intent, a Cheque of Rs. 3 crores has been handed over by the Respondent to the learned counsel for the Petitioner. The Respondent submitted that the present amount is paid without prejudice to the pending dispute, as well as the submissions made before the Commission by the Respondent, and also without admitting any contentions.

Hearing dated 10.11.2023



26. During the course of the hearing, the learned senior counsel for Respondent No. 1 submitted that the Respondent, in its reply to the IA, has also indicated the liquidation plan of making the payment of the balance principal amount of Rs. 22 crores in seven months and while the said reply has already been served on the Petitioner, it could not be uploaded on the e-filing portal of the Commission.

27. Learned counsel for the Petitioner submitted that the reply of Respondent No.1 does not contain any detailed liquidation plan as per the direction of the Commission. Learned counsel submitted that no firm/ specific dates of payment and the amount have been indicated in the said reply. Also, it does not take into account the entire outstanding amount (e.g., outstanding late payment surcharge). In response, learned senior counsel for Respondent No.1 submitted that the Respondent will include the specific dates and the amount to be paid on such dates in its fresh liquidation plan. The learned counsel further sought liberty to file its rejoinder and also a compliance affidavit as per the direction issued vide Record of Proceedings for the hearing dated 18.10.2023.

28. Considering the submissions made by the learned senior counsel and learned counsel for the parties, the Commission permitted Respondent No.1 to file its reply along with the revised liquidation plan as above, within three weeks with a copy to the Petitioner, who may file its rejoinder along with a compliance affidavit.

Reply by the Respondent, KEIPL on IA No. 85 of 2023

29. The Respondent in its Reply dated 15.2.2024 to the IA filed by the Petitioner, has mainly submitted as under:

(a) The doctrine of colorable exercise bars the prayers made by the Petitioner in its Application. The Petitioner in the Petition has prayed for revocation of the trading license of the Respondent under Section 19 of the Act, whereas in the present Application, the Petitioner has prayed for directions under Section 19(4) of the Act. A bare perusal of the Act makes it clear that the same presupposes a situation where, if the Commission is to proceed under Section 19 (4), the same would be only in a situation where the Commission is not revoking the license of the

Respondent. In such an event, the present Application, being contradictory to the main Petition, is liable to be dismissed on the face of it.

(b)The prayer in a way deprives the Respondent of the very right of litigating and exercising its legal right, which directly plays foul with the principles of natural justice as well as Article 14 of the Constitution. The Respondent has the right to be heard, and the same cannot be injuncted at the whims of the Petitioner, as well as in the adjudication process being carried out by the Commission. Furthermore, the trading license cannot be restricted in such a manner under the garb of the provisions of the Electricity Act, which came into existence for specific relief under given conditions.

(c)The said prayer of the Petitioner is in a way seeking anti-suit injunction from the Commission, which is firstly beyond the ambit of jurisdiction of this Hon'ble Court and secondly is not recognised in the eyes of law. The law on injunction in India is governed and specifically dealt with in Order XXXIX of the Civil Procedure Code 1908 and sections 37 to 41 of the Specific Relief Act 1963. From a plain reading of Order XXXIX Rule 1 and 2 of CPC, it is clear that it does not specifically deal with granting injunctions or interlocutory orders in respect to any judicial or quasi-judicial proceedings whereas the section 41 of the Specific Relief Act 1963, straight away refuses and bars to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought or to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought or to restrain any person from instituting or prosecuting any proceeding in a criminal matter. The legislative intent is clear from a plain reading of section 41 of the Specific Relief Act 1963, that it may be a well-prevalent common law, but does not find place in Indian domestic law. Thus, the request so made by the Petitioner is completely untenable under the regulatory regime and is untenable in the eyes of the law.

(d)Without prejudice that, at best, the present disputes may be referred to as a breach of contractual conditions. However, the same is not only attributable to the Respondent, but the Petitioner is equally responsible for the same. As a matter of

fact, the Petitioner has used what could be a breach under the present circumstances to initiate proceedings for revocation, only to arm-twist the Respondent and extract sums which are beyond the legally payable amounts, if any.

(e) The PPA executed by the parties duly envisages clauses under the agreement with respect to arbitration. The issue in dispute between the parties herein is purely commercial in nature, and such questions can be duly identified and answered by way of arbitration to save the precious time and resources of the Commission and to save judicial time. Furthermore, the Commission is empowered under Section 79 (1)(f) to refer any dispute for arbitration. Furthermore, as per Section 8 of the Arbitration and Conciliation Act, 1996, a Judicial Authority, such as this Commission, is empowered to refer parties to arbitration where there is an arbitration agreement. Thus, it is submitted that the present disputes can be referred to arbitration for speedy redressal and resolution between the parties.

(f) Without prejudice, despite several attempts to amicably resolve the dispute in pursuance of the order dated 13.6.2023 of the Commission, the Petitioner's primary intent is to have the license of the Respondent revoked without having any interest in recovering the amounts which may be due and payable.

(g) The Petitioner vide letter dated 6.2.2023 had debarred and blacklisted the Respondent and its associate concerns for a period of 5 years from 6.2.2023 or till the period the (alleged) total outstanding dues of the Respondent are cleared, whichever is later. Apart from this, the Petitioner is pursuing litigation under section 138 of the Negotiable Instruments Act, 1881, against the Respondent, seeking the exact same principal amount as mentioned in the Application of the Petitioner. Furthermore, the Petitioner, after having received the interim payment of Rs. 3 Crore in the month of October from the Respondent, has issued a letter dated 6.11.2023, thereby stating that no steps shall be taken on their end towards the said coercive actions and pending litigation. The said actions of the Petitioner and their contentions under the letter dated 6.11.2023 are evident of their conduct of not letting the matter resolve mutually and amicably, only to keep the disputes pending and active between the parties herein.

(h) Till date, despite the Respondent having put forth all the aspects of settlement and terms thereof, the Petitioner has till date not made any statement and has adopted pure silence with respect to withdrawal of coercive actions including blacklisting and litigation before Ld. Magistrate Court under Section 138 of the Negotiable Instruments Act, 1881 (NI ACT). On the contrary, the Petitioner has filed the present Application.

(i) The Petitioner had moved an Application under Section 143A of the Negotiable Instrument Act, 1881, seeking directions against the Respondent to deposit 20% of the Principal amount under consideration in the present case, before the Ld. Magistrate Court, Dehradun, in the proceedings pending u/S 138 of the NI Act. It is submitted that the Ld. Magistrate Court, after recording that an interim payment of Rs. 3 Crores has been made (payment made before this Commission), has further directed the Respondent to make a payment of Rs. 25 lakhs to the Petitioner within a period of 60 days vide order dated 11.1.2024. The Petitioner before this Commission is not disclosing its actions being taken before the Magistrate Court seeking payments in the interim, which form part of the principal amount of the dues under consideration. The Petitioner is indulging in forum shopping by pursuing multiple litigations for the purpose of arm-twisting the Respondent.

(j) The Petitioner vide letters dated 15.7.2020 and 20.7.2020 has conveyed that the outstanding amount came out to be Rs. 60 Crore. As a matter of fact, the Respondent has already disbursed 35 crores to the Petitioner out of the same. Furthermore, the Petitioner has recently made an upfront payment of Rs. 3 Crore vide cheque dated 24.10.2023, which was handed over in the presence of this Commission. Therefore, there lies no question of willful or prolonged default which would warrant actions under Section 19 of the Electricity Code. As a matter of fact, there is no direction or finding based on merit rendered by this Commission showing that the Respondent is in default. In this regard, the Hon'ble Supreme Court in the matter of Global Energy Ltd. Vs. Central Electricity Regulatory Commission (2009) 15 SCC 570 has observed the trading license cannot be suspended or revoked

merely on account of a breach of contract resulting in a legal proceeding as grounds such as moral turpitude for revocation of license.

(k) The Respondent is under financial constraints on account of pending recovery from various entities such as Saranyu Power Trading Private Limited (SPTPL), IPCL, which is pending adjudication before this Commission vide Petition No. 94/MP/2023. Further, the Respondent is entitled to the recovery of certain pending dues from J&K PDD. As a matter of fact, the Petitioner has already requested the J&K PDD to put on hold all payments against the transaction being made by the Respondent in IEX or elsewhere and remit such payments to the Petitioner vide letter dated 2.9.2020.

(l) In compliance with the Commission's direction during a hearing on 18.10.2023, the Respondent submitted the payment plan for the consideration of the Commission. Further, the Respondent endeavors to make best efforts towards preponing the payment upon recovering amounts in the other pending cases before this Commission as stated above. The said plan is, however, subject to the Petitioner being put to certain settlement terms which are not entirely onerous and whimsical as suggested by the Petitioner, and the coercive actions as well as litigation being pursued by the Petitioner are put to a halt and withdrawn.

Hearing dated 23.2.2024

30. During the course of hearing, the learned counsel for the Petitioner submitted that the Petitioner has filed a Case being Complaint Case No. 4415/ 2021 under Section 138 of the Negotiable Instrument Act, 1881 ('NI Act') in Civil Court i.e. Magistrate Court Dehradun against Respondent No.1 and the Petitioner has pressed for interim compensation under Section 143A of the NI Act. It is pointed out that the cheque amount includes the amount claimed in this instant petition. Learned counsel further submitted that the Civil Court vide its interim order dated 11.1.2024 directed Respondent No.1 to pay 5% of the cheque amount, i.e., Rs. 25,00,000/- as interim compensation within 60 days from the date of issuance of the order.

31. Learned senior counsel for Respondent No.1 submitted that as per the direction of the Commission, Respondent No.1 has already paid Rs. 3 crores to the Petitioner. In response to a specific query of the Commission regarding the liquidation plan for the payment of the balance amount, learned senior counsel for Respondent No.1 submitted that the Respondent vide its reply dated 15.2.2024 has submitted the liquidation plan for making the payment of the balance principal amount of Rs. 21.98 crores by the end of December, 2024. In rebuttal, learned counsel for the Petitioner opposed the liquidation plan as submitted by Respondent No.1 and submitted that the balance outstanding amount be paid on or before five months (in five instalments) instead of December 2024 and requested to direct Respondent No. 1 to resubmit the liquidation plan. Learned counsel further pointed out that the current liquidation plan is only related to the principal amount, and the Late Payment Surcharge (LPS) amount of Rs.34 crores is yet to be paid by Respondent No.1. Learned counsel sought liberty to file its rejoinder.

32. The learned senior counsel for Respondent No.1 submitted that the Petitioner has imposed LPS upon the Respondent in a completely whimsical and wrongful manner. Learned senior counsel further added that the issue in dispute between the parties is purely commercial in nature and such questions can be duly identified and answered by way of arbitration to save the precious time and resources of this Commission. Learned senior counsel submitted that Respondent No.1 has filed an IA to refer the present dispute to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996, for speedy redressal and resolution between the parties on the issue of the LPS.

33. Considering the submissions made by the parties, the Commission directed the Petitioner to file (a) its rejoinder to the reply of Respondent No.1, (b) reply on the IA filed by the Respondent No. 1, and (c) the outcome of the case pending before the Magistrate Court of Dehradun, in a timely manner.

Rejoinder of the Petitioner

34. Pursuant to the liberty granted by the Commission, the Petitioner vide its Rejoinder dated 22.02.2024 has mainly submitted as under:



(a) There is no legal impediment to the Commission exercising its power under Section 19(4) of the Act in the present case. The Petitioner has filed both the said actions in the public interest and in order to ensure that the Respondent's actions in breach of the terms and conditions of its license are brought to the knowledge of the Commission so that suitable action may be taken against them.

(b) Filing of a Petition under Section 19 of the Act or for that matter an Application under Section 19(4), complaining of a violation of Regulation 7(h) of the 2009 Trading Licence Regulations (or Regulation 9(10) of the 2020 Trading Licence Regulations) cannot be characterized as an action which is for serving a "narrow end" or for resolving a secluded dispute.

(c) There is no inconsistency between the prayer in the present Application and the prayer in the main Petition. It is submitted that Section 19 of the Act empowers the Commission to take one of two possible actions in a case where the *desiderata* of Section 19(1) of the Act are satisfied. The first option is to revoke the license. The second option is to exercise power under Sec. 19(4) and to allow the license to remain in force subject to further terms and conditions. In case the second option is exercised, it does not exclude the eventual exercise of the first option. In the present case, the Petitioner submits that the public interest would be *better* satisfied by invoking the powers under Section 19(4) of the Act as opposed to revocation of licence. This is because, as the Respondent itself acknowledges, revocation of the license would allow the Respondent to go scot-free after its failure to comply with Regulation 7(h) of the 2009 Trading License Regulations. For clarity, the Petitioner's submission is that the option of proceeding under Section 19(4) of the Act is the better one in the present case if and only if the Respondent appears ready and willing to cure its wilful and prolonged default in complying with Regulation 7(h) by committing to a payment plan for its outstanding dues. If, after imposing such additional terms and conditions in the Respondent's trading licence, the Commission finds that the same are not complied with by the Respondent, the Petitioner shall be constrained to press for revocation of the license.

(d) Neither the express terms of Section 19(4) nor the wording of other provisions of the Act suggests that a term restricting a licensee from pursuing a legal remedy which is already barred cannot be inserted by the Commission into the license in exercise of its powers under Sec. 19(4). The Petitioner's prayer in the captioned Application is not for an anti-suit injunction. The Petitioner is seeking the exercise of a power which falls within the four corners of the Commission's remit under Sec. 19(4) of the Act.

(e) Filing of the present Application, which ensures the Respondent's benefit by proposing that its trading license may remain in force (albeit conditionally), demonstrates the *bona fide* intent of the Petitioner. The Petitioner was constrained to reject the offers for upfront payment mentioned by the Respondent because the said offers were made conditionally – wherein the Petitioner would have to first withdraw all pending litigations against the Respondent including the present one, disclaim its right to recover LPS – and only then would the Respondent make the purported “upfront payment”.

(f) The Petitioner, after the dishonour of those cheques, has resorted to legally available remedies, cannot be labelled as coercion or as “forum shopping”. Blacklisting of the Respondent was also done after affording the Respondent substantial opportunity to show cause and after carefully considering the Respondent's reply to the show-cause notice.

(g) The Respondent has proposed a payment plan which provides for the payment of the admitted outstanding amount of Rs. 21,98,74,999/- in 11 monthly instalments ending on 27.12.2024. It is prayed that the Commission may kindly modify the terms of the payment plan and provide for payment in 5 equated monthly instalments in the months of February, March, April, June, and July 2024, respectively, as proposed by the Respondent vide its letter dated 9.10.2023.

IA of the Respondent, KEIPL

35. The Respondent, KEIPL vide its IA No. 16 of 2024 dated 15.2.2024 has mainly

submitted as under:

(a) The contract agreement executed between the parties duly envisages a clause of arbitration. A plain inference can be drawn from the clause that any dispute between the Petitioner and the Respondent in the subject matter of tendering/tender documents/agreement is to be resolved by seeking the indulgence of this Commission. The said clause further stipulates that all disputes apart from those related to tendering/tender documents/agreement, i.e., in terms of the execution of the agreement are to be resolved by way of arbitral proceedings.

(b) Further, the Respondent has placed reliance on the Judgment passed by the APTEL in the matter of *Southern Power Distribution Company of AP Limited vs. Andhra Pradesh Electricity Regulatory Commission & Anr., Connected Appeal Nos. 397 of 2022 and 147 of 2021*, and submitted that in view of the provisions under Section 79 (1)(f) of the Act, the Commission has the power to refer the disputes to arbitration. Further, the parties herein are bound by the terms of the PPA, which duly envisage a clause for the resolution of disputes by way of arbitration. It will be in the best interest of the parties for expeditious and detailed examination of the disputes if this Commission refers the disputes under the captioned petition to arbitration.

Hearing dated 1.5.2024

36. The matter was again heard along with Petition No. 87/MP/2024, also filed against KEIPL for default in payment. The learned senior counsel for Respondent, KEIPL submitted that, Respondent has additionally paid Rs.1.25 crores to the Petitioner, UPCL on 11.3.2024 and Respondent, along with its affidavit dated 15.2.2024, has also indicated the proposed payment plan, which the Respondent is willing to abide by, provided the Petitioner does not press for the same outstanding quantum/dues under the proceedings initiated under Negotiable Instrument Act, 1881.

37. Learned counsel for the Petitioner submitted that the Respondent, KEIPL, has even failed to adhere to its payment plan filed along with an affidavit dated 15.2.2024 as according to the said plan, the Respondent ought to have released the total payment of Rs. 3.25 crore by now. Learned counsel submitted that the total outstanding principal stood at Rs. 20.75 crores, and the Respondent ought to be directed to clear this principal amount in four monthly instalments of approximately Rs. 5 crores or so. Learned counsel submitted that the payment plan proposed by the Respondent does not even include the outstanding LPS amount, and the Respondent ought to be directed to include such amount therein.

38. In response to the specific query of the Commission regarding the reliefs sought by the Petitioner, UPCL, the learned counsel submitted that the Petitioner has prayed for the initiation of appropriate proceedings under Section 19 of the Act, read with the relevant provisions of Trading Licence Regulations for revocation of the inter-State trading licence granted by the Commission to the Respondent, KEIPL. Learned counsel added that alternatively, the Petitioner has also suggested that the payment plan to clear the outstanding dues, including LPS, ought to be made part of the terms & conditions of the trading licence of Respondent, KEIPL, and in case it fails to adhere to such terms & conditions, then the Commission may take appropriate steps to revoke the trading licence of the Respondent.

39. Considering the submissions made by the learned senior counsel and learned counsel for the parties, the Commission expressed strong disapproval of the conduct of Respondent KEIPL. Keeping in view the overall facts and circumstances involved in these cases, the Commission directed Respondent, KEIPL, to make the payment of the entire principal outstanding in two equated monthly instalments, with the first instalment becoming due on 1.6.2024 and the second instalment becoming due on 1.7.2024. KEIPL was also directed to file a compliance affidavit within a week thereafter. The Commission also clarified that failure on the part of Respondent, KEIPL, to abide by the aforesaid direction will lead to the initiation of appropriate proceedings against Respondent under the provisions of the Act and the Trading Licence Regulations.

Hearing dated 9.12.2024

40. During the course of the hearing, learned senior counsel for the Respondent, KEIPL submitted that in the said case, the Respondent has also moved an IA seeking the reference of the dispute to the arbitration and hence, the Respondent may be permitted to file its brief note of submissions on the above aspect.

41. After hearing the learned senior counsel for the parties, the Commission directed to list the matter for further hearing/compliance on 26.12.2024, and in the meantime, the Respondent may comply with the direction dated 1.5.2024. The Commission, however, made it amply clear that such compliance by the Respondent, if any, will be without prejudice to its liability arising out of the non-compliance with the direction dated 1.5.2024 in the stipulated timeframe. The Respondent was also permitted to file its brief note of submissions.

42. Pursuant to the liberty granted by the Commission, the Respondent, KEIPL, vide its additional affidavit dated 17.12.2024, has reiterated its submissions already made in its IA No.16 of 2023; as such, the same are not being repeated here for the sake of brevity.

Hearing dated 26.12.2024

43. The matter was last heard on 26.12.2024. During the course of the hearing, the learned counsel for the Petitioner submitted that as of date, the principal amount of Rs. 20.75 crores and Late Payment Surcharge (LPS) of Rs.34 crores are required to be paid by Respondent No.1. Learned counsel submitted that vide Record of Proceedings for the hearing dated 1.5.2024, Respondent No.1 was directed to make the payment of the entire principal outstanding in two equated monthly instalments. However, no compliance has been made to the said direction of the Commission by Respondent No.1, KEIPL. Learned senior counsel for the Respondent No. 1 submitted that KEIPL remains committed to resolving the disputes amicably and in a manner that ensures finality. However, the Petitioner's conduct, including the pursuit of parallel proceedings and imposition of unwarranted charges, has rendered the situation untenable and has

made it impossible to redress the issues. Learned senior counsel added that necessary directions be passed for amicable settlement of the matter(s), whereby parties can sit together and arrive at a full and final settlement, which results in payment to the Petitioners, while also ensuring the withdrawal of all the cases and action on the blacklisting by the Petitioner.

44. After hearing the learned senior counsel and learned counsels for the parties, the Commission reserved the matters for order.

Analysis and decision

45. We have considered the submissions of the parties and have carefully perused the records qua the issue raised by the Petitioner. The Petitioner has invoked Section 19 of the Act and the CERC Trading Licence Regulations 2020 for revocation of the inter-State trading licence of the Respondent, KEIPL. The Respondent No. 1, KEIPL, is a trading licensee having been granted a trading licence by this Commission, and violations of the Trading Licence Regulations and terms and conditions of the licence have been alleged in the Petition. The Petitioner has alleged that the Respondent has committed willful and prolonged default in clearing the dues of the Petitioner, which was required to be paid by the Respondent under the CERC Trading Licence Regulations 2020.

46. The Petitioner is a distribution licensee within the meaning of Section 2(17) of the Electricity Act, 2003 in the State of Uttarakhand. The Petitioner had floated a tender for the sale of surplus power, wherein the Respondent No. 1 was the successful bidder. Accordingly, the Petitioner and Respondent No. 1 executed an agreement. Subsequently, the Petitioner floated more tenders for the sale of surplus power and executed multiple agreements with Respondent No. 1. The details of the agreements are as follows:

S No.	Executed on	Duration	For
1	28.09.2016 (through tender)	Up to 30.09.2017	Sale of Power

2	Extension of the 2016 contract	01.10.2017 31.12.2017	–	Sale of Power
3	29.12.2017 (through tender) fresh	01.01.2018 31.12.2018	–	Sale of Power & Purchase of REC
4	26.12.2018 (extension contract) of	01.01.2019 31.12.2019	–	Sale of Power & Purchase of REC
5	28.12.2019 (through tender) fresh	01.01.2020 31.12.2021	–	Sale of Power & Purchase of REC

47. As per the agreements, Respondent No. 1 sold day-ahead surplus power on the power exchange on behalf of the Petitioner, from October 2016 onwards. The Petitioner has submitted that while the Respondent sold power on its behalf on IEX, it has not paid the dues to the Petitioner despite receiving due consideration from IEX. Further, the Petitioner has also sought confirmation from IEX on no outstanding dues with respect to the Petitioner's transactions.

48. However, the Respondent, KEIPL has submitted that the alleged dispute between the parties herein being two-fold i.e. w.r.t to the alleged payments to be made by the Respondent and the consequential prayer seeking revocation of the license of the Respondent completely arising out of the alleged disputes is a matter which is completely non-tariff in nature. Furthermore, in terms of the principles laid down by the APTEL in the matter of *Southern Power Distribution Company of AP Limited vs. Andhra Pradesh Electricity Regulatory Commission & Anr (Appeal Nos. 397 of 2022 and 147 of 2021)*, the Commission is bound to refer the said disputes to arbitration. The Respondent always had its intention to make payments. The Petitioner has concealed the fact from the Commission that the Respondent has made payments to the Petitioner as late as 31.10.2022. Despite the discrepancy in the manner of imposition of LPS made by the Petitioner, the Respondent in the utmost *bona fide* made the aforesaid payments after the Principal amount being claimed by the Petitioner in the month of 2020 along with the alleged LPS. Further, KEIPL vide its IA No.16 of 2024 has submitted that the contract agreement executed between the parties duly envisage clause of arbitration and said clause further stipulates that all disputes apart from those related

tendering/tender documents/agreement i.e. in terms of the execution of the agreement is to be resolved by way of arbitral proceedings. In view of the provisions under Section 79 (1)(f) of the Electricity Act, the Commission has the power to refer disputes to arbitration. Further, the parties herein are bound by the terms of the PPA, which duly envisage a clause for the resolution of disputes by way of arbitration.

49. We have considered the submissions made by the parties. The Present petition has been filed by the Petitioner for the initiation of the appropriate proceedings under Section 19 of the Act, read with the provisions of the Trading Licence Regulations, for revocation of the inter-State trading licence granted to the Respondent, KEIPL. Thus, the present matter is no longer a contractual matter, as envisaged under Section 79(1)(f), but rather a regulatory matter. Needless to mention that trading in electricity is a regulated activity under the Act, as trading is envisaged to promote competition and thereby serve public interest. If the trading licensees are allowed to flout the terms and conditions of the agreements for purchase and sale of electricity in the course of trading, there will be uncertainties in the electricity market that may shake the confidence of the generating companies, distribution licensees, and consumers, thereby affecting competition, which is against public interest. Considering the fact that the present matter involves the revocation of the trading licence and further not filed under Section 79(1)(f) of the Act, we do not find it appropriate to refer the dispute/ issue to arbitration as prayed by the Respondent, KEIPL.

50. The Commission has specified the Trading Licence Regulations, which contain the terms and conditions for the grant of inter-State trading licence, net worth requirement, and credit worthiness for the grant of trading licence, the obligations of the licensee, revocation of the licence, offences and punishment to the licensee, etc. We are concerned with the exercise of the power of the Commission under Section 19 of the Act in the facts of the present case. Section 19 of the Act deals with the circumstances and procedure for revocation of the licence. Regulation 20 of the Trading Licence Regulations contains analogous provisions. Section 19 of the Act covers the following circumstances for revocation of licence .Section 19 of the Act is extracted as under Section 19 of the Act is extracted as under:

“19. (1) If the Appropriate Commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely:-

(a) where the licensee, in the opinion of the Appropriate Commission, makes wilful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder;

(b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;

(c) where the licensee fails, within the period fixed in this behalf by his licence, or any longer period which the Appropriate Commission may have granted therefor

—

(i) to show, to the satisfaction of the Appropriate Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence; or

(ii) to make the deposit or furnish the security, or pay the fees or other charges required by his licence;

(d) where in the opinion of the Appropriate Commission the financial position of the licensee is such that he Revocation of licence is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence.

(2) Where in its opinion the public interest so requires, the Appropriate Commission may, on application, or with the consent of the licensee, revoke his licence as to the whole or any part of his area of distribution or transmission or trading upon such terms and conditions as it thinks fit.

(3) No licence shall be revoked under sub-section (1) unless the Appropriate Commission has given to the licensee not less than three months” notice, in writing, stating the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.

(4) The Appropriate Commission may, instead of revoking a licence under subsection (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon and be observed by the licensee and shall be of like force and effect as if they were contained in the licence.

(5) Where the Commission revokes a licence under this section, it shall serve a notice of revocation upon the licensee and fix a date on which the revocation shall take effect.

(6) Where an Appropriate Commission has given notice for revocation of licence under sub-section (5), without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under this Act, the licensee may, after prior approval of that Commission, sell his utility to any person who is found eligible by that Commission for grant of licence.”

51. If the Commission, after making an enquiry, is satisfied that any of the above circumstances exist and public interest so requires, the licence can be revoked. Before revocation of the licence, the Commission has to give a notice of three months to the licensee stating the grounds on which it is proposed to revoke the licence, and after considering the cause shown by the licensee. Thus, satisfaction of the Commission after making an enquiry about the existence of any of the circumstances for revocation and further satisfaction that public interest requires revocation in such circumstances are the relevant considerations for the exercise of power under Section 19 of the Act.

52. We now proceed to examine whether the Petitioner has made out the case under Section 19 of the Act against the Respondent. Section 19(1)(a) of the Act provides that “where the licensee, in the opinion of the Appropriate Commission, makes willful and prolonged default in doing anything required of him by or under this Act or the Rules or regulations made thereunder.” Section 52(2) of the Act provides that “every electricity trader shall discharge such duties, in relation to supply and trading in electricity, as may be specified by the Appropriate Commission”. Regulation 9 of the Trading Licence Regulations specifies the following obligations for inter-State trading licensees:

“9. Obligations of the Trading Licensee: The Trading Licensee shall be subject to the following obligations, namely:-

(1) The Trading Licensee shall comply with the requirements of laws in force and, in particular, the Act, the Rules and the Regulations, Grid Code, orders and directions issued by the Commission from time to time and any of the State Electricity Regulatory Commissions in accordance with law.

(2) The Trading Licensee shall maintain the Net Worth in accordance with Regulation 3 of these regulations at all times and shall maintain Current Ratio of 1:1 and Liquidity Ratio of 1:1 at the end of every financial year: Provided that if the current ratio or the liquidity ratio at the end of the financial year is less than 1:1, then the Trading Licensee shall be required to maintain additional Net Worth of 100% of the Net Worth stipulated for the respective category of trading licence.

(3) The Trading Licensee shall not exceed at any point of time 110 percent of the volume of trading authorized during a Year under the licence granted to him.

(4) The Trading Licensee shall make an appropriate application accompanied by prescribed fees for up-gradation of its licence to a higher category or down-gradation of its licence to a lower category in order to fulfil the conditions of these regulations in accordance with the procedure specified in Regulation 15 of these regulations.

(5) The Trading Licensee shall not charge any amount exceeding the trading margin fixed by the Commission from time to time:

Provided that where it is established on the basis of regulatory audit carried out in accordance with clause (3) of Regulation 10 of these regulations or otherwise that the Trading Licensee has charged trading margin above the ceiling specified under these regulations, the Commission may direct disgorgement of excess margin along with interest back to the seller/buyer as the case may be, at the rate as may be specified by the Commission, after giving the Trading Licensee an opportunity of being heard and in case of such violation on more than three occasions, the Commission may also revoke the licence of the Trading Licensee after giving an opportunity of being heard.

(6) The Trading Licensee shall continue to be governed by the qualifications or disqualifications specified in Regulations 3 and 4 of these regulations throughout the period of licence. (7) The Trading Licensee shall establish adequate communication facilities like telephone, fax, computer, internet facilities, before undertaking trading

(8) The Trading Licensee may coordinate with Regional Power Committees, the Central Transmission Utility, State Transmission Utilities, the National Load Despatch Centre, the Regional Load Despatch Centres, and the State Load Despatch Centres with regard to his trading-related activities, to the extent authorized by the concerned buyer and seller.

(9) The Trading Licensee shall render all assistance to any person authorised by the Commission to carry out his duties relating to the licence.

(10) The Trading Licensee shall make payment of dues by the agreed due date to the seller for purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller. Such escrow arrangement or irrevocable, unconditional and revolving letter of credit in favour of the seller shall be equivalent to:

(a) one point one (1.1) times the average monthly bill amount (estimated average of monthly billing amounts for three months or actual monthly billing amount for preceding three months as the case may be) with a validity of one year for long term contracts;

(b) one point zero five (1.05) times of contract value for short term contracts.

(11) The Trading Licensee shall enter into an appropriate agreement for purchase and sale of electricity with the sellers and the buyers prior to scheduling a transaction, and that the agreement shall specify the following, namely-

(a) the boundaries, that is to say, upper and lower MW limits of electricity to be purchased or sold;

(b) modalities for scheduling;

(c) payment security mechanism as defined in clause 10 of this regulation;

(d) persons authorized to specify the schedule, or to modify it after it has been intimated to the Regional Load Despatch Centre or the State Load Despatch Centre;

(e) whether the buyer or the seller can unilaterally advise modification of the schedule, or whether the modification can only be advised jointly by the buyer and the seller;

(f) the liabilities of the parties (seller, buyer and Trading Licensee) in case the scheduled quantum (MW) and time of scheduling differs from the agreed terms, or in case of modification in schedule, and in the latter case, the party that will bear non-refundable part of short-term open access charges.

(12) The Trading Licensee shall ensure that there is no discrepancy or scope for dispute in the scheduling advised to the Regional Load Despatch Centre and in case of any discrepancy or ambiguity in the scheduling advice, the decision of the Regional Load Despatch Centre on the acceptance or otherwise of such advice shall be binding.

(13) The Trading Licensee shall ensure that the buyer and the seller are either grid connected entities or represent such entities with special energy meters on their periphery and that the mechanism for Deviation Settlement accounting by the appropriate authority is in place.

(14) The Trading Licensee shall not purchase electricity from the entities and the Associates of such entities, defaulting in payment of Charge for Deviations determined as per the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, transmission charges, reactive energy charges, congestion charge and fee and charges for National Load Despatch Centre or Regional load Despatch Centre or the Unified Load Despatch and Communication Scheme or any other payment levied by the Commission or any of the State Electricity Regulatory Commissions under the provisions of the Act or any regulation made thereunder, when so advised by the Commission.

(15) The Trading Licensee shall pay the licence fee by the stipulated date specified by the Commission from time to time.

(16) The Trading Licensee shall not omit or neglect to undertake trading activity.

(17) The Trading Licensee shall not enter into any agreement related to purchase or sale of electricity that may lead to abuse of his dominant position or enter into combination which causes or is likely to cause a conflict of interest or an adverse effect on competition in electricity industry.

(18) The Trading Licensee shall maintain up to date record of all trading transactions undertaken by him, separately for Over the Counter (OTC) inter-State transactions, Over the Counter (OTC) intra-State transactions, if any, made on basis of the inter-State trading licence and transactions through the power exchange.

(19) The Trading Licensee shall not subject to settlement of commercial terms in accordance with law, omit sale of electricity to a consumer who has been allowed open access by the concerned State Electricity Regulatory Commission.

(20) The Trading Licensee shall immediately but not later than one month report to the Commission any change in the Net Worth which makes it ineligible to continue in the category for which the licence has been granted.

(21) The Trading Licensee can transfer or assign its licence only to such person who fulfils the conditions of Regulations 3 and 4 of these regulations with prior approval of the Commission:

Provided that the Trading Licensee shall make an appropriate application before the Commission containing the details of the person to whom the licence is proposed to be transferred or assigned, its eligibility to hold the licence under these regulations, and an affidavit from the proposed transferee or assignee that it will abide by all the terms and conditions of licence and comply with the provisions of the Act, Rules and Regulations made thereunder and the orders of the Commission as may be issued from time to time:

Provided further that the Trading Licensee shall be required to publish in brief in two daily newspapers having circulation in each of the five regions in addition to those published from Delhi, including one economic daily newspaper about its application for transfer or assignment of its licence and invite suggestions or objections within 30 days and submit the copies of the publication along with its response to the suggestions or objections, if any, within 45 days from the date of publication.

(22) The Trading Licensee shall designate one of its officers as Compliance Officer who shall be the nodal officer for communication with the Commission and shall be responsible for compliance with the provisions of the Act and Rules and Regulations specified by the Commission, particularly Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence, and other related matters) Regulations, 2020, Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010, Central Electricity Regulatory Commission (Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters) Regulations, 2009, Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, Central Electricity Regulatory Commission (Power Market) Regulations, 2010, Central Electricity Regulatory Commission (Deviation Settlement Mechanism and related matters) Regulations, 2014 and Central Electricity Regulatory Commission (Cross Border Trade of Electricity) Regulations, 2019 as amended from time to time or any subsequent re-enactment thereof;

(23) In the event Trading Licensee has entered into a contract for sale of power with a buying entity for a particular period, then the Trading Licensee shall not enter into any contract for sale of the same power with any other entity for such period except with the prior consent of the buying entity.

(24) Trading Licensee undertaking banking of electricity shall simultaneously enter into contract for supply of power and contract for return of power, with each of the utilities participating in the banking arrangement, as applicable.”

53. Section 52 (2) read with Regulation 9 of the Trading Licence Regulations casts a statutory obligation on the person issued with a trading licence by this Commission to discharge such duties in relation to the supply and trading of electricity as may be specified by the Commission. The Petitioner has submitted that the Respondent, KEIPL, has violated the obligations of the licensee specified in Regulation 9 of the Trading Licence Regulations. Regulation 9(1) provides that a licensee shall abide by the Act, Rules, and applicable regulations of this Commission. Regulation 9(5) provides that the

licensee shall not charge trading margin more than that specified by the Commission. Regulation 9(6) provides that the licensee shall continue to be governed by the qualifications and disqualifications specified in the Trading Licence Regulations 2020 throughout the life of the licence. Regulation 9(10) provides that the licensee is required to always ensure payment to the seller for the purchase of the agreed quantum of electricity either through a letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee. Thus, a trading licensee is bound to always ensure payment to the Seller for the purchase of the agreed quantum of electricity through the appropriate instrument or as may be mutually agreed between the parties.

54. The Petitioner has submitted that there was no delay on the part of the exchange in remitting any amounts to the Respondent, as clear in the reply from IEX dated 25.8.2020. The Respondent, KEIPL, entered bids for selling power provided by the Petitioner on the power exchange; the said bids were cleared and the power was sold; Respondent received full payment in respect of the sale from the power exchange, but withheld the said amounts and did not forward the same to the Petitioner. According to the Petitioner, KEIPL has made willful and prolonged default as provided in the provisions of Regulation 9 of the Trading Licence Regulations 2020.

55. We note that the Respondent has not paid the dues of the Petitioner for supply of power under Agreements (including extensions) dated 28.09.2016, 29.12.2017, 26.12.2018, and 28.12.2019. The Respondent had given post-dated cheques for payment of the outstanding dues, which could not be encashed by the Petitioner due to insufficient balance. The Respondent, KEIPL vide its affidavit dated 31.7.2023, has submitted that KEIPL is facing an application for initiation of Corporate Insolvency Resolution Process pending before the National Company Law Tribunal, being case No. IB/521/ND/2022, since the last year, and is on the verge of getting insolvent. However, the Respondent has failed to produce any documentary evidence in support of its plea regarding the said insolvency or moratorium. The contention of the Respondent that KEIPL is on the verge of insolvency is therefore rejected.

56. Without prejudice to the actions pending before the Magistrate Court, Dehradun for dishonor of cheques, we are of the view that failure to release payments against the post-dated cheques for outstanding dues, amounts to prolonged and willful defaults on the part of KEIPL to ensure timely payment to the Petitioner for supply of power which KEIPL as a trading licensee is required to comply with in terms of Regulation 9(10) of the Trading Licence Regulations 2020. In our view, the actions of Respondent No. 1, KEIPL, are in violation of the provisions of the terms and conditions of the Agreements of Sale of Power executed for different periods read with provisions of Regulation 9(10) of the Trading Licence Regulations which enjoins upon the trading licensee to ensure payment of dues to the seller. Therefore, it satisfies the conditions of Section 19 (1) (a) of the Act. Further, the trading in electricity is a regulated activity under the Act, as trading is envisaged to promote competition and thereby serve public interest. If the trading licensees are allowed to flout the terms and conditions of the agreements for purchase and sale of electricity in the course of trading, there will be chaos in the market, shake the confidence of the generating companies and distribution licensees/consumers, and thereby affect competition, which is against public interest. Therefore, public interest demands that such practices are strongly discouraged, and the licensees indulging in such practices are dealt with strictly in accordance with law. We are of the view that a case against KEIPL under Section 19 (1) (a) of the Act for revocation of the licence has been made out.

57. We further note that the Commission, on several occasions, has directed the Respondent, KEIPL, to rectify its prolonged and willful non-compliance with the terms and conditions of the Trading License Regulations 2020. However, the Respondent has failed to comply with these terms, particularly regarding the payment of the outstanding amount. On multiple occasions, the Commission expressed its strong disapproval of KEIPL's conduct and made it clear that failure to adhere to the directions would result in the initiation of appropriate proceedings under the provisions of the Act and the Trading License Regulations. Despite this, KEIPL has continued to disregard the Commission's directions, reflecting a willful negligent attitude towards compliance.

58. The commission on enquiry found that the Respondent-1, i.e., KEIPL has committed various violations under the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020, and the applicable provisions of the Electricity Act, 2003. The petitions related to these matters filed by various other parties against the respondent No -1, i.e. KEIPL are mentioned below: -

S No.	Petition No.	Petitioner	Type of Default
1	87/MP/2024	DB Power Limited (DBPL)	Non-Payment of Outstanding Dues
2	282/MP/2022	HARYANA POWER PURCHASE CENTRE (HPPC)	Default in Return of Banked power
3	261/MP/2024	Southern Power Distribution Company of Andhra Pradesh Ltd (APSPDCL)	Default in Return of Banked power
4	288/MP/2024	HIMACHAL PRADESH STATE ELECTRICITY BOARD LIMITED (HPSEBL)	Default in Return of Banked power

59. According to sub-section (3) of Section 19 of the Act, the Commission is required to give “three months” notice to the licensee stating the grounds for revocation of licence and take a decision after considering the cause shown by the licensee. In view of the above, the Commission is satisfied that public interest requires and there is willful and prolonged default on the part of respondent and there are sufficient grounds to proceed under Section 19 (3) of the Electricity Act, 2003 read with Regulations 9 and 20 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 for revocation of licence granted to KEIPL by the Commission for violation of various provisions of the Act and the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020.

60. Accordingly, notice is hereby given to Respondent No.1, KEIPL under Section 19 (3) of the Act read with Regulations 9 and 20 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 to show cause as to why its licence for inter-State

trading of electricity should not be revoked for the various acts of violations as stated above.

61. Respondent No.1, KEIPL, is directed to submit its reply within three (3) months from the issuance of this order. The reply submitted by KEIPL shall be considered while deciding on the notice of revocation of licence under Section 19(1) (a) and Section 19 (1) (b) of the Act, issued herein above.

62. The matter shall be listed for hearing in due course, for which a separate notice shall be issued to the parties.

Sd/-
(श्री हरीश दुदानी)
सदस्य

Sd/-
(श्री रमेश बाबू व.)
सदस्य

Sd/-
(श्री जिशु बरुआ)
अध्यक्ष