IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.187 OF 2017

Dated: 28.08.2024

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

GREEN ENERGY ASSOCIATION
Sargam, 143, Taqdir Terrace,
New Shirodkar High School,
Dr. E. Borjes Road, Parel (E),
Mumbai – 400 012 … Appellant

Versus

1. **MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**
Through its Secretary
World Trade Centre No. 1, 13th Floor,
Cuffe Parade, Colaba,
Mumbai – 400 001

2. **MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO. LTD.**
Through its Chairman and Managing Director
5th Floor, Prakashgad,
Bandra (East)
Mumbai – 400 051

3. **MAHARASHTRA ENERGY DEVELOPMENT AGENCY**
Through its Chairman and Managing Director
MHADA Commercial Complex, II Floor,
Opp. Tridal Nagar, Yerwada, Pune – 411006 … Respondents

Counsel for the Appellant(s)	:	Dipali Sheth
Counsel for the Respondent(s)	:	Pratiti Rungta for Res. 1 Manoj Kaushik Akash Lamba Nikita Choukse for Res.2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant M/s Green Energy Association (in short "GEA" or "the association") is a non-profit organization and was set up in the year 2013. The association is duly registered under the Bombay Public Trusts Act, 1950 vide registration No.F-62393. It has been working towards removing barriers in solar power development and creating an enabling regulatory and policy environment for investments in this sector. It has 34 members in the State of Maharashtra.

2. One of the members of the appellant namely M/s Jai Balaji Business Corporation Private Limited submitted an application on 30.05.2012 to 2nd respondent Maharashtra State Electricity Distribution Company Limited (MSEDCL) for sale of power generated from its solar power plant at preferential tariff. Subsequently, some other members of the appellant also approached the 2nd respondent MSEDCL between the months of February 2014 to November 2014 for granting open access / purchase of power at Average Power Purchase Cost (APPC). The details of these applications are as under: -

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Sr. no.	***Name of the***	***Purpose***	***Date of***	***Period***

	Applicant		***application***	
1.	*Patodia Forgings & Gears*	*OA Application for Captive use under Distribution OA for Solar PV Power project of 0.60 MW at Location No. PVSP_18, Mandrup, South Solapur, Maharashtra*	*March 19, 2014*	*April, 2014 to March 2015*
2.	*Klassic Wheels Pvt Ltd*	*OA Application for Captive use under Distribution OA for Solar PV Power project of 1.0MW at Location No. PVSP_27, Mandrup, South Solapur, Maharashtra*	*February 19, 2014*	*April- 2014 to March 2015*
3.	*Gaurav Agropipes*	*OA Application for Captive use under Distribution OA for Solar PV*	*February 19, 2014*	*April, 2014 to March 2015*

		Power project of 1.0MW at Location No. PVSP_25, Mandrup, South Solapur, Maharashtra		
4.	*Paras PVC Pipes & Fittings Pvt Ltd*	*OA Application for Captive use under Distribution OA for Solar PV Power project of 0.60 MW at Location No. PVSP_24, Mandrup, South Solapur, Maharashtra*	*February 19, 2014*	*April, 2014 to March 2015*
5.	*Bothara Agro Equipments Private Limited*	*OA Application for Captive use under Distribution OA for Solar PV Power project of 1 MW at Location No. PVSP_08, Mandrup, South Solapur,*	*August 16, 2014*	*April- 2014 to March 2015*

		Maharashtra		
6.	*M/s. Bothara Agro Equipments*	*Application for Sale of Power Generated from 1MW Solar PV Power Project at APPC rate*	*October 9, 2014*	*April-2014 to September-2014*
7.	*M/s. Gaurav Agro Pipes*	*Application for Sale of Power Generated from 1MW Solar PV Power Project at APPC rate*	*October 9, 2014*	*April-2014 to September-2014*
8.	*Paras PVC Pipes*	*Application for Sale of Power Generated from 1MW Solar PV Power Project at APPC rate*	*October 9, 2014*	*April-2014 to September-2014*
9.	*Klassic Wheels Pvt. Ltd.*	*Application for Sale of Power Generated from 1MW Solar PV Power Project at APPC rate*	*October 28, 2014*	*April-2014 to September-2014*
10.	*Caspro Metal*	*Application for Sale of Power*	*October 9, 2014*	*September-2014 to*

		Generated from Solar Power Project at APPC rate.		*November 2014*
11.	*Caspro Metal Industried Private Limited*	*Application for Sale of Power Generated from Solar Power Project at APPC rate.*	*April 17, 2014*	*September 25, 2014 to March 2015*

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3. However, vide letter dated 28.10.2014, MSEDCL rejected all these applications stating that it had already executed contract with Maharashtra State Power Generation Company Limited (MSPGCL) for purchase of Solar PV power for fulfilment of Renewable Purchase Obligation (RPO) target for the relevant financial year 2013-14. Thus, MSEDCL neither granted open access to the solar power developers nor came forward to purchase power from their power plants at APPC.

4. Accordingly, the appellant, on behalf of its members, approached the 1st respondent Maharashtra Electricity Regulatory Commission ('MERC' or 'the Commission') vide case No.44 of 2014 seeking appropriate directions against the 2nd respondent MSEDCL. Vide order dated 06.05.2014 passed by the Commission in the said petition, it held as under: -

> *"12……Open Access is the right of the consumers and it is casted upon by the Electricity Act, 2003.The Electricity*

Act, 2003 has defined the Open Access as non-discriminatory provisions for use of transmission lines or distribution system or associated facilities by any licensee or consumer or person engaged in generation.

13. The plain reading of Section 2(47) and Section 42 (2) of the Electricity Act, 2003 indicates that MSEDCL cannot discriminate amongst different RE sources. Energy is coming from whatever source, it is inject in the system as a Unit. The Commission observes that MSEDCL has allowed open access permission for sale of solar energy to Utility (BEST) for certain period. The Commission disagreed with MSEDCL submission that it delayed the Open Access permission on absence of guidelines/policy for Open Access through solar generator.

14. In view of above the Commission directs MSEDCL to allow the Open Access through solar generator as single source. The Commission also directs MSEDCL to continue the procedures followed for allowing Open Access permissions through RE generators during previous financial year.

15. The Commission further directs MSEDCL to issue credit notes immediately for the previous months, if

not done earlier as per timelines as stipulated in its Citizen Charter. …."

5. Some of the members of the appellant association, again, vide letters dated 08.01.2015, 20.12.2014 and 16.01.2015 called upon MSEDCL to buy solar power in terms of the applications submitted by them earlier for sale of power generated from their solar PV projects at APPC. It was vide letter dated 16.12.2014 sent by MSEDCL to few members of the appellant that they were informed that the MSEDCL had already executed contract with MSPGCL for purchase of solar PV power for fulfilment of RPO target for the relevant financial year 2014-15.

6. MSEDCL appears to have belatedly processed the open access applications of the members of the appellant between the months of August 2014 and December 2014 and granted open access permission to them subject to condition of installation of Special Energy Meters (SEM). The details of the members of the appellant to whom such open access permission was granted are hereunder: -

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Sr. No.	***Name of Generator***	***Date of application***	***Date of Letter From MSEDCL***	***Name of User***	***Period***
1.	*Patodia Forgings & Gears Ltd.*	*March 19, 2014*	*August 11, 2014*	*Patodia Forgings & Gears Ltd.*	*Prospectively from the date of Installation*

					and commissioning of SEM at generation end at the consumer end whichever is later upto March 31, 2015
2.	*Klassic Wheels Pvt. Ltd*	*February 19, 2014*	*August 11, 2014*	*Klassic Wheels Pvt. Ltd*	*Prospectively from the date of Installation and commissioning of SEM at generation end at the consumer end whichever is later upto March 31, 2015*
3.	*Bothara Agro*	*August 16,*	*Decemb*	*Bothara Agro*	*From the*

	Equipments Pvt. Ltd.	*2014*	*er 2, 2014*	*EquipmentsPvt. Ltd.*	*date of Installation of SEM at the consumer end to March 31, 2015*
4.	*Gaurav Agro Pipes*	*February 19, 2014*	*Decemb er 2, 2014*	*Gaurav Agro Pipes*	*From the date of Installation of SEM at the consumer end to March 31, 2015*
5.	*Paras PVC Pipes & Fittings*	*February 19, 2014*	*Decemb er 2, 2014*	*Paras PVC Pipes & Fittings*	*From the date of Installation of SEM at the consumer end to March 31, 2015*

”

7. On account of change in the open access regulations (fresh open access regulations having been notified in the year 2014) as well as non-grant of open access by MSEDCL and refusal by MSEDCL to purchase power at preferential tariff in the year 2015-16, some members of the

appellant approached MSEDCL again for purchase of power at APPC. The details of the members of the appellants who had submitted such applications are hereunder:-

"

Sr. No.	***Name of Applicant***	***Application Date***	***Period***	***Capacity***
1.	*Agrawal Minerals (Goa) P.L.*	*March 20, 2015*	*April-2015*	*4MW*
2.	*GangadharNarsingdas Agrawal*	*March 20, 2015*	*April-2015 to June-2015*	*1MW*
3.	*TriveniSangam*	*March 23, 2015*	*April-2015*	*1.2MW*
4.	*Advik Hi-Tech Pvt. Ltd.*	*March 9, 2015*	*April-2015 to June-2015*	*0.60MW*
5.	*Advik Hi-Tech Pvt. Ltd.*	*June 8, 2015*	*July-2015*	*0.60MW*
6.	*Hemant Group*	*March 24, 2015*	*April-2015*	*2.4MW*

7.	*Hemant Group*	*May 18, 2015*	*May 1, 2015 to May 13, 2015*	*2.4MW*
8.	*Saraswati Industries*	*March 16, 2015*	*April-2015 to March-2016*	*0.6MW*
9.	*GovindaramShobharam & Co.*	*March 16, 2015*	*April-2015 to March-2016*	*0.6MW*
10.	*Parekh Medisales Pvt. Ltd.*	*March 9, 2015*	*April-2015 to March-2016*	*0.6MW*
11.	*Gurudnyankit Energy Pvt. Ltd.*	*March 9, 2015*	*April-2015 to*	*0.6MW*

			March-2016	
12.	*G.I.Energies*	*March 12, 2015*	*April-2015 to March-2016*	*0.6MW*
13.	*Uma Corporation*	*March 24, 2015*	*April-2015 to June-2015*	*1MW*
14.	*Uma Corporation*	*June 20, 2015*	*April-2015 to March-2016*	*1MW*
15.	*Jaibalaji Business Corporation*	*March 9, 2015*	*April-2015 to March-2016*	*1MW*
16.	*Dr. D. H. Patel*	*March 24,*	*April*	*1MW*

		2015	*2015 to June-15*	
17.	*Dr. D. H. Patel*	*June 20, 2015*	*April-2015 to March-2016*	*1MW*
18.	*New Patel Saw Mill*	*March 24, 2015*	*April – 2015 to June -2015*	*1MW*
19.	*New Patel Saw Mill*	*June 20, 2015*	*April-2015 to March 2016*	*1MW*
20.	*Patel Wood Syndicate*	*March 24, 2015*	*April – 2015 to June -2015*	*1MW*
21.	*Patel Wood Syndicate*	*June 20, 2015*	*April-2015 to*	*1MW*

			March-2016	
22.	*Giriraj Enterprises*	*March 9, 2015*	*April-2015 to March-2016*	*6.65MW*
23.	*Pooja Renewable Energy*	*March 24, 2015*	*April-2015 to March-2016*	*0.7MW*
24.	*Saidpur Jute Company Limited*	*April 15, 2015*	*April - 2015 to March -2016*	*0.6MW*

”

8. It appears that the members of the appellant found it difficult to wait as they could not get any other consumer to whom they could sell power and therefore they continued to inject power from their solar power plants into the MSEDCL grid. According to the appellant, its members have injected 53,33,000 units of power into the MSEDCL grid during the financial

years 2014-15 and 2015-16 for which they are entitled to a sum of Rs.10,35,21,701/- at APPC.

9. Since, MSEDCL neither responded to the applications of the members of the appellant for grant of open access in the FY 2015-16 / sale of power at APPC nor did issue any credit notes to them, the appellant approached the 1st respondent Commission again by way of petition No.139 of 2015 under Section 129 / 142 / 149 of the Electricity Act, 2003, claiming non-compliance of its order dated 03.01.2013 passed in case Nos.8, 18 and 20 of 2012, by 2nd respondent MSEDCL.

10. We may note here that vide order dated 03.01.2013 passed by the 1st respondent Commission in case Nos. 8, 18, 20 and 33 of 2012, it had directed MSEDCL to comply with Citizen Charter and issue credit notes in timely manner. We find it pertinent to reproduce the relevant extracts of the said order hereunder: -

> "*As regards the issue related to delay in issuance of credit notes for third party sales and self-use by MSEDCL, the Commission notes that during the hearing held on November 2, 2011 in Case No. 19 of 2011, the Commission directed MSEDCL to issue pending credit notes and submit Citizen Charter for various activities involved in wind energy transactions. Subsequently, MSEDCL issued the Citizen Charter for NCE/CPP Decision stipulating following:*

a. *Time frame for disposal of proposals at MSEDCL head office*
b. *Time frame for disposal of proposals at field office*
c. *Procedure for grid connectivity*
d. *Procedure for execution of Energy Purchase Agreement (EPA)*
e. *Procedure for change of name*
f. *Procedure for change of ownership*

3.152 The Commission notes that MSEDCL, under the head of Time frame for disposal of proposals at field office stipulated the time frame for issuance of generation credit notes and credit adjustment thereafter reproduced as under:

Sr. No.	***Particulars***	***No. of Working days***
1.	*Issuance of Generation Credit Notes (GCN) in respect of Wind and Open Access Decisions*	*15*
2.	*Credit Adjustments after receipt of GCN – in respect of Wind and Open Access Decisions*	*10*

3.	*Payment to generators having EPA with MSEDCL* *Note : In respect of CPPs, in line with term and condition mentioned in the EPA*	*Within 60 days from receipt of Invoice in Circle Office*

……The Commission further directs MSEDCL to adhere to the timelines as stipulated in their Citizen Charter."

11. The contention of the appellant before the Commission was that as per the Citizen Charter prepared by MSEDCL itself, it is supposed to grant open access within 30 days and to issue credit note within 15 days of receipt of application by it, but it has intentionally neglected and failed to issue the same to the members of the appellant due to which they could not claim Renewable Energy Certificates (RECs). It was pointed out that there has been delay ranging from 5 months to 10 months on the part of MSEDCL to process the applications of the members of the appellant for open access / captive use for the year 2014-15. It was further pointed out that responsibility of installing SEM is on MSEDCL and hence, when the consumer in its application for open access permission undertakes to install SEM, MSEDCL ought to have released the open access permission as well as credit note in timely manner. It was further contended that the members of the appellant have injected energy into the grid which MSEDCL had utilized by selling it to the consumers and has profited by realizing the revenue from the consumers for such energy, and therefore, avoiding

payment for such energy to the members of the appellant is totally unjustified and cannot be accepted.

12. The 1st respondent Commission did not find any merit in the claims / contentions of the appellant and accordingly dismissed the petition. Noting that the Distribution Open Access Regulations, 2005 as well as that of the year 2014 make it mandatory for every connector / generator to have installed SEM, the Commission reasoned as under: -

> *"14. Instead of responding within 30 days as required, MSEDCL replied to the OA applications of some of GEA's members belatedly, citing the absence of SEMs. It did not bother to inform them to stop injecting energy into the grid without SEMs. The Commission might have considered penalising MSEDCL for this default, were it not for the fact that there is no ambiguity in the requirement of SEMs, as discussed above. GEA would have been fully aware of the position in this regard, and it would have been prudent for the concerned Generators or OA consumers to initiate steps well in advance to ensure timely SEM installation and commissioning. (The Commission notes that Regulation 17.3 and 17.4 of the DOA Regulations, 2016 now specify the procedure and time allowed for procurement, testing and installation of SEMs.) That being the case, the Commission is not inclined to accept GEA's prayer which is based on the*

ground that, had MSEDCL informed it in time, its members would not have injected energy into the grid or could have claimed RECs."

13. Accordingly, the appellant association has approached this Tribunal by way of the instant appeal challenging therein the above noted order dated 17.03.2017 of the Commission. The appellant has assailed the said order of the Commission on following grounds:

(i) Installation of SEM is not mandatory and it is the responsibility of MSEDCL to install SEM in terms of MERC (Distribution Open Access) Regulations, 2014 (hereinafter referred to as DOA Regulations, 2014);

(ii) The Commission should have held MSEDCL responsible for unwarranted delay in processing the open access applications of the members of the appellant;

(iii) The Commission should have granted relief of sale of power at APPC as such power has been used by MSEDCL for its own benefit by selling it to its consumers and realizing revenue from there; and

(iv) The Commission should have directed MSEDCL to purchase solar energy from willing solar power developers by entering into Energy Purchase Agreements (EPAs) at preferential tariff when there was a shortfall for MSEDCL in meeting the solar RPO target.

14. We have heard the learned counsels appearing for the parties at length. We have also gone through the impugned order as well as written submission filed on behalf of appellant and 1st respondent.

(i) <u>Whether it was mandatory for the members of the appellant to install SEM at their power plants: -</u>

15. It is argued on behalf of the appellant that the responsibility of installing SEM on the generating side is that of generator and on the consumer side is that of distribution licensee. It is further submitted that there is no specific timeframe for installing SEM as the timeframe stipulated is only to provide supply of power. It is submitted that even though the responsibility for installing SEM on the generating side is that of the generator, the meter ought to be as per the specification stipulated by distribution licensee in accordance with CEA Regulations and they alone can test and commission the meters which often takes three to four months. It is further argued that recording of consumption in ToD meter can be used to ascertain consumption and the credit notes are usually issued on the basis of reports generated at the generation end. Therefore, the condition of installation of SEM at consumer end is unjustified and arbitrary.

16. On behalf of the respondents, it is contented that installation of SEM is mandatory in view of Regulation 7.1 of DOA Regulations, 2005 as well as Regulation 6 of DOA Regulations, 2014.

17. Regulation 7.1 of MERC DOA Regulations, 2005 provides as under: -

"7.1 Every Connector shall install or have installed a correct meter in accordance with the regulations made in this behalf by the Authority under Section 55 of the Act:

Provided that every Connector who is either-

(i) a consumer under Regulation 4.2 with a contract demand in excess of 1 MVA; or

(ii) a person under Regulation 4.3 with a contract demand in excess of 1 MVA; or

(iii) a Supplier directly connected to the distribution system of the Distribution Licensee under Regulation 4.4

shall install or have installed a Special Energy Meter:

Provided further that such meters may be procured from the Distribution Licensee or from any supplier of correct meters in accordance with specifications laid down by the Authority in the regulations made

in exercise of the powers under Section 55 of the Act:

Provided also that till the regulations are specified by the Authority under Section 55 of the Act, such meters may be procured in accordance with specifications laid down by the Distribution Licensee:

Provided also that where such meter has been procured from a supplier of meters other than the Distribution Licensee, the Distribution Licensee shall be entitled to test the correctness of the meter prior to installation:

Provided also that the meters shall be maintained by the Distribution Licensee over the duration of the Connection Agreement."

18. It is clear that the said regulation makes it mandatory for every generator / connector / consumer to install SEM. This requirement is specified in the subsequent DOA Regulations of 2014 as well as of 2016 also. Therefore, it cannot be denied that installation of SEM is a mandatory requirement before applying for open access permission and a generator / consumer is eligible for open access only when it has installed SEM at both the generator as well as consumer end.

(ii) <u>Whether the Commission should have held MSEDCL responsible for unwarranted delay in processing the open access applications of the members of the appellant:</u>

19. It is not disputed that some of the members of the appellant association applied to MSEDCL for open access permission for the Financial Year 2014-15 for captive use. However, it is manifest that MSEDCL did not process these applications promptly and took about 5 months to 10 months in processing these applications and ultimately intimated the applicants that open access would be effective from the date of installation of SEM. We may note that in the Citizen Charter prepared by MSEDCL itself and submitted to the Commission during the proceedings of case Nos. 8, 18, 20 and 33 of 2012 (as noted in the order dated 03.01.2013 passed in these cases by the Commission which has been already extracted hereinabove), MSEDCL was suppose to grant open access within 30 days of receiving application and to issue credit notes within 15 days from receipt of the application. Nothing has come on record from MSEDCL either before the Commission or before this Tribunal as to why these timelines were not adhered to in respect of the applications for open access / credit notes submitted by the members of the appellant association. In these facts and circumstances of the case, we are constrained to observe that MSEDCL committed inordinate and contumacious delay in processing the applications of the members of the appellant association despite various reminders sent in this regard by them. There appears no justification for the MSEDCL in withholding open access

permission and issuance of credit notes to the members of the appellant which has caused acute financial loss to them.

20. Section 42(2) of the Electricity Act, 2003 read with Section 2(47) casts a duty upon a distribution licensee like MSEDCL to provide open access to the power generators without any discrimination. However, in the instant case, MSEDCL has manifestly treated the members of the appellant association with discrimination by delaying inordinately and unreasonably their applications for open access and in the process has committed violation of the order dated 06.05.2014 passed by the Commission in case No. 44 of 2014 in which the Commission had lambasted MSEDCL for its discriminatory attitude towards solar power generators and had directed it to allow open access to the solar power generators as well as to issue credit notes to them.

21. The Commission has, in the impugned order, taken note of the belated response of MSEDCL to the open access applications of the members of the appellant association but has stopped short of giving any relief to them on the ground that installation of SEMs was a mandatory requirement, which was not complied with by them.

(iii) Whether the members of the appellant association are entitled to tariff for the power injected by them into the grid at APPC:

22. It is argued on behalf of the appellant association that since its members have injected energy into the grid which has been utilized by MSEDCL by selling it to the consumers thereby profiting by realizing revenue

from the consumers for such energy, it must be held liable to pay charges for such energy to them at APPC. On the contrary, it is argued on behalf of MSEDCL that since installation of SEM is a mandatory precondition for consumers / generators availing open access, open access was not granted to the members of appellant association. It is further submitted that in the absence of open access permission or a valid Energy Purchase Agreement (EPA) with the distribution licensee, these solar power developers were not authorized to inject energy into the grid. Relying upon the judgment of this Tribunal dated 16.05.2011 in *M/s Indo Rama Synthetics v. MERC*, it is argued that Sections 70 and 72 of Indian Contract Act, 1872 are not applicable to the sale of energy under Electricity Act, 2003, and therefore, the members of the appellant association are not entitled to any payment from MSEDCL for the power injected into the grid unauthorizedly.

23. It is evident from the rival contentions of the parties that the members of the appellant association had been injecting power from their solar power projects into the grid even though they had not been granted open access and had not installed SEMs. It also appears that no objection was raised by MSEDCL to such injection of power into the grid by the members of appellant association from their solar power projects at any point of time. In fact MSEDCL appears to have provided connectivity to their power projects with the grid as the injection of power could not have been possible without such connectivity. Concededly, MSEDCL utilized such power by selling it to the consumers and realizing tariff from them and thereby causing financial gain to itself. We wonder as to why such conduct of parties i.e. supply of power by the members of appellant association from their solar power generators (even though without any open access permission or a EPA) on the one hand

and receipt as well as utilization of such power by MSEDCL without any objection or demur on the other hand, cannot be construed to constitute a contractual relationship between the parties. Such kind of contracts are known as “quasi contracts” which have given legal recognition in India also by way of Section 70 of the Indian Contract Act, 1872.

24. “Quasi Contract” is also known as “implied contract” which acts as a remedy for a dispute between two parties which do not have an express contract between them. A Quasi Contract is a legal obligation, not a traditional contract. Such transactions are also referred as “constructive contract” as these are constructed by the Court when there is no existing contract between the parties. Such arrangements may be inferred or imposed by the Court when goods or services are accepted by a party even though there might not have been any order. The acceptance and utilization of the goods or services by the other party creates an expectation for payment in the mind of the party providing the goods/services.

25. The concept of Quasi Contract is basically founded on the doctrine of “unjust enrichment”. This doctrine itself is based upon the maxim “Nul ne doit s’ enricher aux depens des autres” (No one ought to enrich himself at the expense of others.) The rationale behind the doctrine of unjust enrichment is that in certain situations, it would be unjust to allow the defendant to retain a benefit at the plaintiff’s expenses. To apply this doctrine, it must be established that :-

(i) the Defendants/Respondents have been enriched by the receipt of a “benefit”;

(ii) this enrichment is “at the expenses of the plaintiff”;

(iii) the retention of the enrichment is unjust.

26. The Hon’ble Supreme Court had the occasion to deal with and explain the contours of Section 70 of the Contract Act, 1972 in State of West Bengal Vs. B.K. Mondol & Sons, AIR, 1962 SCC 779 and it was held as under:-

> *“Three conditions must be satisfied before S. 70, Contract Act can be invoked. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When these conditions are satisfied S. 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered.*
>
> *The person said to be made liable under S. 70 always has the option not to accept the thing or to return it. It is only where he voluntarily accepts the thing or enjoys the work done that the liability under S. 70 arises. Section 70 occurs in Chap. V which deals with certain relations*

resembling those created by contract. In other words, this chapter does not deal with the rights or liabilities accruing from the contract. It deals with the rights and liabilities accruing from relations which resemble those created by contract.

In cases falling under S. 70 the person doing something for another or delivering something to another cannot sue for he specific performance of the contract nor ask for damages for the breach of the contract for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. All that S. 70 provides is that if the goods delivered are accepted or the work done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus where a claim for compensation is made by one person against another under S. 70, it is not on the basis of any subsisting contract between the parties, it is on the basis of the fact that something was done by the party for another and the said work so done has been breach of the contract for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. All that S. 70 provides is that if the goods delivered are accepted or the work

done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus where a claim for compensation is made by one person against another under S. 70, it is not on the basis of any subsisting contract between the parties, it is on the basis of the fact that something was done by the party for another and the said work so done has been voluntarily accepted by the other party.

The word 'lawfully' in the context indicates that after something is delivered or something is done by one person for another and that thing is accepted and enjoyed by the latter, a lawful relationship is born between the two which under the provisions of S. 70 gives rise to a claim for compensation.

The thing delivered or done must not be delivered or done fraudulently or dishonestly nor must it be delivered or done gratuitously. Section 70 is not intended to entertain claims for compensation made by persons who officiously interfere with the affairs of another or who impose on others services not desired by them. When a thing is delivered or done by one person it must be open to the other person to reject it. Therefore, the acceptance and enjoyment of the thing delivered or done which is the

basis for the claim for compensation under S. 70 must be voluntary.

What S. 70 prevents is unjust enrichment and it applies as much to individuals as to corporations and Government. On principle S. 70 cannot be invoked against a minor. There is good authority for saying that S. 70 was framed in the form in which it appears with a view to avoid the niceties of English law on quasi-contracts."

(Emphasis supplied)

27. We may, elucidate the concept of 'Quasi Contract' as well as Doctrine of 'Unjust Enrichment' by way of following illustration: -

"A person X sends some goods to person Y in the absence of any order from Y. Y is dutybound to either refuse delivery of goods as and when those are tendered to him or immediately after receipt of goods, to return those to X or at least send a communication (oral, telephonic or written) to him informing him that he has sent the goods without any order from Y and hence, should take those back. However, in case Y accepts goods stoically and also utilizes them, he cannot be heard to say that he shall not pay to X for them as he has not ordered them. In that case, Y shall be required to

pay for the goods. This is what the essence of Section 70 of Contract Act also is."

28. We may further note that in similar facts and circumstances in case No. 28 of 2020 (Bothe's case) where there was no valid EPA between the power generators and the distribution licensee (it was MSEDCL in that case also), the MERC awarded compensation to the power generator i.e. M/s Bothe for the electricity generated and injected into the grid on the following reasoning:-

"21.8 The Commission however would like to also consider the conduct of MSEDCL and BWDPL. It has been accepted by MSEDCL that it has taken the benefits by considering this power for fulfilling its non- Solar RPO targets for three years i.e. from FY 2014-15 to 2016-17 i.e till such time the procurement methodology had not been changed to Competitive Bidding. The Commission thus feels that MSEDCL should compensate BWDPL for that limited period. As there was no valid EPA between the parties, generic tariff applicable at that point of time cannot be made applicable in the present matter. Only other method that can be considered is sale of power at Average Power Purchase Cost (APPC) to Distribution Licensee which is akin to REC mechanism. Therefore, the Commission directs MSEDCL to compensate BWDPL for the period of FY 2014-15 to 2016- 17 at rate of approved APPC (excluding renewable sources) for

respective year. Further, as MSEDCL has used this energy for meeting its RPO, green attribute of the same also needs to be paid. Hence, in addition to APPC rate, MSEDCL should also compensate BWDPL for such energy at Floor price of non-solar REC prevailing at that point of time. Accordingly, the Commission direct MSEDCL to pay compensation for energy injected by BWDPL from 3 WTGs aggregating 6.3 MW capacity in the year FY 2014-15 to FY 2016-17 at the rate of APPC (excluding RE) plus floor price of non-solar REC applicable for respective year. However, such compensation would be without any carrying cost as MSEDCL was not responsible for delay in raising bills for FY 2014-15 to FY 2016-17.

21.9 Energy injected by BWDPL form FY 2017-18 onwards, which has not been utilized by MSEDCL for its RPO, needs to be treated as energy injection without a valid EPA and hence need not be compensated."

[Emphasis supplied]

29. We may further note that the above noted order of the Commission in Bothe's case was assailed before this Tribunal by way of appeal No.119/2020 which was decided along with the batch of identical appeals vide judgment dated 18.08.2022 setting aside the Commission's order and holding the appellants entitled to tariff for the electricity generated and supplied from the respective dates. It has been further held that the

conduct of the parties leaves no room for doubt that the contracts had come into being with the MSEDCL permitting not only commissioning but also connectivity as well as enjoying the electricity injected into the system without demur, accounting it towards its RPO obligations and indisputably reaping financial gains by receiving corresponding tariffs from its consumers. It has further been held that signing of an EPA, model of which had already been approved by MERC, was only a matter of formality and the MEDA registration would relate to the respective dates with the application for registration by appellants. For clarity, we find it apposite to quote the relevant Paragraphs of the judgment of this tribunal hereunder: -

> *"56. The process of scrutiny for MEDA registration seems to have been opaque and wholly unguided, seemingly dependent on the discretion as to the order of priority at the hands of the officialdom that would have handled it. Since certain rights or disqualifications statedly flow from such registration, this cannot be accepted. MEDA, despite notice, has chosen not to participate by any submissions before us. From the chronology of events concerning the registration of the projects of WPPs in appeal, we notice that it primarily depended on micro-siting inspections and the propriety of location chosen. Such considerations would have been relevant even for purposes of the projects to come up and be commissioned. Since setting up and commissioning of the projects was duly monitored, and under constant gaze of the MSEDCL, the connectivity*

given being contingent on the inspection and certificate of Electrical Inspector reporting to the said very entity, we fail to understand as to how MEDA registration process could come in the way of securing rights to the WPPs who had otherwise become eligible for execution of the EPAs under the promise held out through the RE Policy- 2015. It bears repetition to say that the delay in MEDA registration in the present cases were not for reasons attributable to these WPPs but beyond their control. At any rate, the registration granted in 2019 would refer back to the dates of their respective application which in each case here is of January-February 2016 vintage.

57. In the above context, it is advantageous to refer to certain case law. In Joint Chief Controller of Imports and Exports, Madras v. Aminchand Mutha etc. AIR 1966 SC 478, Hon'ble Supreme Court had ruled thus:

> *"11. The fact that in his letter of approval the Chief Controller usually says that the quota rights admissible to the dissolved partnership should in future be divided between the partners would not necessarily mean that the quotas for the partners were to take effect only after the date of approval. If the division of quota has to be recognised by the Chief Controller on production of evidence required by Instruction 72 and this division has to be in*

accordance with the agreement between the partners of a dissolved firm, the approval must relate back to the date of agreement, for it is the agreement that is being recognised by the Chief Controller. In such a case the fact that the Chief Controller says that in future the quota would be divided, only means that the original quota of the undissolved firm would from the date of the agreement of dissolution be divided between partners as provided thereunder.

12. Further we should like to make it clear that quotas should not be confused with licences. Quotas are merely for the purpose of informing the licensing authority that a particular person has been recognised as an established importer for import of certain things. Thereafter it is for the licensing authority to issue a licence to the quota holder in accordance with the licensing policy for the half year with which the licence deals. For example, if in a particular half year there is an order of the Central Government prohibiting the import of certain goods which are within the quota rights, the licensing authority would be entitled to refuse the issue of licence for import of such goods whose import has been banned by the Central Government under the Act by notified order. Thus the approval of the Chief Controller under Instruction 71 is a mere recognition

of the division made by the partners of a dissolved firm by agreement between themselves and in that view the recognition must clearly relate back to the date of the agreement. Further when the Chief Controller says in his letter that in future the division would be recognised in a certain ratio based on the agreement, it only means that the Chief Controller has approved of the division made by the parties and such approval then must relate back to the date of the agreement between the parties. We therefore hold that the view taken by the Madras High Court that the approval by the Chief Controller relates back to the date of agreement is correct."

[Emphasis Supplied]

58. In the case of UP Avas Evam Vikas Parishad & anr. v. Friends Coop. Housing Society Ltd & anr. 1995 Supp (3) SCC 456, it was held as under:

"7. It is seen that the approval envisaged under exception (iii) of s.59(1) (a), is to enable the Parishad to proceed further in implementation of the scheme framed by the Board. Until approval is given by the Government, the Board may not effectively implement the scheme. Nevertheless, once the approval is given, all the previous acts done or actions taken in anticipation of the approval gets validated and the publications made under the Act thereby becomes valid."

[Emphasis Supplied]

59.The above view was reiterated in Graphite India Ltd & anr v. Durgapur Projects Limited & ors. (1999) 7 SCC 645.

60. The fact that MEDA registrations secured in 2017 in at least 32 cases (Sr. no. 292 to 324 in Annexure-A/2) have resulted in the appellant WPPs being kept out of the fray, even though the applications of the latter were submitted earlier in 2016, they being ready in 2014-15, renders the denial of EPAs to these WPPs most unfair and inequitable, the entire process being vitiated by the arbitrary approach of MSEDCL and MEDA.

61. Promises were held out by the State Government through its RE Policy-2015, followed by methodology order, and subsequent notification of the government resolution issued on 21.12.2016 to accommodate and regularize the WPPs which had been commissioned after the targets of RE Policy-2008 had been exhausted for the purposes of new capacity added by RE Policy-2015, particularly in the own interest of MSEDCL for fulfilling its RPO obligations to the extent of 1350 MW. This gave rise to legitimate expectations for all WPPs then in the process of being established and commissioned.

62. In M/s Motilal Padampat Sugar Mills, (1979) 2 SCR 641 the doctrines of legitimate expectation and promissory estoppel were explained as under:

> *"The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the*

Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negative in the IndoAfghan Agencies case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire

legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public

interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the IndoAfghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an ex parte appraisement of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the

Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable."

[Emphasis Supplied]

63. Expounding the doctrine further, the Hon'ble Court clarified that it was not necessary to show that the party in question had suffered any detriment, it being sufficient that it had relied upon the promise and representation held out and altered its position relying upon such assurance. It was further held thus:

> *"Of course, it may be pointed out that if the U.P. Sales Tax Act, 1948 did not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute, but since Section 4 of the U.P. Sales Tax Act, 1948 confers power on the Government to grant exemption from sales tax, the Government can legitimately be held bound by its promise to exempt the appellant from payment of sales tax. It is true that taxation is a sovereign or governmental function, but, for reasons which we have already discussed, no distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government, so far as the doctrine of promissory estoppel is concerned. Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory*

estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. We are, therefore, of the view that in the present case the Government was bound to exempt the appellant from payment of sales tax in respect of sales of vanaspati effected by it in the State of Uttar Pradesh for a period of three years from the date of commencement of the production and was not entitled to recover such sales tax from the appellant."

[Emphasis Supplied]

64. In Manuelsons Hotels Private Limited v. State of Kerala & Ors (2016) 6 SCC 766, quoting with approval from the above decision in the case of Motilal Padampat Sugar Mills (supra) and following similar discourse in the judgment in the case of State of Punjab v. Nestle India Ltd. (2004) 6 SCC 465, the Supreme Court held thus:

"19. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory

estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party…"

[Emphasis Supplied]

65. From the narrative of the factual background, it is clear that the subject WTGs were set up by the appellant WPPs in terms of RE Policy, the development and commissioning having been monitored by MSEDCL, the intended beneficiary of the entire generation capacity thereby created. There is no denial as to the fact that the appellant WPPs had established, set-up and commissioned their respective projects, particularly the WTGs which are subject matter of the present dispute, on the promises made by RE Policy – 2008 read with RE Policy – 2015, as indeed assurances held out by MSEDCL Circular 2014. Promises were made and commitments taken including in the form of undertakings furnished by the WPPs, and accepted by MSEDCL, that their entire capacity would be sold to, and purchased by the latter (MSEDCL), as per the tariff regime put in position by MERC, MSEDCL having started taking the supply and accounting it towards RPO obligations issuing, at least in the case of WinIndia, even credit notes for such supply. The cases of such WPPs who, by then, had not been covered by formal EPAs were subjected to scrutiny by the State Government which resolved to have the same regularized and so

recommended in December, 2016, the requirement of MEDA registration introduced around that time having deferred immediate action in that light. There is no case made out by MSEDCL of suffering any inequity by being held bound by its promise or the relief claimed being detrimental to public interest. The additional targets of RE Policy – 2015, as already found, are yet not exhausted. All the requisite ingredients for the doctrine of promissory estoppel to come into play are thus shown to exist, the argument of MSEDCL to renege on its promises being arbitrary, unfair and unconscionable.

66. The appellant WPPs contend that implied contracts exist between the parties, execution of EPAs being only a formality required to be completed. Reliance is placed on the decisions of the Supreme Court reported as Haji Mohd. Ishaq v Mohd. Iqbal and Mohd. Ali & Co., (1978) 2 SCC 493 and Bhagwati Prasad Pawan Kumar v Union of India, (2006) 5 SCC 311.

67. In Haji Mohd. Ishaq (supra), the Supreme Court quoted (Para 10) with approval the following passage from Chitty on Contracts, twenty-third Edn., pp. 9-10, para 12:

> *"Express and implied contracts.—Contracts may be either express or implied. The difference is not one of legal effect but simply of the way in which the*

consent of the parties is manifested. Contracts are express when their terms are stated in words by the parties. They are often said to be implied when their terms are not so stated, as, for example, when a passenger is permitted to board a bus: from the conduct of the parties the law implies a promise by the passenger to pay the fare, and a promise by the operator of the bus to carry him safely to his destination. There may also be an implied contract when the parties make an express contract to last for a fixed term, and continue to act as though the contract still bound them after the term has expired. In such a case the court may infer that the parties have agreed to renew the express contract for another term. Express and implied contracts are both contracts in the true sense of the term, for they both arise from the agreement of the parties, though in one case the agreement is manifested in words and in the other case by conduct. Since, as we have seen, agreement is not a mental state but an act, an inference from conduct, it follows that the distinction between express and implied contracts has very little importance, even if it can be said to exist at all." …"

[Emphasis Supplied]

68. In Bhagwati Prasad Pawan Kumar (supra), it was held thus:

"19. It is well settled that an offer may be accepted by conduct. But conduct would only amount to acceptance if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. The decisions which we have noticed above also proceed on this principle. Each case must rest on its own facts. The courts must examine the evidence to find out whether in the facts and circumstances of the case the conduct of the "offeree" was such as amounted to an unequivocal acceptance of the offer made. If the facts of the case disclose that there was no reservation in signifying acceptance by conduct, it must follow that the offer has been accepted by conduct. On the other hand, if the evidence discloses that the "offeree" had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act."

[Emphasis Supplied]

69. We agree with the submissions of the WPPs herein that the conduct of the parties leaves no room for doubt that contracts had come into being MSEDCL permitted not only commissioning but also connectivity and has been enjoying the electricity injected into its system without demur, accounting it towards its RPO obligations,

indisputably reaping financial gains by receiving corresponding tariff from its consumers.

70. The implied contract is in consonance with the principles enshrined under the Indian Contract Act, 1872. Lack of a written contract would not render the implied agreement between the parties illegal. There is merit in the argument of the appellant WPPs that by its ruling through Order dated 24.11.2003 in Case no. 17(3)3-5 of 2002 on the application of erstwhile Maharashtra State Electricity Board on the subject of "procurement of wind energy & wheeling for third party sale and/or self-use", MERC had rendered formal exercise of approval under Section 86 of Electricity Act in cases covered by the RE Policy unnecessary, the relevant observations being as under:

> *"1.6.1 Energy Purchase Agreement (EPA) & Energy Wheeling Agreement (EWA) It is not the intention of the Commission to approve the EPA/EWA for each wind project individually. The Commission however has formulated the principles of EPA/EWA, which have been elaborated in the Order. The Commission directs the MSEB and other utilities/licensees to modify Draft EPA/EWA to reflect the tariff provisions and principles of EPA/EWA as approved in the Order before executing the EPA/EWA with developers. The Commission further*

directs the MSEB and other utilities/licensees to make all EPAs/EWAs public."

71. Crucially, the above was reiterated by MERC in its Order dated 26.02.2009 in Case no. 89 of 2008 in the matter of petition of another entity (Reliance Infrastructure Ltd.) seeking approval of EPA for purchasing the entire energy generated from certain WTGs, the relevant para reading thus:

"15. The Commission, in its Order dated December 10, 2008 in Case No. 58 of 2008 has determined the tariff on adinterim basis at Rs. 2.52 per kWh for the wind energy injected into the Grid by wind energy generators belonging to GroupII category until determination of Final Tariff as may be determined based on further regulatory process to be initiated pursuant to para 44 of the Commission's Order dated October 7, 2008 in Case 89 of 2007. Moreover, the Commission has already spelt out the provisions of the Model EPA in its Order dated 24.11.2003 in Case No. 17(3),3,4,5 of 2002, and the Petitioner should enter into EPAs in accordance with the approved Model EPA, since the Commission does not approve individual EPAs entered into by the distribution licensee with wind developers."

72. All the requisite ingredients are in place, they being valid offer, acceptance, express mutual consents, lawful object and consideration. In fact, the implied contracts (qua subject WTGs) between these WPPs on one hand and the MSEDCL, on the other, had even been acted upon by the latter (MSEDCL) commencing procurement of supply, showing it in its account as part of the fulfillment of RP obligations. Clearly, the WPPs did not intend the supply of electricity to be gratuitous.

73. On the forgoing facts and in the circumstances, we are not impressed with the reasons cited by MSEDCL for refusal to sign EPAs with the appellant WPPs. The reference to competitive bidding guidelines issued in 2017 is not correct. The contracts had already come into existence and the signing thereof, following the model EPA already approved by MERC, was only a matter of formality. The competitive bidding guidelines could not preclude such contracts to be formalized so as to be given retrospective effect. Such guidelines may have to be followed for future arrangements. The MEDA registrations granted in 2019 would relate back to the respective dates of application for such registration i.e. January-February, 2016. The appellant WPPs had commissioned the WTGs in 2014-15 and had started injecting power thereby generated from the date(s) of commissioning into the system of MSEDCL. It bears

repetition to note that the new targets created by RE Policy – 2015, particularly to the extent set apart for RP obligations, have not been yet exhausted, a finding returned by us on the basis of scrutiny of the facts discovered by CMD of MSEDCL. The claims of appellant WPPs herein, upon being allowed, will not result in the said target being exceeded. The WPPs thus are entitled to the execution of the formal EPAs from the date(s) they fulfilled all the eligibility requirements, i.e. date(s) on which they had applied for such registrations as have been granted later. The denial of a direction for EPAs to be executed thus cannot be upheld.

74. As a sequitur, the appellant WPPs are entitled to the tariff for the electricity generated and supplied from the respective dates on which they are entitled w.e.f. the date(s) from which the EPAs are to become effective. The restriction of compensation only for the period for which MSEDCL has claimed RPO compliances and consequent denial (of compensation) for the remainder is unjust and, therefore, incorrect. For these reasons, the appeals of MSEDCL grudging the restricted grant of compensation cannot be accepted."

30. When we apply the concept of quasi contract as well as the doctrine of unjust enrichment / legitimate expectation as explained by Hon'ble Supreme Court in the above noted judgements of B K Mondal and M/s

Motilal Padampat Sugar Mills to the facts of the instant case, we find that the members of appellant association are entitled to payment of power injected into the grid from their solar power projects during the period already noted hereinabove. We also see no reason for making any departure from the findings of this Tribunal given in Bothe's case i.e. Appeal No.119/2020 decided on 18.08.2022.

(iv) <u>Whether the Commission should have directed MSEDCL to purchase solar energy from willing solar power developers upon factoring into EPAs with them at preferential tariff when there was a shortfall for MSEDCL in meeting the solar RPO targets:</u>

31. It is argued on behalf of the appellant that from the financial year 2010-11, MSEDCL has not been able to meet its RPO targets under RPO Regulations and the 1st respondent Commission, vide order dated 04.08.2015 in case No.190 of 2014 had directed MSEDCL to fulfil cumulative solar RPO shortfall by the end of financial year 2015-16 but despite that, MSEDCL has refused to purchase power from the members of the appellant in an arbitrary fashion. It is submitted that in view of these facts and circumstances, the Commission should have directed the MSEDCL to purchase solar power from the members of appellant association at preferential tariff by entering into EPAs with them.

32. On behalf of MSEDCL, it is argued that in terms of regulation 7.2 of MERC (Renewable Purchase Obligation, its compliance and implementation of REC Framework) Regulations, 2010, solar energy purchase at APPC or other rate different from preferential tariff cannot be accounted for meeting RPO target for MSEDCL. It is further submitted that in terms of these regulations, it is for MSEDCL to decide how and in what manner it wishes to fulfil its RPO targets. The learned counsel for MSEDCL pointed out that purchase of RECs is also one of the options to fulfil RPO targets and the Commission cannot direct MSEDCL to adopt a particular mode of power procurement for RPO fulfilment. It is further pointed out that the 1st respondent Commission has provisionally disallowed Rs.260.33 crores to MSEDCL for non-compliance of RPO in its multi-year tariff order dated 03.11.2016 in case No.48 of 2016.

33. We do not feel convinced by the submissions made on behalf of the MSEDCL on this aspect. The conduct of the MSEDCL clearly appears to be atrocious, to say the least. It is a public body and is expected to conduct is affairs with utmost prudence and for the public good. On the contrary, it has conducted its affairs malafidely, discriminatorily and against the public good. For the reasons best known to MSEDCL (which have nowhere been explained), it chose neither to purchase solar power from the members of appellant association to meet its RPO target nor procured the requisite RECs and accordingly suffered disallowance of Rs.260.33 crores for noncompliance of RPO. Such conduct of MSEDCL needs to be deprecated in strongest words.

34. Despite recording such conduct of MSEDCL in the impugned order, the Commission has, for no valid reasons, chosen not to direct MSEDCL to grant open access to the members of the appellant association. This is despite the Commission having directed MEDCL to grant open access to Tata Motors Limited in similar circumstances vide order dated 18.09.2017 in case No.88 of 2016 titled Tata Motors Limited v. MSEDCL. We find it pertinent to reproduce hereunder the relevant paragraphs of the said order:-

> *"9. Being a leading industrial consumer with Contract Demand of 55.37 MVA and availing OA for a long time, TML ought to have been aware of the process and the technical and other requirements. Nevertheless, in the Commission's view, the sequence of events set out above shows that the entire matter was mishandled by MSETCL and MSEDCL, quite apart from belated responses by MSEDCL. In 2011, MSETCL and MSEDCL, respectively, had themselves procured the CTs and the Apex Meter. The configurations were also verified and the equipment tested and commissioned by MSEDCL. However, neither of them thought it necessary to consider the specifications prescribed in the CEA Metering Regulations as amended from time to time,*

resulting in the subsequent complications and delays brought out in these proceedings.

10. Considering these circumstances, the Commission directs MSEDCL to grant OA to TML for captive use of its wind energy from April to October, 2015, and to issue the credit notes for the energy injected during this period for adjustment in the ensuing billing cycle, notwithstanding the fact that the metering configuration at that time was not in line with the CEA Metering Regulations. The Commission also notes that MSEDCL had granted OA permission for FY 2013-14 and FY 2014-15 with the earlier metering arrangement, a fact which MSEDCL has avoided addressing in its submissions."

Conclusion:

35. We, therefore, direct the 2nd respondent MSEDCL to purchase solar energy injected by the members of the appellant into the grid at APPC rate for the financial year 2014-15 and at preferential tariff for the financial yar 2015-16 and to pay the entire tariff to them within one month from today. We also direct the 2nd respondent to compensate the members of appellant association by paying them Rs.50,000/- each for the loss of RECs on account of being constrained to lose the benefit of RECs due to delay on the part of the 2nd respondent in processing their applications for open

access and issuance of credit notes. The 2nd respondent shall also pay carrying cost to the members of the appellant association on the outstanding dues.

36. Accordingly, the impugned order of the Commission stands set aside and the appeal stands allowed to the above extent.

Pronounced in the open court on this the 28th day of August, 2024.

(Virender Bhat)	(Sandesh Kumar Sharma)
Judicial Member	Technical Member (Electricity)

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