

**APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)**

APPEAL NO. 70 OF 2017

Dated : 29th January, 2020

**Present: Hon'ble Mrs. Justice Manjula Chellur, Chairperson
Hon'ble Mr. S.D. Dubey, Technical Member**

IN THE MATTER OF:

**DCM Shriram Limited
Shriram Nagar,
Kota -324004**

...Appellant

VERSUS

- 1. Rajasthan Electricity Regulatory Commission
Through its Secretary
Vidyut Viniyamak Bhawan,
Sahkar Marg, Near State Motor Garage,
Jaipur – 302005**
- 2. Jaipur Vidyut Vitaran Nigam Limited,
Through its Director – Power Trading
Vidyut Bhawan, Janpath,
Jaipur – 302005**
- 3. Rajasthan Rajya Vidyut Prasaran Nigam Limited,
Through its Superintending Engineering (SLDC)
Vidyut Bhawan, Janpath,
Jaipur – 302005**
- 4. National Load Despatch Centre
Through its Chairman and Managing Director
B-9, Qutab Institutional Area, Katwaria Sarai,
New Delhi – 110016**
- 5. Northern Regional Load Despatch Centre
Through its Editorial Director,
18-A, Shaheed Jeet Singh Sansanwal Marg,
Katwariasarai, New Delhi - 110016**

...Respondents

Counsel for the Appellant (s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Ritu Apurva
Ms. Adishree Chakraborty
Mr. Amal Nair
Mr. Utkarsh Singh
Ms. Neha Garg
Mr. Ashwin Ramanathan
Ms. Parichita Chowdhury
Mr. Sandeep Rajpurohit

Counsel for the Respondent(s) : Mr. R. K. Mehta
Ms. Himanshi Andley
Mr. E. Premjit Singh for R-1

Mr. Ashutosh Jain, Sr. Adv.
Mr. Ajatshatru S. Mina
Mr. Anish Sharma
Ms. Megha Karnwal for R-2

Mr. Pradeep Misra
Mr. Manoj Kumar Sharma
Mr. Shashank Pandit
Mr. A. K. Arya
Mr. M. K. Verma (Rep.)
Mr. Naresh Kumar Agarwal (Rep.) for R-3

Mr. Ashok Ranjan (Rep.), NLDC for R-4

Mr. Rajiv Porwal
Ms. Kavita Parihar, DGM (Rep.) for R-5

J U D G M E N T

PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER

1. The present Appeal No. 70 of 2017 has been filed by M/s. DCM Shriram Limited (Appellant) under Section 111 of the Electricity Act, 2003 (“**Electricity Act**”) against the Impugned Order No. RERC-603/16 Dated 13.12.2016 holding that the demand charges claimed by the

Respondent No. 2 from the Appellant for the excess drawal are legal and in accordance with the tariff conditions and the RERC (Terms and Conditions for Open Access) Regulations, 2004.

2. Brief Facts of the Case:-

- 2.1 The Appellant is a company incorporated under the provisions of the Company Act, 1956 having its registered office at 1st Floor, Kanchenjunga Building 18, Barakhamba Road, New Delhi – 110001. The Appellant is inter-alia, engaged in the business of manufacture of Urea, Caustic Soda, Plastics, Cement and other products and has its manufacturing premises at Shriram Nagar, Kota in the State of Rajasthan.
- 2.2 The Respondent No. 1, Rajasthan Electricity Regulatory Commission (hereinafter called the **State Commission**) is the State Electricity Regulatory Commission constituted for the State of Rajasthan exercising jurisdiction and discharging the functions under Section 61, 62, 86 and other applicable provisions of the Electricity Act, 2003.
- 2.3 The Respondents No. 2 is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Vidyut Bhawan, Jyoti Nagar, Jaipur – 302005. The Respondent No. 2 is the distribution licensee in the State of Rajasthan, which is an unbundled entity of the erstwhile Rajasthan State Electricity Board.
- 2.4 The Respondent No. 3 is a transmission licensee undertaking intra-state transmission of electricity within the State of Rajasthan and also the State Transmission Utility for the State of Rajasthan constituted under Section 39 of the Electricity Act. The State Load Despatch Centre constituted under Section 31 and 32 of the Electricity Act, 2003 is an

- entity under the control of STU to look into operation & discipline of the State Grid.
- 2.5 The Appellant is a consumer of the Respondent No. 2 within the meaning of 2 (15) of the Electricity Act, 2003. The Appellant has at present a contract demand of 20 MVA with the Respondent No. 2. The Appellant has entered into an agreement with the Respondent No. 2 for supply of power in terms of the above contract demand.
- 2.6 In addition to the above, the Appellant is also an Open Access Consumer. The Appellant has been procuring certain quantum of power through collective transactions on the Power Exchange and the power so priced is conveyed through the grid network for the delivery of power at the above mentioned facilities.
- 2.7 The Appellant from 2008 onwards has applied for and has been duly granted the No Objection Certificate (NOC) from the Respondent No. 3 for procurement of power through Open Access to the extent of 40 MW.
- 2.8 The Appellant is a Member of the Indian Energy Exchange (IEX) and, therefore, has the facility to procure power on Power Exchanges and schedule the same for drawal in accordance with the applicable Regulations notified by the Central Electricity Regulatory Commission (hereinafter referred to as the '**Central Commission**').
- 2.9 The State Commission under Section 50 of the Electricity Act, 2003 has framed the Supply Code in accordance with which the supply is given by the Distribution Licensees to consumers. Accordingly, the State Commission also determines the tariff and other charges to be paid by the consumers of electricity including the Appellant.
- 2.10 On 14/01/2016 at 10.47 AM (44th time block), the Appellant received an e-mail from the IEX Email ID. The email had been sent to two officers of

the Appellant informing revision in schedule as notified by National Load Despatch Centre (**NLDC**) and asking the Appellant to curtail its drawal from the 41st Time Block to the 96th Time Block (10.00 hrs to 24.00 hrs) and also giving a revised schedule reducing the drawal from 40 MW to 7 MW for such time periods.

2.11 There was no communication to the Appellant either from NLDC, NRLDC or SLDC prior to the receipt of the above email. This fact has also been sufficiently informed to IEX and the communications in this regard is attached hereto.

2.12 As soon as the officer of the Appellant saw the email, the same was forwarded to the field officers of the Appellant. At the premises of the Appellant, both the main meter and check meter are installed and the representative at the field office immediately took action. While in the main meter the curtailment became effective in the 11 hrs – 11.15 hrs time block itself, it took a few more minutes and the curtailment became effective in the check meter in the 11.15 hrs – 11.30 hrs time block.

2.13 In the circumstances mentioned above, the information regarding curtailment itself having been received by the Appellant by e-mail delivered at about 10.47 AM and seen by the officer around 11 AM, it was impossible for the Appellant to adhere to such curtailment from 10 AM and till 11.15 to 11.30 AM time block. (i.e. 6 time blocks). For the remaining time blocks on 14/01/2016, there was no over-drawal by the Appellant.

2.14 The Appellant vide email dated 14/01/2016 to IEX stated as under –

“With reference to railing mail received from IEX – Schedule at 10.47 hrs regarding curtailment of client schedule.

Please note that necessary action has been initiated and the revised schedule has been followed from the 47th Time Block onward.

Please appreciate that it will not be possible for us to act retrospectively, hence it is requested to kindly consider our request for revised schedule from 47th time block only.

Kindly regularise the schedule as requested and confirm.”

There was however, no response to the above e-mail of the Appellant.

2.15 On 15/01/2016, once again, NLDC seems to have imposed such a restriction wherein the consumers were advised to restrict the entire load from 41st time block onwards. This information regarding such revision was received by the Appellant vide telephone at 00:50 Hrs and, the Appellant immediately reduced its drawal from IEX to 0 MW and there was no issue of over-drawal.

2.16 The Appellant on 15/01/2016 wrote a detailed letter to IEX recounting the incidents on 14/01/2016 and requested the IEX to consider its revised schedule from the 47th time block only. Vide letter dated 27/01/2016, IEX stated that there was a force majeure situation and the excess drawal of power was beyond the control of all parties including the Appellant.

2.17 The Appellant on 01/02/2016 wrote a detailed letter to the Respondent No. 3, bringing on record all relevant facts and stating as under –

“Dear Sir,

We are an open access consumer since 2008. We have been complying with all the grid regulations and directions issued by SO&LD from time to time as well as obtaining NOC for open access power on regular basis. We are regularly bidding for drawal of power on IEX. After receipt of final schedule for drawal of power from IEX, an intimation of the same is sent to the SO&LD & JVVNL on daily basis.

We were issued a NOC no 12/2356 dated 16th December 2015 from SO&LD for drawal of power upto 60MW for the month of January 2016 (copy enclosed).

On 14th January 2016, NLDC made a revision in the schedule of drawal of power from IEX at 12:08 PM. A copy of such revision no. 48 (issued at 12:08PM) & 47 issued at 11:47AM) are enclosed for your kind reference.

In view of the above mentioned revision, we kindly request you to please confirm the revision no. 48 received from NLDC for submission to JVVNL. Since the revision is from retrospective effect, we also request you to kindly confirm to JVVNL that the revision was made at 12:08 PM with retrospective effect i.e. from 10 AM.

We shall be grateful to provide any further clarification/information for the above.”

2.18 The Respondent No. 3 vide its reply letter dated 02/02/2016 has stated as under to the Appellant –

“On the above cited subject and reference, it is intimated that on 14th January 2016, NRLDC revised schedule through revision no. 14 at 11:47 hrs wherein there is no power reduction in the schedule of IEX i.e 17120.54 Mwh in 96 blocks.

Thereafter, revision no 48 was issued at 12:08 hrs by NRLDC with reducing drawal from 41st time block to 96th time block i.e. 10:00 hrs to 24:00 hrs. The total drawal was restricted to 9764.37 Mwh instead of 17120.54 Mwh in 96 block for IEX.

The above reduction in the quantum of power to IEX was continued till 93rd last revision for the day.

The revision no. 48 issued at 12:08 PM was made effective retrospectively from 41st time block i.e. 10:00 hrs whereas no such intimation of reduction in quantum of power was received to SLDC from NRLDC before 12:08 hrs..

The above position is confirmed for your reference.”

2.19 In the view of the above position taken by Respondent No 3, the Appellant wrote another letter to the Respondent No. 2 on 03/02/2016, stating as under –

“Dear sir,

We are an open access consumer since 2008. We have been complying with all the grid regulations and directions issued by SO&LD from time to time as well as obtaining NOC for open access power on regular basis. We are regularly bidding for drawal of power on IEX. After receipt of final schedule for drawal of power from IEX, an intimation of the same is sent to the SO&LD & JVVNL on daily basis.

We were issued a NOC no 12/2356 dated 16th December 2015 from SO&LD for drawal of power upto 60MW for the month of January 2016 (copy enclosed).

On 14th January 2016, NLDC made a revision in the schedule of drawal of power from IEX AT 12.08 hrs. A Copy of such revision no. 48 (issued at 12:08 hrs) & 47 (issued at 11:47 hrs) are enclosed for your kind reference.

Please also find enclosed a letter from SO&LD confirming that “the revision no. 48 issued at 12:08 hrs was made retrospectively from 41st time block i.e. 10:00 hrs whereas no such intimation of reduction in quantum of power was received at SLDC from NRLDC before 12:08 hrs. “ (copy enclosed)

In view of the above fact you would appreciate that due to delayed intimation and the revision made at 12: 08 hrs, it couldn't have been possible to make the revision in drawal of power from IEX with retrospective effect. Therefore, we would kindly request you to exclude the period between 10:00 hrs to 12:08 hrs while computing our billing demand for the entire month.

We shall be please to provide any further clarification and information with respect to the above.”

2.20 In the meantime, the joint meter reading was taken by the officers of the Appellant and Respondent No. 2 on 01/02/2016. Along with the joint meter reading, the Appellant also sent a communication dated 03/02/2016 to the Respondent No. 2, inter-alia stating as under –

“Sir,

It would be pertinent to submit here that we have a contract demand of 20MVA with Jaipur DISCOM for purchase of power. In addition to this we applied to SE (SO & LD) Jaipur to grant

permission for Purchase/ sale of power through Indian Energy Exchange. Accordingly we have obtained 'No objection certificate' for purchase / sale of power through Indian Energy Exchange by SE (SO&LD), vide his letter, no. RVPN/SE (SO&LD)/ XEN (OA)/ F.21/D. 3753 DATED 16.12.2015 and NOC No. 12/2356 dated 16.12.2015.

In line with the same, we had submitted bid to IEX for power purchase during the month of January' 2016 and have purchased power through IEX.

We would like to inform your good office that on 14th January 2016, NLDC made a revision in the schedule of drawal of power from IEX at 12:08 PM. A copy of such revision no. 48 (issued at 12:08 PM) & 47 (issued at 11:47 AM) are enclosed fro your kind reference.

Please also find enclosed a letter from SO&LD confirming that "the revision no. 48 issued at 12:08 hrs was made retrospectively from 41st time block i.e. 10:00 hrs whereas no such intimation of reduction in quantum of power was received at SLDC from NRLDC before 12:08 hrs. " (copy enclosed)

Please also find enclosed, Joint Meter Readings of the meters at Kota signed by the officials of M/s RRVPNL, M/s JVVNL and M/s DCM Shriram Ltd, viz. Executive Engineer (P), RRVPNL, Executive Engineer (220 KV GSS), RRVPNL, Executive Engineer (CD-II) JVVNL, Executive Engineer (M&P), JVVNL and a representative from our organization along with details of energy drawal for every 15 minutes block, for pour perusal.

*Total energy drawal from Indian Energy Exchange during the month of **January' 2016 are 13515783.11 Units.** These units are to be adjusted in the final energy HT Bill for the consumption month **January' 2016 (Billing month February' 2016)***

In view of the above fact you would appreciate that due to delayed intimation and the revision made at 12: 08 hrs, it couldn't have been possible to make the revision in drawal of power from IEX with retrospective effect. Therefore, we would kindly request you to exclude the period between 10:00 hrs to 12:08 hrs while computing our billing demand for the entire month.

We hope that your good self will find it in order and will initiate to take necessary action."

2.21 However, the Appellant on 18/02/2016 received the invoice dated 10/02/2016 for the months of January 2016 from the Respondent No. 2 claiming excess demand charges of Rs 2,97,61,356/-. In the circumstances, the Appellant on 23/02/2016 filed Petition No. 603 of 2016 before the State Commission for quashing the invoice dated 10/02/2016 raised by the Respondent No.2 with regard to excess demand charges only. Subsequently, the Appellant also amended its petition.

2.22 The State Commission has vide the Order dated 13/12/2016 dismissed the Petition No. RERC- 603/16 and held that the bill raised by the Respondent No. 2 is legal and justified and demand charges for the excess drawal are in accordance with the tariff conditions specifically framed and RERC (Terms and Conditions for Open Access) Regulations, 2004.

2.23 Hence, the Appellant has preferred the present appeal before the Tribunal.

3. QUESTIONS OF LAW

The following questions of law arise in the present appeal:

3.1 Whether the State Commission is justified in upholding the invoices raised by the Respondent No.2, despite the Appellant placing on record all the relevant material before the State Commission showing Force Majeure situation?

3.2 Whether there can be a penalty imposed for an event which is impossible to avoid by any action taken by the Appellant?

3.3 Whether the Appellant by overdrawing power from the grid of Respondent No. 2 beyond its contract demand for 6 time blocks for

reasons entirely beyond the control of the Appellant was a strict offence for which the penal demand charges ought to have been paid by the Appellant?

3.4 Whether the State Commission can ignore the contemporaneous evidence that for the remaining time blocks on 14/01/2016 and also on any other date, there was no over-drawal by the Appellant ?

4. Ms. Swapna Seshadri, learned counsel appearing for the Appellant has filed the following written submissions in Appeal No. 70 of 2017 for our consideration:-

4.1 The basic question of law that arises in the present case is whether a penalty can be imposed on the Appellant for an act which is impossible of performance.

4.2 While the State Commission noted the impossibility of performance on the part of the Appellant as the intimation regarding curtailment of drawal from 10:00 am - 41st time block to 96th time block on 14.01.2016, was received by the Appellant vide email from Indian Energy Exchange (*hereinafter referred to as "IEX"*) at 10:47 A.M. i.e. 44th time block, the State Commission has still held that the Appellant is liable to pay the penalty as raised by the Jaipur Discom.

4.3 It is not in dispute by the Respondents, nor can it be disputed that electricity drawal cannot be revised retrospectively. What has already been consumed in the past (based on valid permission) cannot be directed to be revised post-facto. Further, any revision of schedule is also given at least 4 time blocks for implementation, as actual energy drawal under a schedule requires at least so much time for revision.

4.4 The Appellant has a contract demand of 20 MVA with the Jaipur Discom. From 2008 onwards, the Appellant is also procuring upto 40 MW through power exchange for which no objection is being given by

the Respondent No. 3 – Rajasthan Rajya Vidyut Prasaran Nigam Ltd / SLDC.

- 4.5 The issue relates to 14.01.2016, when at 10.47 AM, the Appellant received an email from an Indian Energy Exchange Email ID which had been sent to two of its officers informing revision in schedule notified by the National Load Despatch Centre (NLDC) asking the Appellant to curtail its drawal from 41st time block to 96th time block (10.00 hrs to 24.00 hrs).
- 4.6 The Appellant did not receive any information or communication from National Load Despatch Centre (NLDC), National Regional Load Despatch Centre (NRLDC) or State Load Despatch Centre (SLDC) prior to the receipt of the aforementioned email by IEX on 14.01.2016 at 10:47 A.M. Upon receipt of the email, the drawal in the main meter was effectively curtailed in the 11 hrs – 11:15 hrs time block while the check meter was curtailed in the 11:15 hrs – 11:30 hrs time block.
- 4.7 Further, on 15.01.2016 the NLDC again imposed such a restriction from 41st time block onwards and the information regarding such revision was received by the Appellant vide telephone at 00:50 Hrs and the Appellant immediately reduced the drawal from IEX to 0 MW and there was no over-drawal. This reflects the bona fide of the Appellant wherein it curtailed its drawal as per instructions when it was possible to do so. However, the information on 14.01.2016 was delayed and the Appellant cannot possibly have its drawal retrospectively.
- 4.8 Further apart from the six time blocks on 14.01.2016 i.e. 10.00 hrs to 10.15 hrs, 10.15 hrs to 10.30 hrs, 10.30 hrs to 10.45 hrs, 10.45 hrs to 11.00 hrs, 11.00 hrs to 11.15 hrs and 11.15 hrs to 11.30 hrs, the Appellant has not over drawn electricity in any other time block in the entire month of January 2016.

- 4.9 Before the State Commission and also before this Tribunal, the Respondent No. 3 – SLDC had initially taken the position that before 12.08 hrs, it had no intimation of there being a revision in schedule. However, this Tribunal vide Order dated 15.07.2019 impleaded NRLDC and NLDC as parties to the appeal and NLDC filed its reply on 22.08.2019 wherein at 09.00 hrs it had informed the curtailment of all Short Term transactions to the Indian Energy Exchange and at 9.07 hrs, it had also informed the SLDC that all transactions on the WR – NR path are being curtailed. However, neither the IEX nor the SLDC gave any intimation to the Appellant prior to 10.47 hrs. SLDC has subsequently acknowledged the email sent by NLDC but has stated that it had no responsibility to inform the Appellant but it was the IEX which had to prepare a revised schedule and inform the Appellant.
- 4.10 The fact remains that the Appellant had no intimation about the curtailment of schedule prior to 10.47 hrs and could not have been expected to curtail its drawal through the short-term open access. In the facts and circumstances mentioned above, it is submitted that the Appellant was not at fault for over drawal on 14.01.2016 because the information was provided belatedly and curtailment of power is impossible to be done retrospectively. The only relief that the Appellant sought is that the penal charge amounting to Rs. 2,97,61,356 should not be levied on the Appellant. Whatever the energy charges for the over drawal were paid by the Appellant to the Jaipur Discom.
- 4.11 The State Commission has wrongly upheld the bill dated 10.02.2016 of Jaipur Discom levying the excess / penal demand charges on the Appellant without appreciating the peculiar facts and circumstances of the case.
- 4.12 The State Commission has given a pedantic interpretation to Clause 16 (a) of the Agreement dated 15.01.2000. The Appellant is obviously liable

to pay the charges to Jaipur Discom as per the applicable Tariff Schedule. However, the Schedule cannot be applied in a manner that a penalty is imposed for an impossible act and for reasons completely out of the control of the Appellant. On the contrary, it was due to the failure of the SLDC to intimate to the Appellant the revision in schedule, though due intimation was given to the SLDC.

- 4.13 The State Commission failed to appreciate that the concept of uniform billing to all consumers has no application to the case. There is no doubt that if consumers exceed the drawal of energy over the contract demand, either by open access or from the distribution company, the excess demand charges become applicable. However, when the Appellant is not intimated for revising the schedule and is then asked to revise it with retrospective effect (which is an impossible act), there can obviously be no penalty imposed.
- 4.14 The decision of the State Commission goes contrary to the basic principle of law that a person cannot be penalised for not performing an impossible act. In this regard, the Hon'ble Supreme Court has in the case of ***HSIDC v. Hari Om Enterprises, (2009) 16 SCC 208***, held as under:

30. A law, far less a contract, does not warrant compliance with the contractual or statutory obligations where it is otherwise impossible to do. An entrepreneur may start raising constructions over a plot only when the physical possession thereof is handed over and/or plan for construction of the building is approved. State cannot ignore the aforementioned relevant factors.

- 4.15 The above applies squarely to the present case. The Appellant was intimated only at 10.47 am that its drawal needs to be curtailed from 10:00 AM due to revision in schedule, the same obviously cannot be accomplished for the past period when the Appellant has already drawn electricity based on the implemented schedule. In other words, revised

schedule in no way can be implemented retrospectively and rather, it is impossible to act/perform.

- 4.16 This is without prejudice to the fact that has now emerged that the SLDC did not intimate the Appellant in time, though relevant intimation was made to SLDC by the NLDC at 09.00 am. If the Appellant was informed immediately at 0900 hours or soon thereafter, the drawal obviously would have been curtailed as per the revised schedule, within the 4 time blocks.
- 4.17 The State Commission has erroneously relied on the decision of the Hon'ble Supreme Court in OSEB v. IPI Steels &Ors (1995) 4 SCC 320 which explains the concept of demand charges. This has no application to the present case, which is of levy of penalty for over-drawal of electricity than the schedule. This is when the schedule is revised retrospectively.
- 4.18 The State Commission erred in distinguishing the Judgment of this Tribunal stating that the facts were different. The exact issue of waiver of excess / penal charges by the Regulatory Commissions had been dealt with in the said Judgments.
- 4.19 The full Bench Judgment dated 24.02.2011 of this Tribunal in Appeal No. 25 of 2010 (**Chhattisgarh State Power Distribution Company Limited v. Arasmeta Captive Power Plant &Ors**) – has held as under

“12. In the light of the rival contentions urged by the learned counsel for the parties, the following questions would emerge for consideration:

- I. Whether, in the facts and circumstances of the case, the State Commission had the jurisdiction in the matter on a billing dispute raised on the question of levy on a consumer of additional charges for excess demand in accordance with the Tariff determination by the State Commission?*

II. Whether, in the facts and circumstances, the State Commission was correct in holding that the case ought to be considered as unforeseen circumstances under Clauses 12.10 and 12.11 of the Supply Code and whether the same was available to waive charges as per the applicable Tariff?

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16. According to the Appellant, this is a billing dispute between the consumer and a licensee and, therefore, the State Commission had no power to resolve this dispute as held by this Tribunal in Chattisgarh State Electricity Board Vs. Rabhubir Alloys Limited appeal No.125, etc, of 2006 dated 28.11.2006 and the Appeal No. 3, etc, of 2006 dated 29.3.2006. It is true that the Appellant is a licensee but the Respondent No.1 cannot be construed to be a consumer because it being a Captive Power Plant is a Generating Company. It is the plea of the Respondent that the drawal of excess power during 15 minutes' time cycle was because of sudden failure of protection system of the generator, the st 1 Respondent causing non-isolation of Captive generation from the grid and, therefore, it is not a mere billing dispute between the consumer and the licensee.

17. We find force in this plea. As a matter of fact, the Appellant itself filed the review petition against the order dated 5.6.2009 with reference to the issue of amendment of Supply Code as well as in regard to the waiver of the excess demand charges by submitting to the jurisdiction of the State Commission. The State Commission accepted the plea of the Appellant in regard to the proposal for the provisions in the Supply Code and, however, affirmed the main order with reference to the waiver of the penal excess demand charges. So, this issue is not related to the billing dispute. On the other hand, it relates to the payment of excess demand charges. Therefore, we hold that the State Commission has got the jurisdiction to go into the issue under Sections 86(1)(f) and 86(1)(k) of the Electricity Act, 2003 to resolve the said dispute.

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22. The waiver of penal demand charges is within the regulatory control of the State Commission. It cannot be disputed that the penal demand charges were decided by the State Commission and provided for in the Supply Code and Tariff Order. When the authority has the right to impose penalty, equally it has got the

right to vary, waive and modify such a penalty for the justified reasons.

23. In the present case, the State Commission has considered the peculiar facts and circumstances and decided to waive the penalty by giving various reasonings. These reasonings, in our view, cannot be held to be unjustified.”

4.20 The stand taken by the Jaipur Discom is also not correct. The Jaipur Discom has simply justified the billing carried on by it and also relied on Section 45 of the Electricity Act which permits it to recover charges for supply of electricity. This does not answer the basic issue that the Appellant is being asked to pay a penalty for an act which is impossible to perform. This cannot be the interpretation or application of any law or contract.

4.21 In the circumstances mentioned above, the Appellants prays that the impugned order be set aside and Jaipur Discom fund/adjust the quantum of penalty of Rs. 2,97,61,356/- (Rupees two crore ninety seven lacs sixty one thousand three hundred and fifty six only) paid against the impugned energy bill dated 10.02.2016 for the month of January 2016.

5. Mr. Ajatshatru Mina, learned counsel appearing for the Respondent No. 2 (Jaipur Vidyut Vitaran Nigam Limited) has filed the following written submissions in this Appeal for our consideration:-

5.1 M/s DCM Shriram Ltd. (hereinafter referred as “Appellant”) is a consumer of Jaipur Vidyut Vitaran Nigam Limited (hereinafter referred as “Respondent No.2”). It is submitted that the Respondent No. 2 is a Distribution licensee within the meaning of Sec 2(15) of the Electricity Act, 2003 and is authorized to operate and maintain a distribution system for supplying electricity to the consumers in the state of Rajasthan.

- 5.2 The appellant company entered into a power supply agreement dated 15/01/2002 with Respondent No.2 stipulating a contract demand of 20 MVA/20,000 KVA. The agreement dated 15.01.2002, in the instant appeal, contains varied clauses underlying terms and conditions for supply of electricity to the appellant company. Further, the aforementioned agreement has been appended with a Tariff schedule containing parameters for calculating tariff as per the actual drawal as well as in the event of excess drawal above the contractual demand.
- 5.3 The appellant applied and obtained the No Objection Certificate dated 16.12.2015 from the Respondent No.3 i.e. Rajasthan Rajya Vidyut Prasaran Nigam limited/ SLDC for procurement of power through open access to the extent of 40 MW. Further Appellant is also a member of Indian Energy Exchange and has the facility to procure power on power exchanges and schedule the same for drawal in accordance with the applicable regulations notified by the Central Electricity Regulation Commission.
- 5.4 On 14/01/2016 at 10.47 AM, the Appellant received an e-mail from the IEX asking the Appellant to curtail its drawal from the 41st Time Block to the 96th Time Block (10.00 hrs to 24.00 hrs) and also giving a revised schedule reducing the drawal from 40 MW to 7 MW for such time periods.
- 5.5 The revision in schedule as notified by National Load Dispatch Centre (NLDC) was informed to the Appellant at 10.47 AM by IEX through e-mail to two officers of the Appellant and by no other means. There was no communication to the petitioner either from NLDC, NRLDC or SLDC.
- 5.6 After receiving information with respect to curtailment of the drawal limit, the required action was taken by the field officers and in the main meter the curtailment became effective in the 11 Hrs-11:15 hrs time block

itself, it took a few more minutes and the curtailment became effective in the check meter in the 11.15 hrs-11:30 hrs time block. Hence, the appellant for 6 time blocks i.e. 10.00 hrs-10:15 hrs, 10:15 hrs-10:30 hrs, 10:30 hrs-10:45 hrs, 10:45 hrs-11:00 hrs, 11hrs-11:15 hrs and 11:15 hrs- 11:30 hrs could not curtail the drawal limit leading to excess drawal over the contractual demand.

- 5.7 Consequently the appellant requested the IEX vide an email dated 14.01.2016 for revising the schedule from the 47th block only i.e from 11:30hrs-11:45 hrs.
- 5.8 The appellant company on 15.01.2016 further wrote a detailed letter to the IEX showing their bonafide and requesting to consider its revised schedule from 47th time block only considering the circumstances occurred on 14.01.2016.
- 5.9 The IEX vide letter dated 27.01.2016 intimated the appellant company that there was a force majeure situation and in consequence thereto the incidents occurred in the manner as stated on 14.01.2016.
- 5.10 The appellant company wrote a letter dated 01.02.2016 to RRVPNL/SLDC informing them about the circumstances occurred on 14.01.2016 and also intimidated them about the revision no. 48 received from NLDC at 12:08 pm which came to be applied with retrospective effect from 41st time block i.e. 10 A.M.
- 5.11 The SLDC vide its reply through letter dated 02/02/2016 has stated as under to the Appellant –

“On the above cited subject and reference, it is intimated that on 14th January 2016, NRLDC revised schedule through revision no. 47 at 11:47 hrs wherein there is no power reduction in the schedule of IEX i.e 17120.54 Mwh in 96 blocks. Thereafter, revision no 48 was issued at 12:08 hrs by NRLDC with reducing drawal from 41st time block to 96th time block i.e. 10:00 hrs to

24:00 hrs. The total drawal was restricted to 9764.37 Mwh instead of 17120.54 Mwh in 96 block for IEX. The above reduction in the quantum of power to IEX was continued till 93rd last revision for the day. The revision no. 48 issued at 12:08 PM was made effective retrospectively from 41st time block i.e. 10:00 hrs whereas no such intimation of reduction in quantum of power was received to SLDC from NRLDC before 12:08 hrs.....”

- 5.12 The appellant company on receiving confirmation with respect to abovementioned position wrote a letters dated 03.02.2018 thereby informing Respondent No.2 with respect to the position that on 14.01.2016, NLDC made a revision in schedule of drawal of power from IEX at 12:08 P.M and further stated that due to the delayed intimation and the revision made at 12:08 hrs, it couldn't have been possible for the appellant to make the revision in drawal of power from IEX with retrospective effect. Appellant Company further requested to exclude the period between 10:00 hrs to 12:08 hrs while computing their billing demand for the entire month.
- 5.13 The Respondent No. 2 by exercising its power to recover charges u/s 45 of the Electricity Act,2003 and as per the tariff- schedule appended to the power supply agreement between the appellant company and Respondent No.2, raised the impugned bill dated 10.02.2016. In the aforesaid bill, the Appellant has been charged excess demand charges of Rs. 2,58,19,604.30/- for excess drawal beyond the permissible limit.
- 5.14 As per clause (4) of the tariff schedule, a consumer shall not cause a demand more than its contract demand. In case, the demand is more than 105% of the contracted demand in a particular month, apart from being disconnected, the consumer shall be liable to pay an extra charge equal to the same percentage of fix and energy charges (excluding the electricity duty and other charges if any) by which the demand has actually exceeded.

5.15 The bill dated 10.02.2016 raised by Jaipur Discom charging Rs. 2,58,19,604/- towards excess demand charges is on account of demand having been exceeded beyond permissible limit. It is further submitted that, the maximum demand for the billing month of Jan., 2016 had been reported to be 39152.89 KVA, whereas, the sanctioned/ opted demand of Appellant was 20,000 KVA. Thus, the reported demand, i.e., 39152.89 KVA was in excess by 95.96% as compared to the sanctioned demand, i.e., 20,000 KVA. Therefore, the charges which have been levied through bill dated 10.02.2016 are justifiable and legally recoverable.

5.16 Aggrieved by the impugned bill dated 10.02.2016 issued by Respondent No.2, filed petition No.603 of 2016 before Respondent No.1 i.e. Rajasthan Electricity Regulatory Commission and the state commission vide order dated 13.12.2016 dismissed the petition no. RERC/603/2016 and held that the bill raised by the Respondent No. 2 is legal and justified. It further rightfully held that the same has been issued in accordance with the tariff schedule and clause 20(4) of RERC (Terms and conditions for open Access) regulations, 2004.

5.17 **GROUND IN SUPPORT OF THE SUBMISSIONS**

A. **Bill dated 10.02.2016 has been issued in strict consonance of the Power Supply Agreement dated 15.01.2002**

- (i) A bare perusal of clause 1(c) of the power supply agreement dated 15.01.2002 makes it abundantly clear that where the consumer draws power more than 5% over and above the contract demand, in such circumstances the consumer will be required to pay as per the tariff schedule appended with the agreement. Further, clause 16(a) of the said agreement stipulates that every monthly bill shall be issued to the

consumer in accordance with the scale of rates and rules set forth in the tariff schedule which is a part and parcel of the said power supply agreement.

- (ii) It is submitted that as per clause (4) of the tariff schedule, a consumer shall not cause a demand more than its contract demand. In case, the demand is more than 105% of the contracted demand in a particular month, apart from being disconnected, the consumer shall be liable to pay an extra charge equal to the same percentage of fix and energy charges (excluding the electricity duty and other charges if any) by which the demand has actually exceeded.
- (iii) It is further submitted that, the appellant company's maximum demand for the billing month of Jan., 2016 had been reported to be 39152.89 KVA, whereas, the sanctioned/ opted demand of Appellant was 20,000 KVA. Thus, the reported demand, i.e., 39152.89 KVA was in excess by 95.96% as compared to the sanctioned demand, i.e., 20,000 KVA. Accordingly, the impugned bill dated 10.02.2016 was issued.

B. No form of liability or loss is attributable to JVVNL by virtue of Agreement dated 15.01.2002

- a) The bare perusal of clause 6 and clause 10 of the power supply agreement dated 15.01.2002 makes it abundantly clear that JVVNL/ Respondent No. 2 is obliterated from any form of liability or obligation accruing from any circumstance such as in the instant appeal. For the convenience of this tribunal the same is reproduced as hereunder:

“ (6) The consumer shall be solely responsible for and shall pay for any loss or damage to any supply

lines, maines, fuses, meters and/or other apparatus belonging to Jaipur Discom on the premises of the consumer, whether caused maliciously or through culpable negligence or default on the part of consumer or any of his employees....

(10) The Jaipur Discom shall not be liable for any claim for any loss, damage or compensation whatsoever arising out of failure, but in no case will this agreement extend to cases when such failure is attributable to orders of civil or military authorities, break-downs of machinery and plant or causes directly or indirectly to war, mutiny, civil commotion, riot, strike, lockout, fire, flood, tempest, lightening, earthquake or other force, accident or any cause beyond the control of the Jaipur Discom.”

- b) It is also relevant to appreciate that clause of 17(b) of the contract stipulates that the consumer is not required to pay the minimum charges, in case, he is prevented from receiving the energy from the DISCOM on account of civil and military authority, lock out, strike etc. Therefore, in case of the occurrence of the abovementioned causalities the respondent Nigam would have suffered the losses, accordingly, applying the same principle, the appellant is not protected from *force majeure* in drawing more energy than the contract demand. Furthermore, it is also relevant to submit that if the plea of the appellant is admitted that the purpose of the agreement between the parties would be defeated.
- c) As per information provided by IEX vide mail dated 27.01.2016 the revision in the schedule for drawal of power was caused due to a force majeure situation, thereby, indirectly causing loss to the appellant company. It is humbly submitted that in light of the clause (10) of aforesaid agreement such loss cannot be transferred to respondent

no.2 by the appellant company. It is further submitted that Respondent No.2 was never under obligation to communicate the revision or change in the drawal schedule to the appellant company, therefore it does not create any obligation or liability upon the respondent No.2.

c. Bill dated 10.02.2016 has been issued in strict consonance of the RERC (Open Access) Regulations, 2004.

Admittedly Appellant company on 14.01.2016 exceeded the contract Demand on account of curtailment of power availed through open access for which the JVVNL has rightfully claimed extra charges within the periphery of Regulation 20(4) of RERC (Open Access) Regulations, 2004 and the same was rightfully observed by RERC/state commission in the impugned order dated 10.02.2016. For the convenience of the Tribunal the Regulation 20(4) of RERC (Open Access) Regulations, 2004 is reproduced as hereunder:

“20(4) In case of reduced supply or outage of supplier’s generating station, the excess drawal at the drawal end, beyond the permissible limit will be first considered under the HT power supply upto contract demand and beyond that up to the contract demand under the standby supply and thereafter, excess drawal will be considered as per HT power supply agreement. Billing for HT supply will be effected on monthly or weekly basis and that of standby supply at temporary supply tariff on daily basis with fixed charges and minimum billing etc. based on daily maximum demand.

Provided, where the agreement for HT power supply and standby supply does not exist, any drawal exceeding the open access entitlement will be effected at temporary supply tariff on daily basis with the contract demand considered as equal to maximum demand of such excess drawal for that day or maximum demand caused during the preceding 90

days, whichever is higher. Further, any excess drawal of more than two blocks in a month will be considered as Grid indiscipline and the distribution licensee may effect curtailment or suspension or determination of open access until contract demand for HT power supply is enhanced corresponding to the excess demand.”

D. Doctrine of Privity of Contract

- a) The appellant and respondent No.2 are bound by the terms and conditions of the power supply agreement dated 15.01.2002 as there exists a privity of contract between them. Further, it is pertinent to mention here that when there exists a privity of contract only between the appellant company and the respondent No.2, any act or omission on the part of stranger to the power supply agreement does not affect the right and liabilities accruing out of the aforesaid agreement.
- b) The omission on part of IEX or NLDC or SLDC to communicate about change in the drawal schedule on 14.01.2016 to the appellant company does not affect the right of respondent No. 2 accruing out of the tariff schedule which is a part and parcel of the power supply agreement. The same is submitted in lieu of the “doctrine of privity of contract”, as IEX or SLDC or NLDC being a stranger to the power supply agreement dated 15.01.2002 cannot affect the outcome of the aforesaid agreement.

Since, there is no omission on part of JVVNL/Respondent No.2, it was justified in issuing the impugned bill dated 10.02.2016 which has been issued as per the actual consumption by the appellant and is within the periphery of

tariff schedule which is a part and parcel of power supply agreement by virtue of clause 16(A) of the agreement.

- c) The same principle of privity of contract that, a stranger to a contract cannot enjoy fruits of a contract neither can affect rights or liabilities of the parties to the contract by his act or omission was enunciated by Hon'ble Supreme Court in the case of:

- (i) **Essar Oil Ltd. Vs. Hindustan Shipyard Ltd and Ors, 2015(10) SCC 642- Para No. 13-14**
(ii) **Shri Ram Builders Vs State Of M.P. and Ors. 2014 (14) SCC 102- Para No.53-54**

E. Doctrine of Vicarious Liability

- (a) In the events and circumstances such as in the instant appeal, it is submitted that the appellant company's prayer before this Tribunal is in the nature of making Respondent No.2 JVVNL vicariously liable for the omission on the part of SLDC i.e. Rajasthan Rajya Vidyut Prasaran Nigam Limited in communicating the change or revision in the schedule for drawal of power from open access for which JVVNL was never under the same obligation.
- (b) It is a settled principle of law that vicarious liability arises in the course of relationship such as that of a "principal-agent" or "master-servant", where the principal or master shall be liable for the acts or omission of his agent/servant which is done in the course of his duty and thereby causing loss to the subject.
- (c) The Hon'ble Supreme Court in the landmark judgement of "Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra" (AIR 1957 SC 264), laid down the principle for determining the factors for "principal-agent" relationship.

Hon'ble Supreme Court laid down that the key factor is "control and supervision" by one party over the other in order to establish a relationship of Principal-agent. The relevant portion of the aforementioned judgement is reproduced as hereunder:

- "10. The principles according to which the relationship as between employer and employee or master and servant has got to be determined are well settled. The test which is uniformly applied in order to determine the relationship is the existence of a right of control in respect of the manner in which the work is to be done. A distinction is also drawn between a contract for services and a contract of service and that distinction is put in this way: In the one case the master can order or require what is to be done while in the other case he can not only order or require what is to be done but how itself it shall be done.*
- 15. The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. As has been noted above, recent pronouncements of the Court of Appeal in England have even expressed the view that it is not necessary for holding that a person is an employee, that the employer should be proved to have exercised control over his work, that the test of control was not one of universal application and that there were many contracts in which the master could not control the manner in which the work was done."*

- (d) In the light of the aforementioned principle of law, in order to make JVVNL vicariously liable for the acts of SLDC there has to be a controlling factor of JVVNL which is a distribution licensee over the functions of SLDC which itself is an apex body to ensure integrated operation of power system in any

state. The constitution and functions of SLDC is enshrined in section 31 and 32 of the Electricity Act, 2003. For the convenience of this Tribunal the aforementioned provisions are reproduced as hereunder:

“Section 31. (Constitution of State Load Despatch Centres):

- (1) *The State Government shall establish a Centre to be known as the State Load Despatch Centre for the purposes of exercising the powers and discharging the functions under this Part.*
- (2) *The State Load Despatch Centre shall be operated by a Government company or any authority or corporation established or constituted by or under any State Act, as may be notified by the State Government:
Provided that until a Government company or any authority or corporation is notified by the State Government, the State Transmission Utility shall operate the State Load Despatch Centre:
Provided further that no State Load Despatch Centre shall engage in the business of trading in electricity.*

Section 32. (Functions of State Load Despatch Centres):

- (1) *The State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State.*
- (2) *The State Load Despatch Centre shall - (a) be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State; (b) monitor grid operations; (c) keep accounts of the quantity of electricity transmitted through the State grid; (d) exercise supervision and control over the intra-State transmission system; and (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code.*

(3) *The State Load Despatch Centre may levy and collect such fee and charges from the generating companies and licensees engaged in intra-State transmission of electricity as may be specified by the State Commission.”*

The bare perusal of the aforementioned provisions makes it abundantly clear the role of SLDC is to control and supervise dispatch of electricity in the state of Rajasthan. Further, it also make it clear that JVVNL which is a distribution licensee in the state of Rajasthan does not control or supervise the functioning of SLDC in any manner which is a pre-requisite to establish principal-agent relationship. Thus, in the light of the same, it is humbly submitted that in any circumstance JVVNL cannot be made vicariously liable for the acts or omission on the part of SLDC.

F. Strict interpretation to the Electricity Supply Code and Regulations for Determination of Tariff enumerated by State Commission U/s 50 and 62 of the Electricity Act, 2003.

- (i)** The state commission which is RERC in the instant matter has the statutory authority to determine various guidelines, rules and regulations for determination of tariff and the recovery of charges from the consumers of the distribution licensee. The aforementioned guidelines being statutory in nature have to be abided by giving them a strict interpretation.
- (ii)** Further, it is humbly submitted that RERC while passing the impugned order dated 13.12.2016 has rightfully observed by following the mandate of Sec 62 of the Electricity Act,2003, that while determining the tariff, the commission cannot show undue preference to any consumer of electricity. Thus, where the appellant admittedly drew 39152.89 KVA, in

excess of the sanctioned/ opted demand of 20,000 KVA, thereby, causing excess by 95.96%, the respondent No.2 JVVNL has rightfully issued the impugned bill dated 10.02.2016 by strictly complying with Rule 20(4) of RERC (Open Access) Regulation, 2004.

- (iii) It is pertinent to mention here that it is a settled principle of law that the technical laws such as taxation laws and electricity laws and such other statutes having financial implications have to be given strict interpretation. It is further submitted that the language of such statutes have to be construed as it is and there is no principle of equity in such statutes.

G. Findings by RERC in Petition No. 603/2016.

- (i) The state commission has rightfully observed that in the instant case, admittedly the Appellant has drawn excess demand beyond the contract demand and hence has to be billed on that basis. The reason for which it drew excess demand is not relevant at all and that it is incidental to drawal of power either from the Discom or from power exchange. At any rate, if the Appellant, making use of contract it had with the Discom, has drawn energy from Discom beyond contracted capacity, it has to pay for the same at the prescribed rate.
- (ii) The Learned state commission has not made any error by holding the view that “if the argument of the Appellant is accepted then the same will be in violation of terms and conditions of Tariff which are statutory and part of the contract and will give a different treatment to the Appellant

which is not extendable to any consumer of the Respondent No. 2.”

- (iii) The learned state commission has rightfully opined that the Appellant, having availed the Open Access benefit, has to bear the risks which are incidental to it and has to bear the charges for the demand consumed in excess of contract demand. In fact, whenever there is an over drawal by the Discom from the grid, even Discom may have to pay charges for the excess drawal. The State Utility does not enjoy any exception so far as grid discipline and drawal schedule is concerned.
- (iv) The Learned state commission while dealing with the question of law with respect to **retrospective change in schedule** opined that, in the instant petition no allegation with respect to the said question of law has been levelled against the JVVNL, contrary to that all the allegations are levelled against NLDC, IEX and SLDC. Further, it was also observed by the learned commission that instant petition has been preferred by M/s DCM Sriram Ltd. for determination of tariff and the issue involving the question of law with respect to **retrospective change in schedule** is pending before Central Electricity Regulatory Commission, Delhi. In light of the same, it is humbly submitted that since the impugned order dated 13.12.2016 does not deal with the question of law with respect to retrospective change in schedule, and the same being pending before CERC, Delhi, it does not need to be decided by this Tribunal.
- (v) Therefore, in the instant case, JVVNL has claimed demand charges for the excess drawal in accordance with the tariff

conditions specifically framed and RERC (Terms and Conditions for Open Access) Regulations, 2004 referred to above which are statutory and binding both on the Appellant and Respondent.

6. Mr. Pradeep Misra, learned counsel appearing for the Respondent No. 3 has filed the following written submissions in this Appeal for our consideration:-

6.1 The Appellant has filed the above noted Appeal against the order dated 13.12.2016 passed by Rajasthan Electricity Regulatory Commission in Petition No. RERC 603 of 2016 which was filed by the Appellant challenging the demand raised by Jaipur Vidyut Vitran Nigam Ltd. Respondent No. 2 herein.

6.2 No averment has been made against the replying Respondent nor any prayer has been made against it. The replying Respondent while filing reply on 16.08.2017 in Para 4 has stated that as no allegations have been made against the replying Respondents, hence its name be deleted from array of parties. The relevant Paras of the reply filed by replying Respondent are being reproduced below for ready reference.

“4. That the Appellant has not made any allegation against the replying Respondent, hence the name of replying Respondent be deleted from array of parties.

5. That the Appellant has not made any allegation against the replying Respondent, hence the name of replying Respondent be deleted from array of parties.

6. That in case of collective transactions NLDC is the nodal agency and in case there is constraint in the grid NLDC should send the message to SLDC. Similarly, IEX should send the message to the entitled/Open Access Consumer involved in the collective transaction in the present case replying Respondent/SLDC Rajasthan has not received any message from NLDC.

7(K). That in reply to the contents of Para 7(K) it is submitted that NRLDC issued revision No. 48 at 12:08 hours on 14.01.2016 with reducing drawal from 41st time block to 96th time block i.e. from 10 hours to 24 hours and no intimation of reduction in quantum of power was received by SLDC from NRLDC before 12:08 hours on 14.01.2016.”

In view of aforesaid facts appeal qua replying Respondent be dismissed.

7. Mr. S. S. Barpanda, Executive Director, NRLDC (Representative) appearing for the Respondent No. 4 & 5 has filed the following written submissions in this Appeal for our consideration:-

- 7.1 The present reply is filed on behalf of Respondent No. 4 National Load Despatch Centre and Respondent No. 5 Northern Regional Load Despatch Centre, to the Appeal filed by the Appellant above named challenging the order dated 13.12.2016 passed by the Learned Rajasthan Electricity Regulatory Commission in the Petition No. 603/2016.
- 7.2 The National Load Despatch Centre (NLDC) is a statutory body set up under Section 26 of the Electricity Act, 2003 for optimum scheduling and despatch of electricity among the Regional load Despatch Centres. The Northern Regional Load Despatch Centre (NRLDC) is a statutory body set up under Section 27 of the Electricity Act, 2003 and performs the functions specified in Section 28 of the said Electricity Act, 2003. The operations and functions of NLDC and NRLDC are governed by the Electricity Act, 2003, Regulations of the Central Electricity Regulatory Commission (CERC) and Central Electricity Authority (CEA), issued and amended from time to time. NLDC and NRLDC are operated by POSOCO, a Govt. of India Enterprise.
- 7.3 The answering Respondent denies each and every averment and contention raised in the Appeal except those which are matters of

record and which are admitted hereinafter, and none of the averments may be treated as admitted by the answering Respondents merely on account of their not being individually denied or on account of non-traverse of the same. The submissions made in this reply are made strictly in the alternative and without prejudice to one another.

- 7.4 The present Appeal has been filed by M/s DCM Shriram Limited challenging the Order of the Learned Rajasthan Electricity Regulatory Commission (RERC) dated 13.12.2016 in Petition No. 603/2016. The appellant has disputed the excess demand charges levied on it by its Distribution Licensee, Jaipur Vidyut Vitaran Nigam Limited (JVVNL). As per the Appellant, the excess demand charges have been levied on it by JVVNL for no fault of the Appellant as the information regarding the curtailment in real time of its day ahead approved power in the Power Exchange (IEX) was made available to the Appellant after the curtailment was effected. Due to the delayed receipt of information regarding the curtailment of power approved in the Collective Short Term Open Access (STOA) transaction, the Appellant continued to draw as per its original drawal schedule resulting in excess demand charges being levied on it. The power scheduled to the Appellant in day-ahead Collective STOA was curtailed in real time from 41st time block (10.00 hrs block) to 96th time block (23.45 hrs block) of 14.01.2016, whereas the information regarding the curtailment of power was made available at 10.47 hrs via an E-mail from the Power Exchange (IEX). The Appellant has prayed to allow refund/adjustment of Rs 2,97,61,356/- paid against the impugned energy bill dated 10.02.2016 for the month of January 2016 against excess/penal demand charges.

7.5 As regards the present Appeal, the role of NLDC/NRLDC is restricted to explaining the procedure of scheduling of collective transactions at the inter-state level. Also, the settlement system between the intra-state entities (JVNL and M/s DCM Shriram Limited in the present case) is as per the Rajasthan SERC Regulations and is therefore not reported at the inter-state level.

7.6 In this regard, the relevant clauses of the CERC, Indian Electricity Grid Code, Regulations, related to scheduling of collective transactions are quoted below:

Quote

6.5 ***“Scheduling and Despatch Procedure for long-term access, Medium-term and short-term open access***

5. *Scheduling of collective transaction:*

a. *NLDC shall indicate to Power Exchange(s), the list of interfaces/control areas/regional transmission systems on which unconstrained flows are required to be advised by the Power Exchange(s) to the NLDC. Power Exchange(s) shall furnish the interchange on various interfaces/control areas/regional transmission systems as intimated by NLDC. Power Exchange(s) shall also furnish the information of total drawal and injection in each of the regions. Based on the information furnished by the Power Exchanges, NLDC shall check for congestion. In case of congestion, NLDC shall inform the Exchanges about the period of congestion and the available limit for scheduling of collective transaction on respective interface/control area/transmission systems during the period of congestion for Scheduling of Collective Transaction through the respective Power Exchange. The limit for scheduling of collective transaction for respective Power Exchange shall be worked out in accordance with CERC directives.*

Based on the application for scheduling of Collective Transaction submitted by the Power Exchange(s), NLDC shall send the details (Scheduling Request of Collective Transaction) to different RLDCs for final checking and incorporating them in their schedules. After getting confirmation from RLDCs, NLDC shall convey the acceptance of scheduling of collective transaction to Power

Exchange(s). RLDCs shall schedule the Collective Transaction at the respective periphery of the Regional Entities.

- b. **The individual transactions for State Utilities/intra-State Entities shall be scheduled by the respective SLDCs. Power Exchange(s) shall send the detailed break up of each point of injection and each point of drawal within the State to respective SLDCs after receipt of acceptance from NLDC. Power Exchange(s) shall ensure necessary coordination with SLDCs for scheduling of the transactions.**
- c. *Timeline for above activities will be as per detailed procedure for Scheduling of Collective Transaction issued in accordance with CERC (Open access in inter-state transmission) Regulations, 2008 and as amended from time to time.*

Unquote

- 7.7 As per the Procedure for Scheduling of **“Short-Term Open Access in Inter-State Transmission (Collective Transaction)”** dated 30.06.2011 the timeline for submission/processing and scheduling of applications on day ahead basis is quoted below:

Quote

“SUBMISSION/PROCESSING OF APPLICATION

- 3.1 *The National Load Despatch Centre (NLDC) shall indicate to Power Exchange(s), by 11:00 Hrs, the list of interfaces/control areas/ regional transmission systems on which unconstrained flows are required to be advised by the Power Exchange(s) to the NLDC.*
- 3.2 *Power exchange(s) shall furnish by 13:00 Hrs, the interchange on various interfaces/control areas/regional transmission systems as intimated by NLDC (Para 3.1 above). Power Exchange(s), shall also furnish the information of total drawal and injection in each of the regions.*
- 3.3 *Based on the information furnished as per Para 3.2 by Power Exchange(s), NLDC shall check for congestion. If there is no congestion, the Power Exchange(s) shall submit the application as per clause 3.5. However, in case of congestion, NLDC shall inform the exchange(s) by 14:00 Hrs. about the period of congestion and the available limit for scheduling of collective transaction on respective interfaces/control areas/transmission system(s) during*

the period of congestion for scheduling of Collective Transaction through that respective Power Exchange. The limit for scheduling of collective transaction for respective Power Exchange shall be worked out in accordance with CERC directives.

- 3.4 Power Exchange(s) shall ensure that “Scheduling Request for Collective Transaction” is within the limits (as per Para 3.3 above) for each time block as intimated by NLDC. Further, Power Exchange(s) shall ensure that the Scheduling Request is within the limits for each time block specified by respective SLDCs in the “Standing Clearance”/“No Objection Certificate” (submitted by State Utilities/intra-State Entities to Power Exchange(s)).*
- 3.5 The Application for Scheduling of Collective Transaction shall be submitted by the Power Exchange(s) by 15:00 Hrs each day, to the NLDC as per Format-PX-II: “Application for Scheduling of Collective Transaction”, for transactions to be implemented on the following day.*
- 3.6 The details for Scheduling Request for Collective Transaction shall be submitted by Power Exchange (s) to the NLDC as per Format–PX-III: “Scheduling Request for Collective Transaction to NLDC”. Power Exchange(s) shall club together all Buyers within a State in one group and all Sellers within a State in another group for the purpose of Scheduling by RLDCs.*
- 3.7 NLDC shall send the details (Scheduling Request of Collective Transaction) to different RLDCs by 16:00 Hrs for final checking and accommodating them in their schedules. RLDCs shall confirm its acceptance to NLDC by 17:00 Hrs.*
- 3.8 After getting acceptance from the RLDCs, NLDC shall convey the acceptance of scheduling of Collective Transaction to Power Exchange(s) by 17:30 Hrs.*

4. SCHEDULING

- 4.1 Concerned RLDCs shall accommodate the Schedule of Collective Transactions in the respective Regional Entity’s and inter-Regional Schedules, which would be issued finally by RLDCs at 18:00 Hrs of each day.*
- 4.2 RLDCs shall schedule the Collective Transaction at the respective periphery of the Regional Entities.*
- 4.3 RLDCs shall incorporate all buyers within a State (clubbed together as one group) and all sellers within a State (clubbed together as another group), in the schedules of the Collective Transactions.*

- 4.4 *The individual transactions for State Utilities/intra-State Entities shall be scheduled by the respective SLDCs. Power Exchange(s) shall send the detailed breakup of each point of injection and each point of drawal within the State to respective SLDCs by 18:00Hrs. after receipt of acceptance from NLDC. The details for Scheduling Request for Collective Transaction shall be submitted by Power Exchange (s) of the respective SLDC as per Format–PX-IV:“Scheduling Request for Collective Transaction to SLDC”. Power Exchange(s) shall ensure necessary coordination with SLDCs for scheduling of the transactions.*
- 4.5 *While finalizing the Drawal Schedule / Injection schedule of Entities, each transaction shall have are solution of 0.01 MW at each State/inter-Regional boundaries”.*

Unquote

The mandate as per clause 6.5 of the CERC, Indian Electricity Grid Code, Regulations, in case of curtailment of power due to transmission constraints is quoted below:

Quote

- 6.5 **“Scheduling and Despatch Procedure for long-term access, Medium-term and short-term open access**
27. *When for the reason of transmission constraints e.g. congestion or in the interest of grid security, it becomes necessary to curtail power flow on a transmission corridor, the transactions already scheduled may be curtailed by the Regional Load Despatch Centre.*
28. *The short-term customer shall be curtailed first followed by the medium term customers, which shall be followed by the long-term customers and amongst the customers of a particular category, curtailment shall be carried out on pro rata basis.*
30. *Collective Transaction through Power Exchange(s) would normally be curtailed subsequent to the Short Term Bilateral Transaction(s).*
31. *RLDCs would curtail a Transaction at the periphery of the Regional Entities. SLDC(s) shall further incorporate the inter-se curtailment of intra- State Entities to implement the curtailment”.*

Unquote

- 7.8 The real time congestion management clause of the Procedure for Scheduling of “Short-Term Open Access in Inter-State

Transmission (Collective Transaction)” dated 30.06.2011, is quoted below:

Quote

6. “REAL TIME CONGESTION MANAGEMENT

- 6.1 *In case of transmission constraint or threat to grid security, the scheduled transactions may be curtailed in the manner as decided by the NLDC / RLDCs / SLDCs to relieve the transmission constraint/ to improve grid security.*
- 6.2 *Collective Transaction through Power Exchange(s) would normally be curtailed subsequent to the Short-Term Bilateral Transaction(s).*
- 6.3 *RLDCs would curtail a Transaction at the periphery of the Regional Entities. SLDC(s) shall further incorporate the inter-se curtailment of intra-State Entities to implement the curtailment.*
- 6.4 *In case of curtailment of a Transaction caused by transmission constraints / threat to grid security, the Transmission Charges in respect of such Transaction shall be payable on pro-rata basis in accordance with the finally Implemented Schedules. Operating Charges shall not be revised in case of curtailment.*
- 6.5 ***Power Exchange(s) shall be responsible for the settlement on account of curtailment, directly with its participants. NLDC/RLDCs/SLDCs shall interact only with the respective Power Exchange(s), for the same”.***

Unquote

- 7.9 In case of real time curtailment of collective STOA transactions, the flow of information between Power Exchange, NLDC and RLDCs is as follows:
 - a. NLDC informs the Power Exchanges regarding the period and quantum of curtailment of the collective STOA transactions already approved on day-ahead basis.
 - b. The Power Exchanges communicate the revised regional entity-wise schedule of collective transactions to NLDC.

- c. NLDC further communicates the revised Regional Entity-wise schedules to the RLDCs (as communicated by the Power Exchange) for incorporation in the schedules by RLDCs.
- d. RLDCs incorporate the revised schedule in the drawal and injection schedules of the respective regional entities and publishes it on its website.

7.10 Regarding the revision of schedules of collective transactions on the RLDCs website, it is clarified that the revised Regional Entity-wise schedules are first communicated by the Power Exchange to the NLDC and NLDC further communicates these schedules to RLDCs. RLDCs then incorporate the revised Regional Entity-wise schedules as soon as the information is received from the Power-Exchange via NLDC and publishes them on its website.

7.11 It is further clarified that the 15minute time block-wise schedules or schedule revisions of collective transactions of the individual intra-state entities are handled directly by SLDCs. The information related to day-ahead schedules and revised schedules in case of real time curtailment, of the individual intra-state entities is communicated directly by the Power-Exchanges to the SLDCs / intra-state entities as per clause 6.5.5 b of CERC, IEGC Regulations and clause 4.4 the Procedure for Scheduling of “Short-Term Open Access in Inter-State Transmission (Collective Transaction)”.

7.12 On 14.01.2016, in view of Outage of 765 kV Gwalior-Agra D/C lines, all STOA transactions on WR-NR path were curtailed. NLDC being the Nodal Agency for collective transactions intimated both Indian Energy Exchange (IEX) and Power Exchange of India Limited (PXIL) via E-mail dated 14th Jan 2016 at 09:00 hrs

regarding the tripping of 765kV Agra-Gwalior D/C lines, and advised the Power Exchanges to curtail all collective transactions on WR-NR path from 41st time block to 96th time block.

7.13 NRLDC intimated all concerned Regional Entities/SLDCs of Northern Region including SLDC Rajasthan via E-mail dated 14.01.2016 at 09.07 Hrs regarding Outage of 765 kV Gwalior-Agra D/C lines and curtailment of all STOA transactions on WR-NR path w.e.f. 09.15 hrs.

7.14 NLDC received the information regarding revised schedules of the collective transactions from IEX at 11.48 hrs which was updated on NRLDCs website at 12.08 hrs in its 48th revision.

7.15 It is emphasized here that 765 kV Gwalior-Agra D/C line is a critical high capacity interconnection between two large regions of the Country i.e. Western Region and Northern Region. A large quantum of power is imported by the Northern Region from the Western Region on these lines. Tripping of these lines has major impact on the Total Transfer Capability (TTC)/Available Transfer Capability (ATC) of WR-NR corridor and the Import Capability of Northern Region. It is pertinent to mention that outage of 765 kV Gwalior – Agra – II (charged at 400 kV) was one of the triggering factors of the major Grid Disturbance on 30th and 31st July 2012. The massive Grid Disturbance had affected approximately 48000 MW of consumer load across 21 States and 1 Union Territory. In case of tripping of these lines, TTC/ATC of WR-NR corridor has to be revised and action for curtailment of power has to be taken in order to save the system from further catastrophe. Therefore NRLDC curtailed the STOA Bilateral Transactions and NLDC

curtailed the STOA Collective Transactions on 14.01.2016 and informed accordingly.

7.16 It would be relevant here to quote clause 6.5.24 of CERC, Indian Electricity Grid Code *“Generation schedules and drawal schedules issued/revised by the Regional Load Despatch Centre shall become effective from designated time block irrespective of communication success.”*

7.19 Also Para 6.4.5 of CERC, Indian Electricity Grid Code which mentions about the responsibilities of SLDCs, is quoted below:

Quote

6.4 “Demarcation of responsibilities:

5. *The Regional grids shall be operated as power pools with decentralized scheduling and despatch, in which the States shall have operational autonomy, and SLDCs shall have the total responsibility for-*
- (i) scheduling/despatching their own generation (including generation of their embedded licensees),*
 - (ii) regulating the demand of its control area,*
 - (iii) scheduling their drawal from the ISGS (within their share in the respective plant’s expected capability),*
 - (iv) permitting long term access, medium term and short term open access transactions for embedded generators/consumers, in accordance with the contracts and*
 - (v) regulating the net drawal of their control area from the regional grid in accordance with the respective regulations of the CERC”.*

Unquote

7.20 In the conclusion, it is reiterated that NLDC had issued instruction to Power Exchanges to curtail the STOA collective transactions on 14.01.2016 in view of outage of the critical 765 kV Gwalior-Agra

D/C inter-regional line and RLDCs incorporated the regional entity-wise schedule revision information in the schedules as soon as it was received from the Power Exchanges via NLDC. The 15 minute time block-wise schedules or schedule revisions of collective transactions of the intra-state entities are handled by SLDCs. The information related to 15 minute time block-wise schedules or schedule revisions is communicated directly by the Power Exchanges to the SLDCs/concerned intra-state entities.

7.21 In light of the above, it is respectfully prayed that the Appellate Tribunal may pass orders as deemed fit.

8. We have heard the learned counsel appearing for the Appellant and learned counsel for the Answering Respondent at considerable length of time. We have gone through their written submissions and also taken note of the relevant material available on records. Based on the pleadings and submissions of the parties, the following main issue emerges in the Appeal for our consideration:

- ***Whether in the facts and circumstances of the case, the State Commission is justified in upholding the demand charges claimed by the Second Respondent for the over drawal of power by the Appellant?***

9. Our Consideration and Findings

9.1 Learned Counsel for the Appellant submitted that the State Commission has erred in interpreting the Clause 16(a) of the Agreement dated 15.01.2000 in a pedantic manner. While the Appellant is obviously liable to pay the charges to the Second Respondent as per the applicable tariff schedule but the schedule cannot be applied in the circumstances when the over drawal by the Applicant was for the reasons entirely beyond the

control of the Appellant. Learned Counsel for the Appellant alleged that the State Commission has failed to appreciate that the concept of uniform billing to all consumers has no application to the case as if consumers exceed the drawal of energy over the contract demand, either by open access or from the distribution company, the excess demand charges become applicable.

9.2 However, this is not an offence in the strict sense in the instant case. The Authorities imposed a retrospective revision in schedule and therefore the question which arises for our consideration is whether excess demand charges should be levied on the Appellant or not. Learned counsel further submitted that there was no methodology in which the Appellant could have curtailed its drawal from the grid since the information regarding the curtailment itself was given belatedly to the Appellant. Learned counsel for the Appellant vehemently submitted that the State Commission has not doubted the position that the said over drawal occurred for no fault of the Appellant, however, the State Commission has treated it as a routine drawal matter and held that this is one of the risks of open access which the Appellant needs to bear. Further, State Commission has erred in distinguishing the judgement of this Tribunal in Appeal No. 25/2010 dated 24.02.2011 and of Apex Court in OSEB Vs. IPI Steels case as the facts in these cases were entirely different.

9.3 Learned Counsel was quick to submit that on the reference date i.e. 14.01.2016 the Appellant received the first hand information through e-mail from the Indian Energy Exchange at 10:47AM for curtailment of drawal from 41st Time Block to 96th Time Block and in pursuance of the e-mail the drawal in the main meter was effectively curtailed in the 11 hrs – 11:15 hrs time block while the check meter was curtailed in the subsequent time block of 11:15 hrs – 11:30 hrs time block. Further, on

15.01.2016 such restriction was again imposed from 41st time block onwards and the information regarding such revision was received by the Appellant vide telephone at 00:50 Hrs and the Appellant immediately reduced the drawal from IEX to 0 MW and hence there was no over-drawal. This clearly reflects the bonafide of the Appellant wherein it curtailed its drawal as per instructions since it was possible to do so. However, the information for curtailment on 14.01.2016 was delayed by the concerned authorities namely SLDC & IEX and the Appellant could not curtail its drawal retrospectively being an impossible act to perform.

- 9.4 Learned Counsel further contended that while referring to the reply submitted by the NLDC/NRLDC, it becomes crystal clear that the intimation for curtailment was issued to Indian Energy Exchange as well as SLDC at 09:07 hrs. However, neither the IEX nor the SLDC gave any intimation to the Appellant prior to 10:47 hrs. It is rather astonishing that despite getting advance intimation/instructions from NLDC for curtailment of drawal on WR-NR path, the SLDC clearly and strangely states that it had no responsibility to inform the Appellant.
- 9.5 Learned Counsel further submitted that the only relief the Appellant sought from the State Commission was that the penal charges amounting to Rs 2,97,61,356/- should not be levied on it and the energy charges whatsoever for the over drawal were paid by the Appellant to the Jaipur Discom. In response the State Commission wrongly upheld the bill dated 10.02.2016 of Jaipur Discom levying the above penal demand charges on the Appellant without appreciating the peculiar facts and circumstances of the case.
- 9.6 To strengthen its argument learned counsel placed reliance on the judgement of Hon'ble Supreme Court in case of **HSIDC v. Hari Om Enterprises, (2009) 16 SCC 208** which has held that "a law, far less a

contract, does not warrant compliance with the contractual or statutory obligations where it is otherwise impossible to do". The above principle apply squarely to the present case when the Applicant was intimated only at 10:47 hrs. for drawal curtailment and the Appellant effected the same by 11:30 hrs. successfully. Learned Counsel submitted that the State Commission has erroneously relied on the decision of the Hon'ble Supreme Court in OSEB v. IPI Steels & Ors. (1995) 4 SCC 320 which explains the concept of demand charges and has no application in the present case. Further, the State Commission has also erred in distinguishing the judgement of this Tribunal dated 24.02.2011 in Appeal No. 25 of 2010 (Chhattisgarh State Power Distribution Company Limited v. Arasmeta Captive Power Plant &Ors).

- 9.7 Learned counsel further contended that the stand taken by the Jaipur Discom is also not correct as it has simply justified the billing for over drawal relying on Section 45 of the Electricity Act which permits it to recover charges for supply of electricity. This does not answer the basic issue that the Appellant is being asked to pay a penalty for an act which is impossible to perform.

Summing up his arguments learned counsel for the Appellant prayed for setting aside the Impugned Order and the unlawfully imposed penalty of Rs 2,97,61,356/- should be refunded/adjusted by the Jaipur Discom.

- 9.8 **Per contra**, the learned counsel for the Respondent 2 & 3 submitted that after receiving information with respect to curtailment of drawal limit, the required action was taken by the field officers of the Appellant and the same became effective by 11:30 hrs. only and hence, the appellant for 6 time blocks i.e. 10.00 hrs to 11:30 hrs. had over drawn power over and above the contractual demand. Accordingly, the Second Respondent by exercising its powers under Section 45 of the Act and as

per tariff schedule appended to the power supply agreement between the Appellant company and the Second Respondent raised the impugned bill dated 10.02.2016 for excess drawal beyond the contractual limit.

- 9.9 Learned counsel referred to clause (4) of the tariff schedule as per which a consumer shall not cause a demand more than its contract demand and in case, the demand is more than 105% of the contractual demand in a particular month, apart from being disconnected, the consumer shall be liable to pay an extra charge equal to the same percentage of fixed and energy charges (excluding the electricity duty and other charges if any).
- 9.10 To justify the action of the Respondent Discom learned counsel submitted following grounds in support of the same:
- (i) Bill dated 10.02.2016 has been issued in strict consonance of the Power Supply Agreement dated 15.01.2002
 - (ii) No form of liability or loss is attributable to JVVNL by virtue of agreement dated 15.01.2002.
 - (iii) The impugned bill has been issued in strict compliance with the RERC (Open Access) Regulations, 2004.
 - (iv) When there exist a privity of contract only between the appellant company and the respondent No.2, any act or omission on the part of stranger to the power supply agreement does not affect the right and liabilities accruing out of the aforesaid agreement.
 - (v) The case is duly covered under the Doctrine of the Vicarious Liability has the omission on the part of the SLDC in communicating the revised schedule from open access for which Second Respondent was never under the same obligation.

- (vi) The State Commission has the statutory authority has passed the orders with strict interpretation to the Electricity Supply Code and Regulations for Determination of Tariff under Section 50 And 62 of the Act.

9.11 Learned Counsel in support of its ground and arguments has placed reliance on judgements of Hon'ble Supreme Court namely:

- a) Essar Oil Ltd. Vs. Hindustan Shipyard Ltd and Ors, 2015(10) SCC 642- Para No. 13-14
- b) Shri Ram Builders Vs State Of M.P. and Ors., 2014 (14) SCC 102- Para No.53-54

Further, learned counsel also relied upon the judgement of the Apex Court in the case of Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra" (AIR 1957 SC 264), which laid down the principle for determining the factors for "principal-agent" relationship to emphasize that in order to make Jaipur Discom vicariously liable for the acts of SLDC which is a statutory body to ensure integrated operation of power system in any state under Section 31 & 32 of the Act.

9.12 Learned counsel further contended that the State Commission has rightfully observed that in the instant case admittedly the Appellant has drawn excess power beyond its contract demand and hence had to be penalized on that basis. Further the reason for which it drew excess power is not relevant at all and that it is incidental to drawal of power either from the Discom or from power exchange.

9.13 The learned counsel for the Respondent vehemently submitted that the State Commission while dealing with the question of law with respect to retrospective change in schedule opined that in the instant petition no allegation with respect to the said question of law has been levelled

against the answering Respondent/Discom, contrary to that all the allegations are levelled against NLDC, IEX and SLDC, etc.

9.14 Further, the issue regarding retrospective change in schedule is pending before the Central Commission as observed by the State Commission. Summing up their arguments learned counsel for the Respondent reiterated that the appeal filed by the Appellant is devoid of merits and needs to be dismissed.

10. Our Findings

10.1 We have carefully gone through the submissions of the learned counsel for the Appellant and the learned counsel for the answering Respondents and also perused the relevant material/judgements relied upon by the learned counsel. The whole dispute revolves around the incident of 14.01.2016 when on account of certain disturbances in the WR-NR Path, NLDC/NRLDC issued instructions for curtailment of drawal by the associated entities including the Appellant. It is not in dispute that the said instructions were issued by NLDC/NRLDC at 9.07 hrs. to curtail power drawal from 41st time block to 96th time block to Indian Energy Exchange and SLDC. However, the Appellant got first information in this regard at 10:47 hrs. from IEX and no intimation from SLDC. It is relevant to note that after getting the instructions at 10:47 hrs. the Appellant complied with the same scrupulously and achieved the full curtailment of drawal by 11:30 hrs. In the process the Appellant incidentally over-drew power for 6 time blocks (90 minutes) for which the concerned Discom imposed a penalty of Rs 2,97,61,356/- which subsequently have been confirmed by the State Commission.

10.2 We also notice that the similar instructions were issued on 15.01.2016 by NLDC to curtail drawal from 41st time block onwards which was received by the Appellant by telephone at 00:50 hrs. and the Appellant

immediately and successfully revised drawal from IEX to 0 MW and there was no over drawal at all. This has not been disputed by any party including the State Commission.

10.3 While looking at the facts and circumstances of the case the instructions for revised schedule were communicated belatedly to the Appellant at 10:47 hrs. when the actual curtailment were needed at 10:00 hrs. onwards. Taking into consideration all the instructions and real time operation with specific reference to main meters and check meters, the earliest possible implementation of revised drawal schedule would need some time to get effective. The same has been the case of the appellant wherein the drawal of power continued for 6 blocks of 15 minutes each with reference to the time block starting from 10:00 hrs. It is, however, evident that the first 3 time blocks (10:00 hrs – 10:47 hrs) were lost in communication itself and only other subsequent 3 blocks have been consumed in real time implementation of the curtailment.

10.4 We have perused the replies of NLDC, NRLDC and SLDC and it is noticed that the NLDC being the overall coordinator for the integrated operation of the National Grid communicated well in advance at 9.07 hrs to IEX and SLDC but they took their own time to further communicate to the end user i.e. Appellant herein for implementation while IEX issued e-mail at 10:47 hrs., the SLDC did not take any action in this regard. We are of the opinion that in such a critical situation when Grid security is at stake, IEX took almost 1 hour 47 minutes to communicate, whereas SLDC kept quiet for without any instructions as if it is not its responsibility to communicate the same to the Appellant for requisite follow up. This is a matter of serious concern when the concerned authorities have acted with laxity and in an irresponsible manner. We opine that such belated action could have caused irreparable damage to

the National Grid which may lead to grid collapse causing huge financial loss.

- 10.5 We have carefully perused reply of NLDC/NRLDC relating to the procedure of scheduling of collective transactions at the inter-state level and also, the settlement system between the intra-state entities. Among the others the “Short-Term Open Access in Inter-State Transmission (Collective Transaction)” dated 30.06.2011, there is a distinct clause on Real Time Congestion Management which reads thus :

6. “REAL TIME CONGESTION MANAGEMENT

6.1 In case of transmission constraint or threat to grid security, the scheduled transactions may be curtailed in the manner as decided by the NLDC / RLDCs / SLDCs to relieve the transmission constraint/ to improve grid security.

6.2 Collective Transaction through Power Exchange(s) would normally be curtailed subsequent to the Short-Term Bilateral Transaction(s).

6.3 RLDCs would curtail a Transaction at the periphery of the Regional Entities. SLDC(s) shall further incorporate the inter-se curtailment of intra-State Entities to implement the curtailment.

6.4 In case of curtailment of a Transaction caused by transmission constraints / threat to grid security, the Transmission Charges in respect of such Transaction shall be payable on pro-rata basis in accordance with the finally Implemented Schedules. Operating Charges shall not be revised in case of curtailment.

6.5 Power Exchange(s) shall be responsible for the settlement on account of curtailment, directly with its participants. NLDC/RLDCs/SLDCs shall interact only with the respective Power Exchange(s), for the same”.

- 10.6 It is further clarified that the 15 minutes time block-wise schedules or schedule revisions of collective transactions of the individual intra-state entities are handled directly by SLDCs. The information related to day-ahead schedules and revised

schedules in case of real time curtailment, of the individual intra-state entities is communicated directly by the Power-Exchanges to the SLDCs / intra-state entities as per clause 6.5.5 b of CERC, IEGC Regulations and clause 4.4 the Procedure for Scheduling of “Short-Term Open Access in Inter-State Transmission (Collective Transaction)”.

10.7 Coming to the specific date of 14.01.2016, in view of Outage of 765 KV Gwalior-Agra D/C lines, all STOA transactions on WR-NR path were curtailed. NLDC being the Nodal Agency for collective transactions intimated both Indian Energy Exchange (IEX) and Power Exchange of India Limited (PXIL) via E-mail dated 14th Jan 2016 at 09:00 hrs. regarding the same and advised them to curtail all collective transactions on WR-NR path from 41st time block to 96th time block. Subsequently NRLDC intimated to their regional entities/SLDCs of northern region including SLDC Rajasthan by e-mail dated 14.01.2016 at 09.07 Hrs for effecting curtailment of all STOA transactions on WR-NR path w.e.f. 41st time block onwards.

10.8 Further, the para 6.4.5 of CERC, Indian Electricity Grid code which specifies responsibilities of SLDCs, is quoted below:

6.4 “Demarcation of responsibilities:

5. *The Regional grids shall be operated as power pools with decentralized scheduling and despatch, in which the States shall have operational autonomy, and SLDCs shall have the total responsibility for-*

- (i) scheduling/despatching their own generation (including generation of their embedded licensees),*
- (ii) regulating the demand of its control area,*

- (iii) scheduling their drawal from the ISGS (within their share in the respective plant's expected capability),*
- (iv) permitting long term access, medium term and short term open access transactions for embedded generators/consumers, in accordance with the contracts and*
- (v) regulating the net drawal of their control area from the regional grid in accordance with the respective regulations of the CERC".*

10.9 As clarified by NLDC/NRLDC the 15 minute time block-wise schedule revisions of collective transactions of the individual intra-state entities are to be handled directly by SLDCs. The information related to 15 minute time block wise schedule or schedule revisions shall be communicated directly by the Power-Exchanges to the SLDCs and concerned intra-state entities.

10.10 Further the State Commission has interpreted Clause 16(a) of the Agreement dated 15.01.2002 in a pedantic manner as applicable tariff schedule cannot be applied in the circumstances as the over drawal by the Appellant was for reasons completely out of its control and it cannot be confined simply to one of the risks of the open access which has been considered by the Commission.

10.11 In view of the facts stated above, we are of the opinion that after getting requisite instructions on the referred date i.e. 14.01.2016 the Appellant has acted scrupulously and effected the curtailment by 11:30 hrs. successfully. The Appellant has also established its bonafide on 15.01.2016 when similar instructions were issued well in advance for curtailment of power and the Appellant accomplished the same in its entirety without any default.

10.12 It would thus appear that the over-drawal in these referred blocks (10:00 – 11:30 am) cannot be attributed to the Appellant as it received the communication only after lapse of first 4 time blocks

and it is rather impossible to effect revised schedule retrospectively. Accordingly, we are of the opinion that the Appellant cannot be penalised for the fault of the other entities which have been vested with statutory responsibilities under Section 31 & 32 of the Act for smooth and integrated operation of the power system in the State.

ORDER

In the light of the above, we are of the considered view that the instant Appeal No. 70 of 2017 has merits and deserves to be allowed. Hence appeal is allowed.

The Impugned Oder dated 13.12.2016 passed by the Rajasthan Electricity Regulatory Commission in Petition No. RERC-603/16 is hereby set aside to the extent challenged in the instant appeal.

No Order as to costs.

Pronounced in the Open Court on this 29th January, 2020

**(S.D. Dubey)
Technical Member**

**(Justice Manjula Chellur)
Chairperson**

REPORTABLE / ~~NON-REPORTABLE~~

mkj