

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)**

**Appeal No. 245 of 2018
&
Appeal No. 376 of 2018**

Dated: 23.10.2024

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

Appeal No. 245 of 2018

In the matter of:

Maharashtra State Electricity Distribution Company Ltd.
Through its Chief Engineer, Commercial
5th Floor, Plot No. G-9,
Station Road, Prakashgad,
Bandra (East), Mumbai 400 051.

...Appellant(s)

Vs.

1. Maharashtra Electricity Regulatory Commission
Through its Secretary
World Trade Centre, Centre No-1
13th Floor, Cuffe Parade,
Colaba, Mumbai- 400 005.
2. Laxmi Organic Industries Limited
Through its Managing Director
Chandermukhi, 3rd floor,
Nariman Point, Mumbai 400021
3. Prayas (Energy Group)
Through its Managing Director
Amrita Clinic, Athvale Corner,
Lakdipool-Karve Road Junction,

Deccan Gymkhana, Karve Road,
Pune-411 004

4. The General Secretary,
Thane Belapur Industries Association,
Rabale Village, Post Ghansoli,
Plot P-14, MIDC,
Navi Mumbai-400 701
Through its Managing Director.
5. Mumbai Grahak Panchayat,
Through its Managing Director
Grahak Bhavan,
Sant Dynaneshwar Marg,
Behind Cooper Hospital,
Vile Parle (West),
Mumbai-400 056.
6. Maharashtra Chamber of Commerce,
Industry & Agriculture,
Through its Managing Director
Oricon House, 6th Floor,
12-K, Dubash Marg,
Fort, Mumbai- 400 001,
(Nashik Branch).
7. Vidarbha Industries Association
Through its Managing Director
1st Floor, Udyog Bhavan,
Civil Line, Nagpur- 400 001.

...Respondent(s)

Counsel for the Appellant(s) : Mr. G. Saikumar, Sr. Adv.
Mr. Samir Malik
Mr. Rahul Sinha
Ms. Nikita Choukse
Mr. Anup Jain
Mr. Varun Agarwal
Ms. Rimali Batra
Mr. Paritesh Goel

Ms. Shruti Awasthi
Ms. Saroj Bala
Mr. Amit Bute
Ms. Saumya Sharma

Counsel for the Respondent(s) : Mr. M. G. Ramachandran, Sr. Adv.
Mr. Subir Kumar
Ms. Salonee Patil
Ms. Avika Madhura
Mr. Ashish Verma
Ms. Shrishti Thukral for R-2

Appeal No. 376 of 2018

In the matter of:

Laxmi Organic Industries Limited
Through its Managing Director
Chandermukhi, 3rd floor,
Nariman Point, Mumbai 400021

...Appellant(s)

Vs.

1. Maharashtra Electricity Regulatory Commission
Through its Secretary
World Trade Centre, Centre No-1
13th Floor, Cuffe Parade,
Colaba, Mumbai- 400 005.
2. Maharashtra State Electricity Distribution Company Ltd.
Through its Chief Engineer, Commercial
5th Floor, Plot No. G-9,
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Mr. Rahul Sinha
Ms. Nikita Choukse
Mr. Anup Jain
Mr. Varun Agarwal
Ms. Rimali Batra
Mr. Paritesh Goel
Ms. Shruti Awasthi
Ms. Saroj Bala
Mr. Amit Bute
Ms. Saumya Sharma for R-2

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. Appeal no. 245 of 2018 has been filed by the Appellant i.e. M/s. Maharashtra State Electricity Distribution Company Ltd. (in short "MSEDCL") challenging the Order in Case No.97 of 2016 (in short "Impugned Order-245") dated 02.04.2018 passed by Maharashtra Electricity Regulatory Commission (in short "Commission" or "MERC") for directing the MSEDCL to release the retained amount to the concerned Generators, with applicable interest till it is paid.

2. The Appeal no. 376 of 2018 has been filed by the Appellant i.e. M/s. Laxmi Organic Industries Limited (in short "LOIL") challenging the Order in Case No. 168 of 2018 (in short "Impugned Order") dated 03.11.2018 passed by the MERC

whereby the MERC has made unjustified observations on the aspect of the transmission charges and transmission losses which has led to the MSEDCL to raise the invoices for alleged transmission charges and claim for adjustment of transmission losses.

Description of Parties: -

3. Maharashtra State Electricity Distribution Company Limited (MSEDCL) is the Appellant in Appeal No.245 of 2018 and 2nd Respondent in cross Appeal No. 376 of 2018, is engaged in the business of distribution of electricity to its consumers situated over the entire State of Maharashtra, except Mumbai City & its suburbs (excluding Mulund & Bhandup).

4. Maharashtra Electricity Regulatory Commission is Respondent No. 1, in both appeals, *inter-alia* is a statutory authority constituted under Section 14 of the Electricity Regulatory Commissions Act, 1998, and is vested with the powers to determine the tariff for generation, supply, and transmission and wheeling of electricity, within the state and to adjudicate upon disputes between licensees and generating companies.

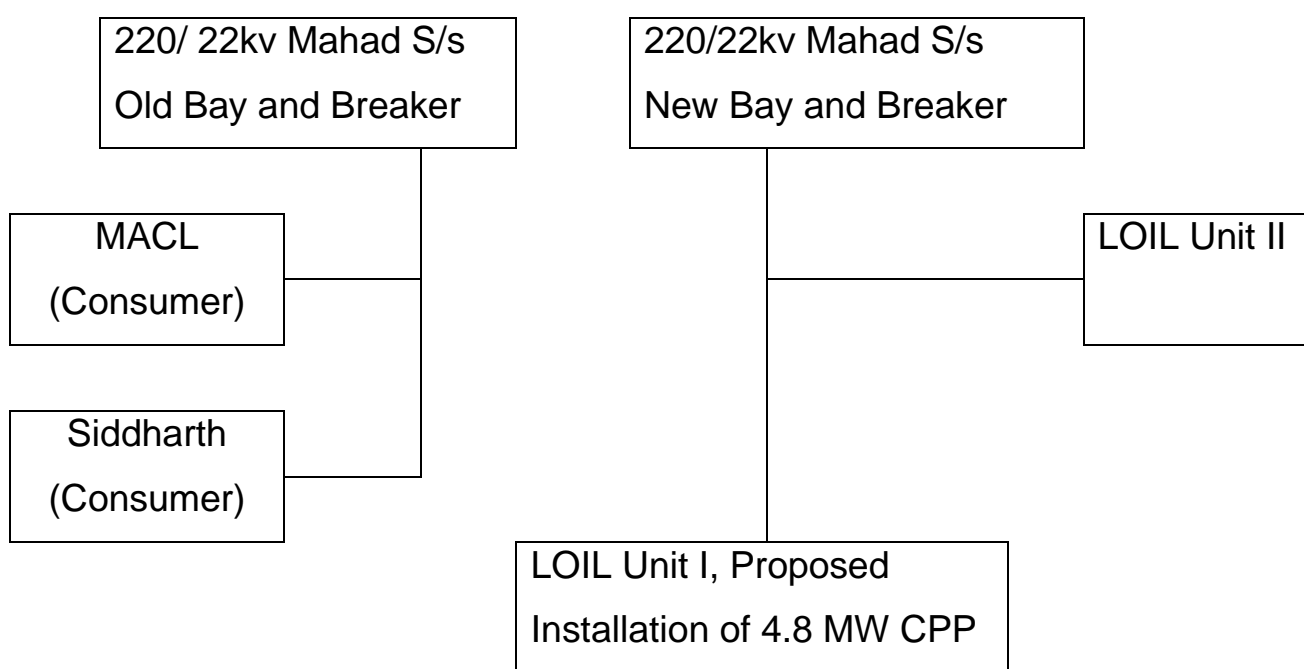
5. LOIL is the 2nd Respondent in Appeal No.245 of 2018, and Appellant in cross Appeal No. 376 of 2018 *inter-alia* manufacturing alcohol-based chemicals.

Factual Matrix of the Case (Appeal No.245 of 2018): -

6. LOIL set up a 4.8 MW coal-based Captive Power Plant (in short “CPP”) in

September 2012 at its Unit I and consumes the electricity generated from the CPP in its two Industrial Units.

7. LOIL complies with the requirement of the captive user as per the applicable provisions of the Electricity Act, 2003 (in short “Act”), the two industrial Units are connected by way of a single feeder system, which has been explained by way of single diagrams as under: -



8. On 19.05.2012, LOIL sent an application for grant of Open Access for the FY 2012-2013 for Wheeling 2.9 MW power from its CPP, subsequently, the MSEDCL granted Open Access Permission on 04.10.2012 duly signed and sanctioned by the authority.

9. Thereafter, on 01.03.2013, the LOIL through application sought Open

Access for 4 MW of power for the FY 2013-2014, however, on 28.03.2013, the MSEDCL approved the application for Open Access only to the tune of 2.95 MW same being equivalent to the Contract demand of the LOIL for one year as against the 4 MW.

10. LOIL and MSEDCL entered into an Energy Purchase Agreement (in short "EPA") on 30.03.2013, for the supply of 2.95 MW of power.

11. LOIL vide application dated 03.04.2013, sought enhancement of contract demand from 2950 KVA to 4000 KVA, i.e., within 5 days of the grant of the Open Access permission for a quantum of 2.95 MW, however, said application being incomplete, the MSEDCL asked the LOIL to furnish necessary documents in complete form, further, on 06.05.2013, LOIL filed a revised application for enhancement of contract demand from 2950 KVA to 4800 KVA.

12. After receiving the complete application along with documents, the MSEDCL vide letter dated 10.10.2013 enhanced the Open Access from 2.9 MW to 4.8 MW.

13. Again, vide letter dated 29.03.2014 along with terms and conditions, the MSEDCL approved open access for 01.04.2014 to 31.03.2015 i.e., for FY 2014-15, furthermore, terms and conditions also embodied the clause about the applicability of Wheeling Charges and Wheeling Losses about open access which is to be levied upon the LOIL.

14. Aggrieved by the action of the MSEDCL for levying Wheeling Charges and Wheeling Losses, the LOIL approached the Commission vide case no. 59 of 2015

thereby challenging the imposition of said wheeling charges and applicable losses for FY 2014-2015 in contradiction to the previous Open Access permissions granted for FY 2012-2013 and 2013-2014 including temporary tariff charges applied for FY 2013-2014 by MSEDCL.

15. The Commission vide daily order dated 12.01.2016 directed the MSEDCL and the LOIL to provide further information.

16. The Commission vide order dated 03.06.2016 disposed of Case No. 59 of 2015 wherein it was observed and held that irrespective of the network arrangement of the CPP and Unit 1 & II of LOIL, the same becomes an integral part of the grid instead of the ownership of the network, therefore LOIL is liable to pay for wheeling charges and wheeling losses to the MSEDCL.

17. Subsequently DOA Regulations of 2016 were notified while superseding the previous regulations of 2005 and 2014 stipulating that Wheeling Charges shall not be applicable in case of a consumer or generating station is connected to the transmission system directly or using dedicated lines owned by the consumer or generating station.

18. Respondent No. 2 given the DOA Regulations of 2016 filed a Review Petition bearing Case No. 97 of 2016 to review the order dated 03.06.2016.

19. On. 02.04.2018, the Commission given the prevailing regulations reversed the Order dated 03.06.2016 and directed MSEDCL not to levy Wheeling Charges and Wheeling Losses on LOIL and further to refund the amounts paid with

applicable interest directly to LOIL within a month or by adjustment in its energy bill for the forthcoming billing cycles.

Factual Matrix of the Case (Appeal No.376 of 2018): -

20. The State Commission vide Order dated 02.04.2018 in Case No.97 of 2016 filed by the LOIL for Review of Order dated 03.06.2016 in Case No.59 of 2015, allowed the Review Petition / Case No.97 of 2016 and directed MSEDCL not to levy wheeling charges and wheeling losses on Appellant with further direction that the amounts paid, in the meantime, to MSEDCL shall be refunded with applicable interest directly to the Appellant with a month or by adjustment in its Energy Bill for the ensuing billing cycle.

21. Subsequently, on 11.06.2018, the LOIL filed the Contempt Petition bearing Case No.168 of 2018 for non-compliance by MSEDCL of the Order dated 02.04.2018 passed by the State Commission in Case No.97 of 2016 as MSEDCL willfully did not refund the amounts paid by the LOIL with applicable interest or made any adjustments in future bills in compliance with Order dated 02.04.2018.

22. On 01.07.2018/02.07.2018, the LOIL served a soft/hard copy of Case no. 168 of 2018 to MSEDCL vide email dated 01.07.2018.

23. On 14.07.2018, MSEDCL preferred Appeal No.245 of 2018 challenging an Order dated 02.04.2018 passed by the State Commission in Case No.97 of 2016, whereby, MSEDCL challenged the order dated 02.04.2018 only on the issue of Wheeling Charges and Wheeling Loss applicable to LOIL.

24. Again on 16.07.2018, the State Commission issued a notice regarding fixing the date of hearing of Case No.168 of 2018 on 18.09.2018.

25. On 26.07.2018, the State Commission issued further notice intimating that the hearing scheduled on 18.09.2018 is postponed and rescheduled on 08.10.2018.

26. On 22.09.2018, a notice issued by the State Commission intimating the hearing on 08.10.2018 was postponed and scheduled on 01.10.2018 instead of 08.10.2018.

27. On 01.10.2018, LOIL and MSEDCL appeared before the State Commission in Case No.168 of 2018, and the State Commission reserved the matter for judgment, at the said hearing, MSEDCL, though being served on 02.07.2018 with the copy of the Petition, did not file any reply on or before 01.10.2018.

28. On 22.10.2018, MSEDCL, in violation of the procedure of the State Commission and after the judgment was reserved, filed its Reply to Case No.168 of 2018 and a copy was served to the Appellant's Advocate, in the said Reply, contrary to the stand taken by MSEDCL in Appeal No.245 of 2018 limited to the issue of Applicability of Wheeling Charges and Losses to the Appellant, raised the issue of transmission charges, and LOIL had no occasion to deal with the same as the reply of MSEDCL was filed after Case No.168 of 2018 was reserved for judgment.

29. On 03.11.2018, the State Commission was pleased to allow Case No.168 of 2018 wherein despite accepting the submissions of the LOIL gave no direction to MSEDCL regarding in what manner the Order dated 02.04.2018 to be complied with and further made observation on transmission charges and transmission losses.

30. On 15.11.2018, MSEDCL served a copy of a letter dated 15.11.20218 to the Advocate for the Appellant appearing in Appeal No.245 of 2018 wherein MSEDCL sought to recover transmission charges of Rs.6,98,78,400 and MSEDCL raised a bill for October of RS.1,92,91,453.17 on the LOIL without any claim of any transmission charges.

31. On 17.11.2018, MSEDCL served a back-dated letter dated 02.11.2018, which was received by LOIL on 17.11.2018 seeking payment of Rs.6,98,78,400 under the head of Transmission Charges, vide the said letter, MSEDCL has purported to disconnect the supply of electricity on account of non-payment of alleged non-payment of transmission charges.

32. On 26.11.20218, Order passed by the Tribunal in Appeal No.245 of 2018 as under:-

“Learned counsel, Mr. G. Umapathy, appearing for the Appellant has filed a Memo dated 26.11.2018, the same was taken on record. Learned counsel, Mr. M. G. Ramachandran, appearing for Respondent No.2 pray for two weeks’ time to file reply to Memo filed by the learned counsel appearing for the Appellant.

Submissions made by learned counsel appearing for the Appellant and learned counsel appearing for the Respondent No.2, as stated above, are placed on record. Relist this matter on 17.12.2018 to enable learned counsel appearing for the respondent No.2 to file the reply.

In the meanwhile, learned counsel appearing for the Respondent No.2, on Instructions from Mr. Arun Dudhane, Managing Director, Respondent No.2 submitted that Respondent No.2 will pay the October bill dtd. 15.11.2018 on due date.

The Appellant is directed not to take any coercive action till next date of hearing i.e. 17.12.2018”

33. On 29.11.2018, LOIL complied with the order passed by this Tribunal and paid the bill dated 15.11.2018.

34. Let us first take up the Appeal No. 245 of 2018.

Written Submissions by MSEDCL (245 of 2018)

35. The MSEDCL is aggrieved by the decision of the State Commission directing it to refund the Wheeling Charges and Wheeling Losses to LOIL which MSEDCL levied under the order passed by the Commission in Case No. 59 of 2015, wherein the Wheeling Charges and Losses were levied for the FY 2014-15.

36. The issue is limited to the levy of Wheeling Charges and Wheeling Losses on LOIL given the peculiar network arrangement of LOIL whereby they allegedly use

the electric lines constructed by them at their own cost for supply of electricity from CPP situated in Unit 1 to their Unit 2 (situated 1.8 Kms away), the electricity is also received by LOIL from MSEDCL for both the units using the electric lines (both underground and overhead) from the Mahad substation (220kV/22kV) of MSETCL.

37. Further, submitted that the LOIL had set up a 4.8 MW Captive Power Plant at Unit-I of the LOIL, *inter-alia* utilizes the energy generated from the CPP in its two industrial units i.e. Unit I and II as well as contracted power from MSEDCL, the said two units are connected by way of a single feeder system and the accounting for the same is done according to MSEDCL Circular No. CE/Comm/CP/OpenAccess/ CPP/2214 dated 23.01.2012 and MSEDCL Circular No. CE/Comm/CP/OpenAccess/ CPP/16411 dated 13.06.2012.

38. It is further mentioned that LOIL's CPP from the beginning is a grid-connected plant and at the request of LOIL, PPA was entered for the procurement of power from CPP by MSEDCL for the FY 2013 -14.

39. The diagram of the MSETCL substation showing the 220kV bus bar as well as the stepping down to 22kV bus bar and around 42 feeders emanating therefrom for the supply of electricity to different consumers of MSEDCL was placed before us along with a schematic diagram of the lines from the substation to Unit 1 as well as Unit 2 along with the connection of electric line from CPP (situated at Unit 1) to Unit 2.

40. In the present case, admittedly, LOIL avails partial distribution open access from MSEDCL for both its units and has a contract demand of 2.76 MW for Unit 1

and 15.7 MW for Unit 2, on 19.05.2012, LOIL applied for a grant of Open Access for wheeling 2.9 MW from their CPP and later also sought permission for open access for 4 MW for the FY 2013-14.

41. Both Unit I and Unit II are consumers of MSEDCL through separate consumer numbers and both avail power from MSEDCL.

42. LOIL has been indisputably paying wheeling charges/losses in the energy bills raised by MSEDCL for the energy supplied, it is needless to state that the power is supplied to both the units by MSEDCL using the same electric supply/service lines as indicated in the schematic diagram above and the supply from the CPP to Unit 2 is also through the same network of underground and overhead lines.

43. It is imperative to highlight that the said lines from Unit 1 to Unit 2 cannot be a Dedicated Transmission Line (DTL) as defined under Section 2(16) of the Electricity Act as it is not point-to-point transmission as seen from the schematic diagram.

44. Furthermore, it is stated that the electric/service line between Unit 1, Unit 2, and the substation (though constructed by LOIL) is maintained by MSEDCL from time to time in terms of Maharashtra Electricity Work of Licensees Rules 2012 (though in case of certain emergencies, when LOIL wants the work to be done immediately, the same is permitted to be done under the supervision of MSEDCL, who supervise and complete the repair job).

45. The MERC Open Access Regulations 2005 provide for levying wheeling charges and losses in terms of Regulation 8.

46. The Dedicated Distribution Facility is a defined term in the Form of Connection and use of Distribution System Agreement (Annexure 2 of the said Regulations), wherein the said facility is necessarily to be owned by the Distribution Licensee.

47. It is pertinent to note that this Tribunal in Appeal No. 171 of 2010 in the matter of *WEST Electric Supply Co. Ltd. v OERC & Ors.* was considering the status of an 11kV feeder (whether the same was a part of a Dedicated Transmission Line or was a part of a Distribution System of a Distribution Licensee).

48. In the said case, the State Commission therein had observed that the 11kV line for the purposes of power transmission should be treated as a deemed distribution system of a Distribution Licensee.

49. In furtherance of the above, this Tribunal, after analyzing Section 2(16) read with Section 2(19), Section 9, Section 46 of the Act as well as Rule 4 of the Electricity Rules and Clause 27 of the OERC Supply Code, duly upheld the decision of the State Commission and *inter-alia* held that insofar as the electric line is concerned (whether constructed or laid by the consumer or by the Distribution Licensee), the cost of the said line has to be borne by the consumer, therefore, the said 11kV was held to be a property of the Distribution Licensee and a part of its Distribution System.

50. MERC (Distribution Open Access) Regulations, 2014 also provides for levying of wheeling charges (in terms of Regulation 15 read with Regulation 16) and

technical losses (in terms of Regulation 25), it was MERC open Access Regulations, 2016 which stipulated that Wheeling Charges shall not be applicable in case a consumer or generating station is connected to the transmission system directly or using dedicated lines owned by the consumer or generating station.

51. As stated hereinabove, LOIL is connected to the transmission substation through the distribution/service line (which is deemed to be part of the distribution system of the Distribution Licensee), further, the underground and overhead electric line (from the CPP at Unit 1 to Unit 2) is not a point-to-point dedicated transmission line. Pertinently, the case of LOIL is covered by the MERC Direct Open Access Regulations 2005 since it pertains to FY 2014-15. Even the 2014 regulations were notified only on 25.06.2014 and therefore, are not applicable.

52. In addition to the contentions raised hereinabove, it is stated that this Tribunal in the judgment dated 14.12.2012 of Appeal No. 30 of 2012 (*Orissa Power Transmission Corporation Ltd v OERC & Ors*) has reaffirmed that the line connecting a consumer is always a part of the distribution system of distribution Licensee, the relevant portion is reproduced below:

"31. The third question for consideration is as to whether the line connecting the transmission network of the Appellant and the consumer's premises (last mile connection) is part of transmission network of the Transmission Licensee or part of the distribution network of Distribution Licensee?"

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34. The learned Counsel for the Appellant has relied upon the definition of distribution network defined in Section 2(19) read with Rule 4 of Electricity Rules 2005. "Section 2 Electricity Rules 2005 (19) "distribution system" means the system of wires and associated facilities between the delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers; Rule 4. Distribution System - The distribution system of a distribution licensee in terms of sub-section (19) of Section 2 of the Act shall also include electric line, sub-station and electrical plant that are primarily maintained for the purpose of distributing electricity in the area of supply of such distribution licensee notwithstanding that such line, sub-station or electrical plant are high pressure cables or overhead lines or associated with such high pressure cables or overhead lines; or used incidentally for the purposes of transmitting electricity for others.

35. According to these provisions the Distribution network is a system of wires between delivery point on the transmission lines or generating station and point of connection to the consumer's installation. It also includes the electric line, sub-station and electric plant that are primarily maintained for the purpose of distributing electricity notwithstanding that such line... is high pressure cables or overhead lines. We have to examine as to whether an EHT line emanating from an EHT substation of the transmission licensee and connects a consumer's installation fits in to this definition of distribution network or not. Evidently, the last mile connection is a line is between delivery point on the transmission line and point of connection on the consumer's premises and is primarily used for distribution of electricity to such consumer. Therefore, it qualifies to be part of distribution network.

36. The learned Counsel for the Respondent no.10 contended that any EHT line connecting generating station and substation directly or through other sub-stations is a transmission line. Every EHT consumer would necessarily have a substation

within its premises. Therefore, an EHT line from a substation owned by transmission licensee to consumer's substation would qualify to be a transmission line within the meaning of transmission line defined by Section 2(72) read with definition of substation defined in Section 2(69) of the Act. These subsections are quoted below:

(69) " sub station" means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers, converters, switchgears, capacitors, synchronouos condensers, structures, cable and other appurtenant equipment and any buildings used for that purpose and the site therof;

(72) "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity.

37. Bare reading Section 2(72) would indicate that the definition of transmission line a residual definition. All high pressure cables and over head lines which are not essential part of distribution system of a licensee are transmissions lines. Therefore, we have to examine as to whether a line in question is a part of distribution network or not. If it is not a part of distribution network, only then it could be transmission line. from a generating station to another generating station or a sub-station, together with any step-up and step-down transformers, switch-gears and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works. As we have observed in para 35 above that last mile connection is part of distribution network, therefore, it cannot be a transmission line.

38. Next requirement for a line to be a transmission line is that the line must be transmitting electricity. Can supply to consumer be treated as transmission of electricity? The answer is 'no. Supply of electricity to a consumer is universal service obligation casted upon distribution licensee under section 43 of the Act and

accordingly, supply to a consumer is distribution and cannot be termed as transmission of electricity.

39. Next requirement is that it must be connected with a generating station or a substation. According to the learned Counsel for the Respondent, every EHT consumer would necessarily have a substation. Substation has been defined in Section 2(69) as a station for transforming electricity for transmission or distribution thereof. Can an arrangement for stepping down electricity at consumer's installations be held as substation as defined in Section 2(69) of the Act? Does this arrangement meant for transmission or distribution of electricity? The answer would again be 'no. No person can transmit or distribute electricity without a license under the Act. Therefore, the arrangement of stepping down electricity for consumer's own use cannot be held to be a substation as defined in the Act.

40. The learned Counsel for the Respondent no. 10 further contended that as per Section 39 of the Act, the Appellant, being a STU, is obliged to ensure development of efficient intrastate transmission system for smooth flow of electricity from generating stations to load centres. A consumer premises has been held to be a load centre by this Tribunal in Appeal No. 139 & 140 of 2007 in the case of Na/wa Steel and Power Limited. The above contention is wholly misplaced and is liable to be rejected for the following reasons:

a) The judgment in Na/wa Steel and Power case had been rendered in the context of Dedicated Transmission Line constructed by a Captive Generating Plant and has no application in the facts of the present case. The issue in that case was as to whether a dedicated transmission line emanating from a captive generating plant terminates at two points.

b) The Act defines a consumer as a person who is supplied with electricity for his own use by a licensee and includes any person whose premises are for

the time being connected for the purpose of receiving electricity with the works of a licensee. It does not differentiate between persons on the basis of the quantum of electricity requirement. A person requiring hundreds of MW or a fraction of kW of electricity (BPL consumer) is a consumer under the Act. If premises of an EHT consumer can qualify to be a load centre under section 39 of the Act, the same would be true for a BPL consumer. Can we hold that the STU is obligated to ensure smooth flow of electricity up to premises of a BPL consumer? If so, what is the need of a distribution licensee? It is the duty of a distribution licensee to develop, operate and maintain distribution system to meet universal service obligation casted upon it under Section 43 of the Act. c) Section 38 of the Act casts the same duties on CTU as Section 39 casts on STU i.e. to ensure development of an efficient, coordinated and economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres. No stretch of imagination would support the contention that Section 38 mandates the CTU i.e. POWERGRID is to ensure smooth flow of power to any consumer, let alone the BPL consumer.

41. In the light of above discussion we are of the view that a line between transmission system and a consumer's premises is a part of distribution system."

53. Further as a matter of fact only lines above 33 kV are considered part of the Transmission system whereas all lines below and up to 33 kV (that would include a 22kV line) are considered to be a part of the Distribution system, *Regulation 5.1 of the Maharashtra Electricity Regulatory Commission (Transmission Open Access) Regulations, 2016.*

54. In this regard, it is submitted that wheeling losses are an inherent and technical phenomenon that is independent of ownership, maintenance, and operation of an electricity

line, Wheeling losses are based on a philosophy that when electricity is transferred through a line some part of it is lost during transmission, at present, as the Unit I and Unit-II are under open access and it is also connected to the distribution system to source part of its power from the Appellant, such line wheeling losses for transfer of power from CGP to Unit-II is being borne by the Appellant.

55. The Commission in the Impugned Order has failed to provide any discussion or provide any reasoning for allowing a refund of wheeling losses, the entire discussion in the order only pertains to wheeling charges, it is pertinent to note that Regulation 25 or the DOA Regulations 2014 authorizes the levy of technical losses (including Transmission and Distribution Losses).

56. Notwithstanding the foregoing arguments, it is submitted that LOIL stopped paying monthly energy bills from July 2018, and arrears to the tune of Rs. 6.17 crores are due on LOIL (till September 2018).

57. Further, the Commission in its Order dated 3.11.2018 in Case No 168 of 2018 directed MSEDCL to comply with the Impugned Order and further, noted that MSEDCL may levy applicable Transmission Charges and Transmission losses in accordance with provisions of the DOA Regulations and the terms and conditions of the Open Access between MSEDCL and LOIL, accordingly, MSEDCL issued the bill for transmission charges to M/s LOIL.

Written Submissions by LOIL (245 of 2018)

58. The two manufacturing Units of the LOIL along with the Captive Power Plant

in Unit 1 are interconnected with Unit 2 through a 22 KV dedicated transmission line established, owned, operated, and maintained by Laxmi Organic itself and the said dedicated line is utilized for the transfer of power from the CGP at Unit 1 to Unit 2.

59. The dedicated line stands approved by the Appellant and there is no 'use' of the distribution system and/ or the associated facilities for the conveyance of power from the CGP to Unit 2, therefore, there is no wheeling involved in terms of section 2(76) of EA, 2003.

60. The above premises of Laxmi Organic with Units 1 and 2 are connected through the dedicated 22 kV transmission line to the grid at the 220 kV transmission substation of MSETCL at Mahad.

61. The Single Line Diagram is prepared jointly by MSEDCL and Laxmi Organic as per the directions of MERC in Case No.59/2015 and therefore, is not disputed.

62. The electricity supplied to the premises by MSEDCL or otherwise imported from sources outside the premises is also only through the said 220 kV substation of MSETCL and from the MSETCL substation through the dedicated 22 kV line established, owned, and maintained by Laxmi Organic.

63. The 22 kV line from Unit 1 through Unit 2 to Mahad Substation of MSETCL duly fulfills the conditions of a dedicated transmission line as defined in section 2(16) and as dealt with in section 9 of the Electricity Act, 2003.

64. At the hearing in the Appeal a vague attempt was made by MSEDCL to claim that the 22 kV line between Unit 1 and to Mahad substation is operated/maintained by MSEDCL.

65. No such claim and/ or document was produced before this Tribunal in support of the above claim, such a claim is patently erroneous in the factual aspects mentioned above, and the arguments of the appellant are *ex facie* contrary to the provisions of the Electricity Act, 2003.

66. If the argument of the appellant is to be upheld the provisions of a dedicated transmission line connecting the captive generation plant to the place of consumption of the same entity and/ or to the substation of the Grid will be redundant and meaningless when the 22 kV line satisfies conditions of dedicated transmission line, it cannot then be called the distribution line of MSEDCL or transmission line of MSETCL.

67. Despite the above and further having not made any claim from April 2012 to March 2014, MSEDCL from April 2014, has all of sudden purported to claim that Laxmi Organic is liable to pay wheeling charges and wheeling losses, for the power conveyed from the CGP to Unit 2, this claim of MSEDCL has been set aside by the MERC in the Impugned Order with detailed reasoning and Laxmi Organic fully supports the said reasoning.

68. Despite the above clear and indisputable position MSEDCL has proceeded to claim wheeling charges and wheeling losses coupled with transmission charges and transmission losses, from Laxmi Organic for the use of the 22 kV dedicated

line of Laxmi Organic after Laxmi Organic secured orders from the MERC that it is not liable to pay wheeling charges and wheeling losses.

69. The imposition of transmission charges and transmission losses by MSEDCL after losing before MERC on 02.04.2018 is a subject matter of consideration before this Tribunal in Appeal No.376/2018 filed by Laxmi Organic.

70. The 22 kV line was installed and maintained with the prior permission of the MSDEDCL by Laxmi Organic contrary to the assertion now sought to be made by the MSEDCL.

71. The decisions relied on by the MSEDCL do not support the case of the MSEDCL and in fact support the case of Laxmi Organic as stated herein.

A. Reliance on WESCO Judgment

a. The judgment dated 05.08.2011 of this Tribunal in “**West Electric Supply Company Ltd. V. Orissa Electricity Regulatory Commission** (Refer to Pg. 290-339 of the Compilation of documents of the Appellant), is related to situation as could be seen from Issue no.7 at pg.310 of compilation was regarding the status of 11kv line between Cement Company and Steel Company two independent legal entities. The Tribunal was also considering a case of further supply by the Steel Company to GRIDCO. In the present case, only the Unit 2 of respondent no.2 gets power from embedded CPP at Unit 1. In the present case, the dedicated line is between two units of the same legal entity and not two separate and independent legal entities.

This is important that in para 76 of the said Judgement it has been specifically held that *“Thus Steel Company being a Captive Generating Plant can own maintain and operate a dedicated transmission line only and not a distribution system. The line in question connects electric plant of CGP of Steel Company to premises of Cement Company, a consumer of the Appellant, WESCO. It does not fit in to the definition of dedicated transmission line. As stated above the 22 kV line in the present case fits in the category of dedicated transmission line.*

- b. More importantly the Tribunal relied on Clause 27 of the OERC supply code (Para 81) in that case, which provided that notwithstanding that the line has been paid for by the consumer, it shall be the property of the licensee. There is no such clause/regulation in the present case. The Regulations applicable, namely (I) Regulation MERC (Distribution Open Access) Regulations, 2014, 2015 and 2016, which govern the status of the line connecting the premises of the Laxmi Organic to Mahad Sub station, do not have a similar provision as the OERC. The Subject Line is not a part of the Distribution System of MSEDCL and not even the Dedicated Distribution Facility operated or maintained by MSEDCL within the scope of Regulation 16 of the Distribution Open Access Regulations 2014 {page 70 of the Compilation}. The issue is not one of DDF charges (which have admittedly never been claimed), but of Wheeling charges. The Wheeling Charges are payable under Regulations 16.1 only if the line is owned by MSEDCL and under Regulations 16.2 if the facility

is operated by MSEDCL. If neither applies there can be no levy of wheeling charges. The Distribution Open Access Regulations, 2016 clarifies and provides in Regulation 14 (b) specifically stipulate that *that Wheeling Charges shall not be applicable in case a consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the consumer or Generating Station.* {page 158 of the compilation). MSEDCL is bound by such Regulations. Thus in any event no wheeling charges are leviable by MSEDCL for the subject line which fulfills the above conditions.

72. Thus, this Tribunal has decided the case of WESCO in very different circumstances, the judgment is clearly distinguishable on facts as well as on the point that it was not dealing with any statutory regulations such as Maharashtra Distribution Open Access Regulations providing to the contrary allowing the CPP to install, maintain and transmit the CPP power to its own unit by laying Dedicated Transmission Line.

73. The appellant has wrongly relied upon para 31 at pg. 355 of the above case decided on 14.12.2012 {Page 340 of the Compilation above judgment as purporting to support its case, further, the above was a matter where there was no generating station and the line considered is between the transmission system and the consumer premises serviced by the distribution licensee. Such a line does not satisfy the basic condition of section 2 [16] of the Electricity Act 2003 providing that the line should emanate from the generating station or captive power plant. This has been held in para 31v at page 355 of the compilation. Further as

mentioned above in Maharashtra, the Regulations are different.

74. Therefore, the judgment does not apply to the facts of the present case, the case of OPTCL arose out of the dispute between Orissa Transmission Corporation Limited, a Transmission Company, and a Distribution Company, the line in question was owned by OPTCL, this Tribunal was not considering the case of wrongful levy of Wheeling Charges or Loss in the context of dedicated transmission line owned and maintained by the CPP, where section 2 (16)... and 9 would apply authorizing the CPP to own such line.

B. Reliance on Judgment of Sai Wardha Power Generation Ltd. V. The Tata Power Company Limited Distribution & Ors

a. It is submitted that again the appellant has erroneously relied upon the Supreme Court judgment to wrongfully support its case, this judgment proceeded to determine the issue regarding the ownership of 2*110 kV line and TPC applied for amendment of license to suggest that the asset in question be part of distribution system and not part of assets of transmission network. It is not a matter relating to dedicated transmission line.

75. LOIL submitted that the view taken by this Tribunal in the Steel Furnace judgment supports the case of the present respondent which arose in the context of the levy of wheeling charges, in the judgment of Steel Furnace, this Tribunal clearly recorded in para 18, 19, 20, 21 to 33, 34, 35 and 36 that wheeling charges can only be levied in the event of use of the system for the conveyance of

electricity to the consumer taking power under open access, this is supported by the view taken by this Tribunal in *(2007) ELR (APTEL) 985 Kalyani Steels Limited v. Karnataka Power Transmission Corporation Limited*.

76. The Status of the subject 22 kV line from Unit 1 of Respondent No 2 to Unit 2 of Respondent No 2 itself and then to 220 kV Mahad Substation of Maharashtra State Electricity Transmission Company Limited [MSETCL] as per the Diagram attached is:

- a. Dedicated Transmission Line as per section 2 (16) read with sections 7 and 9 of the Electricity Act, 2003 as it emanates from the Captive Generating Station at Unit 1 to the load centre at Unit 2 and is connected to the Grid at 220 kV Mahad Substation of MSETCL. The conditions of being such a dedicated transmission line are fully satisfied.
- b. The subject 22 kV line is owned and operated by Respondent No. 2 only. The line is not either owned or otherwise operated by MSEDCL. MSEDCL has not spent any amount on the construction of the said line. There is no evidence to show that MSEDCL HD ever operated such line.
- c. The subject line was constructed by Respondent No 2 with the due knowledge of MSEDCL as dedicated transmission line from Unit 1 till Unit 2 as is clear from the communication dated 14.01,2011 {Referred to at page **22 to 24 in the Annexure C to the reply of Respondent No 2 to Memo of Appeal**} written by MSEDCL in response to Respondent No 2

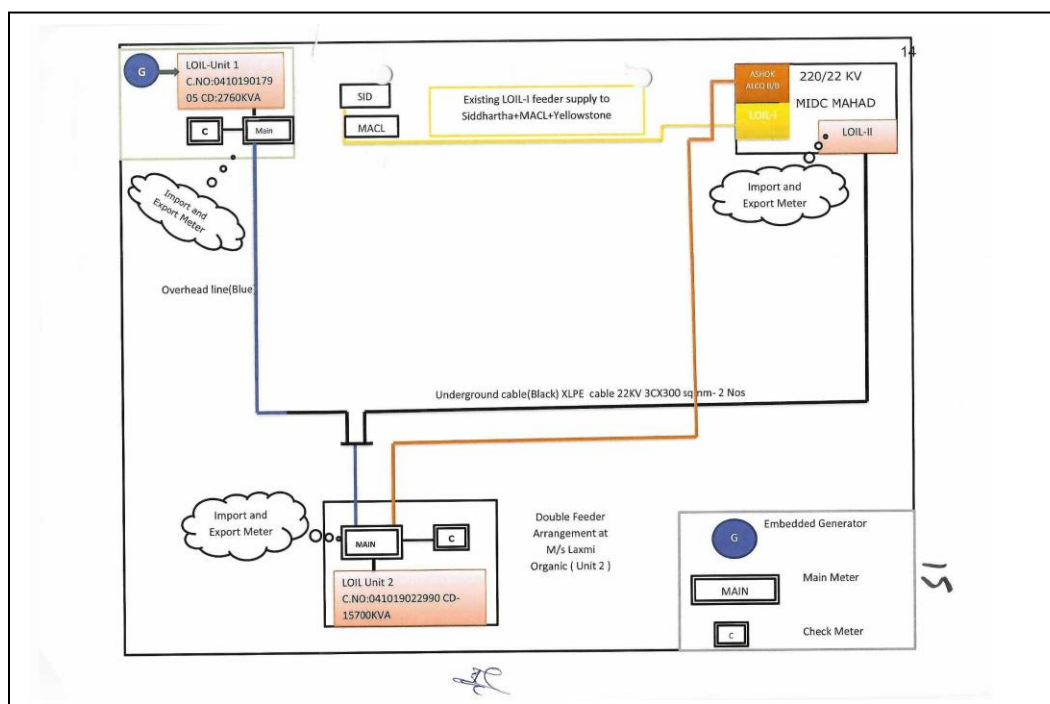
letter dated 20.12.2010 { Referred to at page **20 in the Annexure C to the reply of Respondent No 2 to Memo of Appeal**};

- d. The Subject Line is not a part of the Distribution System of MSEDCL and not even the Dedicated Distribution Facility operated or maintained by MSEDCL within the scope of Regulation 16 of the Distribution Open Access Regulations 2014 {**page 70 of the Compilation**}. The Wheeling Charges are payable under Regulations 16.1 only if the line is owned by MSEDCL and under Regulations 16.2 if the facility is operated by MSEDCL. If neither applies there can be no levy of wheeling charges.
- e. Admittedly MSEDCL did not claim any ownership of the subject line. It has not claimed that the line got vested and has become an integral part of MSEDCL at any time. There is no evidence of MSEDCL operating the line. MSEDCL has not pleaded any such case before MERC. MSEDCL has not even approached MERC for the inclusion of the line for tariff computation or for the computation of charges in terms of Regulations 16.2.
- f. Accordingly in terms of Distribution Open Access Regulations, 2014 the subject line is outside the scope of levy of wheeling charges.
- g. The Distribution Open Access Regulations, 2016 clarifies and provides in Regulation 14 (b) that Wheeling Charges shall not be applicable in case a consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the consumer or

Generating Station. {page 158 of the compilation} Thus in any event no wheeling charges are leviable by MSEDCL for the subject line which fulfills the above conditions..

Our Observations & Conclusions

77. It is important to examine the single-line diagram before proceeding further.



78. From the above, it is clear that the line connecting the CPP at Unit 1 to Unit 2 is a dedicated line evacuating the captive power.

79. The MSEDCL has not disputed the fact that the transmission line was set up by LOIL after obtaining MSEDCL's approval.

80. It is also established that the DDF of the LOIL is directly connected to the intra-state transmission system of MSETCL at the MIDC Mahad substation.

81. The State Commission vide the Impugned Order in Case No. 97 of 2016 has held as under:

“Commission’s Analysis and Ruling

8. In its impugned Order dated 3 June, 2016 in Case No.59 of 2015, the Commission has held that LOIL is liable to pay Wheeling Charge and applicable losses to MSEDCL. The Petition seeks review of that Order on the ground that the Commission did not take into account and address the factual matrix presented in the earlier proceedings and that, consequently, the conclusion arrived at, namely, that Wheeling Charges and Losses are payable to MSEDCL, are erroneous.

9. Regulation 85(a) of the Commission’s Conduct of Business Regulations, 2004 governing review of its orders specifies as follows:

“ 85. (a) Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other

sufficient reasons, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.”

Thus, the ambit of review is limited, and LOIL’s Petition has to be evaluated accordingly.

10. LOIL contends that the Commission has ignored the fact that the DDF Network is owned and maintained by LOIL; that LOIL is directly connected through a dedicated feeder to the Transmission Network and not to the Distribution Network of MSEDCL; and that this had been brought out in the original proceedings.

11. LOIL has a 4.8 MW coal-based CPP supplying power to two Industrial Units. The CPP and Unit 1 are in the same premises. The other Unit 2 is around 2 kms. away. The Commission is of the view that the factual position that emerged in the original proceedings was that Unit 2 is fed through a dedicated 22 kV overhead line and underground cable laid from the CPP, which are installed and maintained by LOIL. Unit 1 is internally connected to the CPP which is at the same location. The CPP itself is connected to the 22 kV Bus of the 220/22 kV Mahad Sub-Station of MSETCL (the Transmission Utility) through a dedicated 22 kV overhead line and underground cable. These are also installed and maintained by LOIL. These facts were also brought out by LOIL in its original Petition read with its submission in response to the Commission’s Daily Order of 12 January, 2016 in the original proceedings. In this background, LOIL has contended that, in the absence of any contrary finding on the issue of maintenance of the DDF, no direction for levy of Wheeling

Charges and Wheeling Losses could have been given. In its submission in the original Case, MSEDCL had stated that only approvals or permissions were given to LOIL for maintenance of this DDF network. The Commission notes that, while granting OA for the earlier two years FY 2012-13 and FY 2013-14 (during which MSEDCL had not levied Wheeling Charges and applicable Losses), MSEDCL had recorded that LOIL had informed that it had installed a new express feeder, bay breaker and metering unit at its own cost under DDF, and that it would be maintaining the express feeder itself and not hand it over to MSEDCL.

12. According to LOIL, the Commission also erred in not considering the important and relevant portion of its own Tariff Order in Case No. 54 of 2005 dated 20 October, 2006, which, the Commission notes, reads as follows:

“CHAPTER 7 (B): DETERMINATION OF WHEELING CHARGES AND SURCHARGE

...1. Applicability of Wheeling Charges: The Commission prescribes that the Distribution system users who are permitted open access to the distribution system of MSEDCL in accordance with Distribution Open Access Regulations, 2005 would be required to pay the wheeling charges as determined in this Order.

...Consumers connected directly to the transmission network would not be required to pay the wheeling charges, if the

distribution licensee's network is not being utilised for the energy wheeling transaction."

13. *The Commission also notes the following provisions of the DOA Regulations, 2014:*

"16.1 Open Access customer using Distribution system shall pay the wheeling or Dedicated Distribution facility charge, as the case may be, as under:

a) Wheeling charges payable to the Distribution Licensee by an Open Access customer for usage of their system shall be determined under the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011...

...35.5 The Generating station shall pay the wheeling charge to the Distribution Licensee as determined by the Commission. Provided that wheeling charges would not be applicable in case the dedicated lines are owned by the Generating stations...

...36.2 Provided that Wheeling charges would not be applicable in case of all such Open Access consumers whose drawal points are connected to the Intra-state transmission system and if the Open Access consumer receives supply from a Generating Company whose injection point is connected to the Inter-state or Intra-state transmission system. Such Open Access consumers would be liable to pay only the applicable transmission charges to the transmission Licensee whose network has been accessed under the Transmission Open Access Regulation."

The present DOA Regulations, 2016 have similar provisions, and Regulation 14.6 makes it clear that

“...b. Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station.

Thus, Wheeling Charges are payable to the Distribution Licensee only when its Distribution System is used. In the present case of LOIL, however, it is clear from the factual matrix set out above that the relevant premises is directly connected to the Transmission System and not to the Distribution System and, further, Unit 2 is internally connected by a 22 kV Dedicated Line and Cable (DDF) and maintained by LOIL. Hence, the Commission concludes that there is a clearly an error on the face of the impugned Order in the Commission holding that LOIL was liable to pay Wheeling Charges and Losses to MSEDCL.

14. In view of the foregoing, the Commission directs MSEDCL not to levy Wheeling Charges and Wheeling Losses on LOIL. The amounts paid in the meantime shall be refunded with applicable interest directly to LOIL within a month or by adjustment in its energy bill for the ensuing billing cycle.”

82. From the above, it is seen that the State Commission has ruled in favor of LOIL on the issue of Wheeling Charges and Wheeling Losses after recording as under:

- a. DDF Network is owned and maintained by LOIL and LOIL is directly connected through a dedicated feeder to the Transmission Network and not to the Distribution Network of MSEDCL.
- b. Tariff Order in Case No. 54 of 2005 dated 20 October 2006, wherein, the Commission notes, reads as follows:

“CHAPTER 7 (B): DETERMINATION OF WHEELING CHARGES AND SURCHARGE

...1. Applicability of Wheeling Charges: *The Commission prescribes that the Distribution system users who are permitted open access to the distribution system of MSEDCL in accordance with Distribution Open Access Regulations, 2005 would be required to pay the wheeling charges as determined in this Order.*

...Consumers connected directly to the transmission network would not be required to pay the wheeling charges, if the distribution licensee’s network is not being utilised for the energy wheeling transaction.”

- c. Provisions of the DOA Regulations, 2014:

“16.1 Open Access customer using Distribution system shall pay the wheeling or Dedicated Distribution facility charge, as the case may be, as under:

a) Wheeling charges payable to the Distribution Licensee by an Open Access customer for usage of their system shall be determined under the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011...

...35.5 The Generating station shall pay the wheeling charge to the Distribution Licensee as determined by the Commission.

Provided that wheeling charges would not be applicable in case the dedicated lines are owned by the Generating stations...

...36.2 Provided that Wheeling charges would not be applicable in case of all such Open Access consumers whose drawal points are connected to the Intra-state transmission system and if the Open Access consumer receives supply from a Generating Company whose injection point is connected to the Inter-state or Intra-state transmission system. Such Open Access consumers would be liable to pay only the applicable transmission charges to the transmission Licensee whose network has been accessed under the Transmission Open Access Regulation.”

d. The present DOA Regulations, 2016 have similar provisions, and Regulation 14.6 makes it clear that

“...b. Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station.”

83. After noting the relevant legal principles, and regulations, the State Commission decided that the Wheeling Charges are payable to the Distribution Licensee only when its Distribution System is used, however, in the present case of LOIL, it is clear from the factual matrix set out above that the relevant premises are directly connected to the Transmission System and not to the Distribution System and, further, Unit 2 is internally connected by a 22 kV Dedicated Line

and Cable (DDF) and maintained by LOIL.

84. We decline to accept the submissions of the MSEDCL as contrary to the existing law, the term used in the Regulations is dedicated line as seen from the DOA Regulations 2014 and DOA Regulations 2016 which reads as:

*“Provided that wheeling charges would not be applicable in case the **dedicated lines** are owned by the Generating stations...”*

85. It cannot be disputed that the electric lines in dispute have been commissioned, operated, maintained and owned by the LOIL, inter-alia, dedicated electric lines for the use of LOIL only.

86. The Impugned Order passed by the State Commission conforms with the relevant legal provisions and is in strict compliance with its regulations.

87. We find no infirmity in the Impugned Order, the Appeal 245 of 2018 thus fails.

88. Let us now take up the second captioned Appeal No. 376 of 2018.

89. After hearing the contesting parties, we find it appropriate to first record the written submissions of the MSEDCL.

[Written Submissions by MSEDCL \(376 of 2018\)](#)

90. The Present written submissions are being filed by MSEDCL pursuant to the hearing dated 01.04.2024 in the captioned Appeal, wherein this Tribunal was pleased to reserve orders and direct MSEDCL to file its written submission.

91. In furtherance of the submissions made by the counsel appearing for MSEDCL, it is submitted the underlying proceedings before the MERC were initiated by the LOIL under Section 142 of the Electricity Act for non-implementation of the order dated 02.04.2018 passed by the MERC, in view of the same, the MERC ought not to have passed any observation on the aspects of Transmission Charges and losses and accordingly, the last line of paragraph 11 of the Impugned Order (to the limited extent as specified hereinabove) may be expunged by this Tribunal, the relevant portion of the Impugned Order is reproduced hereinbelow:

“11.MSEDCL may levy applicable Transmission Charges and Transmission losses in accordance with the provisions of the DOA Regulations and the terms and conditions of the Open Access between MSEDCL and LOIL. Hence the following Order.”

92. In view of the foregoing, this Tribunal may be pleased to dispose of the captioned Appeal.

93. It is important to note the issue behind filing of this Appeal, the LOIL filed the Appeal challenging the Order in Case No. 168 of 2018 (in short “Impugned Order”) dated 03.11.2018 passed by the MERC whereby MERC has made unjustified observations on the aspect of the transmission charges and transmission losses

which has led to the MSEDCL to raise the invoices for alleged transmission charges and claim for adjustment of transmission losses.

94. The Case No. 168 of 2018 was filed by the LOIL against MSEDCL seeking execution of the State Commission's Order dated 02.04.2018 in Case No. 97 of 2016 under Section 142 of Electricity Act, 2003.

95. It is a settled principle of law that an executing court's jurisdiction is limited to questions relating to the execution, discharge, or satisfaction of a decree, it cannot go behind the decree to adjudicate upon matters that were determined in the original suit, for instance, the executing court cannot re-evaluate the merits of the case or modify the terms of the decree.

96. Therefore, it is important to note the final executable order dated 02.04.2018 passed in case no. 97 of 2016, as under:

“Thus, Wheeling Charges are payable to the Distribution Licensee only when its Distribution System is used. In the present case of LOIL, however, it is clear from the factual matrix set out above that the relevant premises is directly connected to the Transmission System and not to the Distribution System and, further, Unit 2 is internally connected by a 22 kV Dedicated Line and Cable (DDF) and maintained by LOIL. Hence, the Commission concludes that there is a clearly an error on the face of the impugned Order in the Commission holding that LOIL was liable to pay Wheeling Charges and Losses to MSEDCL.

14. In view of the foregoing, the Commission directs MSEDCL not to levy Wheeling Charges and Wheeling Losses on LOIL. The amounts paid in the meantime shall be refunded with applicable interest directly to LOIL within a month or by adjustment in its energy bill for the ensuing billing cycle.”

97. However, the State Commission travelled behind the decree and passed a modified order in Case No. 168 of 2018, which reads as under:

11. Therefore, the Commission in above Order noted that if the Open Access consumer receives supply from a Generating Company whose injection point is connected to the Intra-state transmission system, such Open Access consumers would be liable to pay only the applicable transmission charges to the transmission Licensee whose network has been accessed under the Transmission Open Access Regulation. The Commission also notes that as the dispute before the Commission raised by LOIL in Case No. 97 of 2016 was relating to the exemption of Wheeling Charges and Wheeling losses, the Commission did not pass any direction in respect of levy of Transmission Charges. Hence MSEDCL’s argument that the Commission has erred by not making LOIL liable to pay Transmission Charges and applicable losses is incorrect. However, MSEDCL may levy applicable Transmission Charges and Transmission losses in accordance with provisions of the DOA Regulations and the terms and conditions of the Open Access between MSEDCL and LOIL. Hence the following Order:

98. The State Commission has clearly modified the decree which need to be set aside as it is against the settled principle of law.

99. Even the MSEDCL accepted the error committed by the State Commission by submitting that this Tribunal may expunge the Order limited to the last part of the para 11 of the Impugned Order, which reads as under:

“11.-----Hence MSEDCL’s argument that the Commission has erred by not making LOIL liable to pay Transmission Charges and applicable losses is incorrect. However, MSEDCL may levy applicable Transmission Charges and Transmission losses in accordance with provisions of the DOA Regulations and the terms and conditions of the Open Access between MSEDCL and LOIL. Hence the following Order:”

100. We find the Impugned Order of the State Commission erroneous to the limited extent as mentioned in the previous para and thus set-aside to that limit by deletion of the part of the para 11 as quoted in the previous para.

101. The also allow the prayer of the LOIL quashing MSEDCL’s letters dated 02.11.2018 and 15.11.2018 inter-alia setting aside any liability placed on LOIL to pay any Transmission Charges and Transmission Losses in accordance with the Impugned Order.

ORDER

For the foregoing reasons as stated above, the Appeal Nos. 245 of 2018 is dismissed as is devoid of merit, the Impugned Order dated 02.04.2018 in Case No.97 of 2016 passed by Maharashtra Electricity Regulatory Commission is upheld.

The Appeal No. 376 of 2018 is allowed and the Impugned Order dated 03.11.2018 passed by Maharashtra Electricity Regulatory Commission in Case No. 168 of 2018 is set aside to the extent as concluded above.

PRONOUNCED IN THE OPEN COURT ON THIS 23rd DAY OF OCTOBER, 2024.

**(Virender Bhat)
Judicial Member**

**(Sandesh Kumar Sharma)
Technical Member**

pr/mkj