

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

**APPEAL NO. 161 OF 2014**

**Dated: 25<sup>th</sup> May, 2016**

**Present : Hon'ble Mr. Justice Surendra Kumar, Judicial Member  
Hon'ble Mr. T. Munikrishnaiah, Technical Member**

**IN THE MATTER OF:**

Uttam Galva Steels Ltd. (UGSL),  
Having its Registered Office at Uttam House, 69,  
P. D' Mello Road, Mumbai 400 009.

...Appellant

**Versus**

1. Maharashtra State Electricity Transmission Co. Ltd. (**MSETCL**),  
Prakahganga, 5<sup>th</sup> floor / 'A' Wing Plot C-19,  
E- Block, BKC, Bandra (East), Mumbai 400 051.
2. Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**),  
Prakashgad, Plot No. G-9, Bandra (East),  
Mumbai 400 051.
3. Maharashtra Electricity Regulatory Commission (**MERC**),  
13<sup>th</sup> Floor, World Trade Center, Cuffe Parade,  
Mumbai 400 005.

...Respondents

**APPEAL UNDER SECTION 111(1) OF THE ELECTRICITY ACT, 2003**

Counsel for the Appellant(s) : Mr. Abhishekh Khare  
Mr. M.G.Ramachandran  
Mr. Anand K.Ganesan  
Mr. Deeraj Manchanda

Counsel for the Respondent(s) : Mr. M.Y.Deshmukh  
Mr. Shrikant R.Deshmukh for R-1/MSETCL

## J U D G M E N T

### PER Hon'ble T. Munikrishnaiah, Technical Member

1. This Appeal, being Appeal No. 161 of 2014, filed by the Appellant, "Uttam Galva Steels Ltd." under Section 111 of the Electricity Act, 2003 against the **'Impugned Order'**, dated 27.03.2014, passed by the Maharashtra Electricity Regulatory Commission (**State Commission**). The Appellant is having a captive generating plant of capacity 60 MW and the Appellant is consuming power of 31.5 MW i.e. 51% for his own use and balance 29.5 MW i.e. 49% supplying into Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**), by entering into Energy Purchase Agreement (**EPA**) and the Appellant does not have any open access with any of the consumers. The Appellant is supplying total power to the MSEDCL, Respondent No.2. The contention of the Appellant is that the Respondent No.1, i.e. Maharashtra State Electricity Transmission Co. Ltd. (**MSETCL**), levied transmission user charges from January, 2011 to May, 2012. An amount of Rs.1,24,86,734.40/- has been levied upon by the Transmission Company Ltd. and recovered from the Appellant. The Appellant paid the Transmission charges under protest.
2. The Appellant, 'Uttam Galva Steels Ltd.' is having a manufacturing unit situated at Donvat (Khopoli) District Raigad, Maharashtra State to meet its captive power requirements, a coal based Captive Power Plant (**CPP**) of 60 MW capacity is installed in the premises of the said manufacturing unit.
3. The Respondent No. 1, Maharashtra State Electricity Transmission Co. Ltd. (**MSETCL**), is a company registered under the Companies Act,

1956, a wholly owned company by the State of Maharashtra. MSETCL is a major electricity transmission company in the state of Maharashtra and is responsible for transmission of power from Power generation companies to the distribution network of Maharashtra State Electricity Distribution Co. Ltd.

4. The Respondent No. 2, Maharashtra State Electricity Distribution Co. Ltd (**MSEDCL**), is a company registered under the Companies Act, 1956, a wholly owned company by the State of Maharashtra and supplies electricity to approximately 1.93 Crore consumers across, all over the State of Maharashtra excluding the island city of Mumbai.
5. The Respondent No. 3, Maharashtra Electricity Regulation Commission (**MERC**), is a State Electricity Regulator empowered to discharge functions under various provisions of the Electricity Act, 2003.
6. **BRIEF FACTS OF THE CASE:**
  - i) The Appellant/Petitioner is a company engaged in manufacturing of Cold Roll steels, Galvanized and Color Coated Coils and sheets from its manufacturing units situated at Village, Donvat (Khopoli), District Raigad, Maharashtra. The Appellant has established a coal based Captive Power Plant (CPP) of 2x30 MW capacity in the premise of manufacturing unit to meet its captive power requirement.
  - ii) The Coal based CPP has a total power generation capacity of 60 MW. Petitioner is consuming 51% from 60 MW generating capacity i.e. 31.5 MW. The balance 29.5% MW i.e. 46% of the power

generating from the CPP is supplied to MSEDCL, after entering into Energy Purchase Agreement (**EPA**) with MSEDCL on 01.12.2010.

- iii) As per the Energy Purchase Agreement (**EPA**) dated 01.12.2010, the agreement was entered for sale of power generated by the Appellant from 01.12.2010 to 31.11.2011 at the rate of 4.75 per unit. The Appellant entered **EPA** on 05.04.2011, 2<sup>nd</sup> time with Respondent No.2, for the sale of surplus power of 19.5 MW from 05.04.2011 to 31.03.2012 at the specified rates in the EPA.
- iv) On 12.01.2012, an amendment to the 2<sup>nd</sup> EPA was made by Appellant to MSEDCL for supply of 29.4 MW from 01.12.2011 to 31.03.2012.
- v) The Appellant entered with respondent No.2, the 3<sup>rd</sup> Energy Purchase Agreement on 28.03.2012 for 29.4 MW from 01.04.2012 to 23.04.2012 and from 24.04.2012 to 31.03.2013.
- vi) The Respondent No.1, levied transmission charges on the Appellant/Petitioner from January, 2011 to May, 2012 as transmission charges, an amount of Rs.1,24,86,734.40/- is recovered and the Appellant paid this amount to Respondent No.1 under protest.
- vii) On 24.12.2012, the Appellant filed a Petition before the Respondent No.3, MERC for recovery of transmission charges paid under protest.
- viii) On 27.03.2014, the Respondent No.3, MERC, after hearing the Petition, passed an order, stating that the Respondent No.1, has

levied the legitimate transmission charges on the Appellant/Petitioner and also not acquired excess Transmission charges from both i.e. petitioner and consumer and hence the Petitioner is not eligible for any refund from the Respondents.

- ix) Aggrieved by this Impugned Order, the Petitioner/Appellant filed this Appeal, being Appeal No. 161 of 2014 and prayed for the following reliefs:
- a. the transmission lines are used by the Respondent No. 2 to distribute power to their consumers and not by the Appellant and the amount paid by the Appellant is paid in good faith on behalf of the Respondent No. 2;
  - b. recovery of monies from the Appellant on grounds of Transmission Charges are against the tenets of law as the Appellant is not a TSU;
  - c. in the event the Appellant is a TSU, the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2011 will be applicable to the Appellant and any recovery since April 01, 2011 is against the tenets of law;
  - d. according to order passed by the Hon'ble MERC in ARR Petition, the Respondent No. 1 is eligible to levy the transmission charges from the end consumers as collected by the Respondent No. 2 and according to Order dated September 10, 2010 in Case No. 120 of 2009 the Respondent No. 1 is eligible to levy transmission charges on the TSUs.

Thus, by taking both the orders into consideration the Respondent No. 1 has acquired excess transmission charges from both i.e. the Appellant and the end consumer. The Hon'ble MERC (Respondent No. 3) passed an Order stating that the Respondent No. 1 has levied the legitimate transmission charges on the Appellant

7. We have heard learned counsel for the Appellant, Mr. Abhishekh Khare, and Learned counsel for the Respondent, Mr. M.Y.Deshmukh and we have gone through the respective written submissions including the Impugned Order.

8. The following issues arises for consideration.

**8.1 Whether the Appellant is liable to pay the Transmission charges as per the Regulations to State Transmission utility as the Appellant has entered into EPS Agreement with State Electricity Distribution Company Ltd. particularly when he does not have any Open Access Agreement with any consumers?**

**8.2 Whether the State Commission has erred in directing that the Appellant is liable to pay the Transmission charges as the Appellant has entered with connectivity agreement with MSETCL and hence the Appellant is liable to pay the Transmission user charges of 1,24,86,734.40 to the Respondent, MSETCL?**

9. The issues 1 and 2 are interrelated, hence, we will deal with these two issues together.

10. The following are the contentions of the Learned Counsel of the Appellant:

10.1 That the State Commission has wrongly proceeded on the basis that by taking the grid connectivity to the Intra State Transmission System, the Appellant becomes liable to pay the transmission charges. The Appellant is selling the surplus power to Maharashtra State Electricity Distribution Company Limited, Respondent No. 2 at the bus bar of the Appellant's Captive Power Plant. The Appellant had not sought for or obtained any Open Access for use of the transmission system. The grant of connectivity to the Grid and the Captive Power Plant is different from seeking Open Access and conveying power to be delivered at a place different than the bus bar of the generating station.

10.2 That the State Commission has failed to appreciate the difference between seeking Connectivity to the Grid and seeking Open Access. The Connectivity to the Grid is required to be sought by every entity which seeks connection to the Grid. In other words, in order to integrate with the Grid, there is a necessity to apply for and take connection. The Open Access is to be taken by such of the person who desires to transmit electricity by use of the Grid. It is not necessary that every entity which has sought for and obtained connectivity is necessarily to be treated as the user of the transmission system for conveyance of the electricity. In this regard the Open Access Regulations, 2005 defines the term 'Transmission System User' as under:

***(h) Transmission System User*** - means a person who has been allotted transmission capacity rights to access an Intra-State

*Transmission System pursuant to a Bulk Power Transmission Agreement, except as provided in Regulation 5.1 below.*

- 10.3 That the entity which has connectivity to the Grid need not necessarily apply for Open Access, namely, for transmission of electricity in the Grid.
- 10.4 That the Connectivity is regulated by a different regulations, namely, the Maharashtra Electricity Regulatory Commission (State Grid Code) Regulations, 2006 (hereinafter referred to as '**the Grid Code**'). Part C of the Grid Code provides for the connection condition. Para 13 deals with the application for connection. Para 14 deals with the Connection Agreement to be signed. The connectivity terms and conditions are regulated by the Grid Code.
- 10.5 That in terms of the Energy Purchase Agreement (**EPA**), the delivery of the surplus power by the Appellant to Respondent No. 2 is at the bus bar of the Appellant's Captive Power Unit as can be seen from the EPA, more particularly, paras 3.2, 4.4.
- 10.6 That the State Commission has failed to consider that Regulation 66.4 of the MERC (Multi Year Tariff) Regulation, 2011, is applicable only to such of the persons who seek Open Access i.e. transmission system user. The Transmission System User is defined in the said Regulation as under:

*(59) "Transmission System User" means a person who has been allotted transmission capacity rights to access an intra-State transmission system pursuant to a Bulk Power Transmission*



*Agreement, except as provided in the Transmission Open Access Regulations”;*

**11. Per contra, the following are the submissions made by the Learned counsel for the Respondents :**

11.1 That the Appellant is erring while challenging the order of MERC in which it was correctly concluded that Appellant is liable to pay SHORT TERM OPEN ACCESS transmission charges in accordance with Transmission pricing mechanism framed by the Commission in its Order dated 27.06.2006 in Case No.58 of 2005 and in STS Order issued vide dated 10.09.2010 by the Commission in Case No. 120 of 2009.

11.2 That the Appellant is erring while challenging the order of MERC in which it was stated that appellant has the access to the Intra State Transmission System as short term transmission System user and hence the Petitioner is liable for payment of short term open access charges.

11.3 That the Commission vide its Order dated 27.06.2006 in Case No. 58 of 2005 has framed in STS Transmission Pricing mechanism for the State of Maharashtra. Relevant paragraphs of the said Order is reproduced below:-

*4.2.14 Each TSU (distribution licensee or Transmission OA Users), shall be required to pay intra-State transmission system charges (In STS charges) at the approved rate of “Base Transmission Tariff” corresponding to its utilization of ‘intra-State transmission’ capacity.*

11.4 That the commission has determined the In STS Tariff w.e.f. 1<sup>st</sup> September, 2010 till May, 2012, vide its Order dated 10.09.2010 in case No. 120 of 2009, relevant paragraphs for recover of In STS charges are reproduced as follows:

*It is clarified that the above Transmission Charges are payable by all long-term transmission system users irrespective of their actual utilization (peak demand) recorded during the period of operation. In case, actual utilization of transmission capacity by any long-term PSU exceeds the allocated transmission capacity then, the same shall be governed as per MERC (Transmission OPE Access) Regulation, 2005. Further, it is clarified that the usage assignment and surrendering of unutilized transmission capacity by any transmission system user shall be governed by Regulation 9 of MERC (Transmission Open Access Regulations) 2005. The transmission system users shall be entitled to use surplus transmission capacity through short-term open access subject to payment of short term open access charges and governed by MERC (Transmission Open Access).*

*Regulations, 2005 and other Regulations, as applicable. Additional penal charges shall be levied for excess utilization of transmission capacity in accordance with Regulation 11.4 of MEC (Transmission Open Access) Regulation 2005. (emphasis added)*

11.5 That MSETCL is not a party to the EPA executed so the terms are not binding on MSETCL.

11.6 That the delivery of the surplus power by the Appellant to respondent No.2 is the bus bar of the Appellant Captive Power unit as per EPA Paras 3.2.4.4.

The network of MSETCL is to be used to supply power to MSEDCL while using STOPA. BPTA is not essential for scheduling power in STOPA.

## **12. Our Consideration and Conclusion:**

We have cited above the facts of the case, the issues involved and contentions of the rival parties in the upper part of the judgment, hence, we directly proceed to our decision and consideration on these issues.

12.1 The Appellant/Petitioner is having a company/manufacturing unit for making Cold Roll Steels, Galvanised and Colour Coated Coils etc. at Donvat (Khopoli), District Raigad, Maharashtra.

12.2 The Appellant, to meet its power requirements of the factory, established a Captive Power Plant (CPP), initially of 30 MW and specifically installed another 30 MW CPP units. The Appellant is utilising 51% of the Power Generated from its two numbers Captive Power Plants of total capacity of 60 MW for its own use and remaining 49% of 60 MW supplying to Maharashtra State Electricity Distribution Company Ltd by entering into Energy Purchase Agreement with MSEDCL on 10.01.2011.

12.3 The Appellant/Petitioner entered into short term power Energy agreement with MSEDCL and the details of EPA are as under:

EPA as on date	Surplus Power	Effective Date	Rate per Unit (KWH)		
1 <sup>st</sup> EPA on 1 December, 2010	10.0 MW	1 Dec 2010 to 30 Nov 2011	Rs. 4.75 Per Unit (KWH)		
2nd EPA on 5 April, 2011	19.5 MW	5 April 2011 to 31 March 2012	6:00 Hrs to 22:00 Hrs:-	Rs. 4.60	
			22:00 Hrs to 6:00 Hrs	Rs. 3.55	
Amendment in 2 <sup>nd</sup> EPA on 12 January, 2012	29.4 MW	1 Dec 2011 to 31 March 2012	6:00 Hrs to 22:00 Hrs:-	Rs. 4.60	
			22:00 Hrs to 6:00 Hrs	Rs. 3.55	
3 <sup>rd</sup> EPA on 28 May, 2012	29.4 MW	From 1 April, 2012 to 23 April, 2012	6:00 Hrs to 22:00 Hrs:-	Rs. 4.60	
			22:00 Hrs to 6:00 Hrs	Rs. 3.55	
		From 24 April, 2012 to 31 March, 2013	From above up to 131.40 MUs	6:00 Hrs to 22:00 Hrs	Rs. 4.50
				22:00 Hrs to 6:00 Hrs	Rs. 3.30
			Above 131.40 MUs and up to 257.54 MUs	6:00 Hrs to 22:00 Hrs	Rs. 4.25
				22:00 Hrs to 6:00 Hrs	Rs. 2.75
Beyond 257.54 MUs	Rs. 2.97				

As seen from the above table, the Appellant has entered into various Energy Purchase Agreements with MSEDCL for the period specified and also as per the rates mentioned in the Energy Purchase Agreement.

12.4 We have gone through the Commission's analysis and noted that the Appellant/Petitioner applied for Grid connectivity with MSETCL to facilitate injection of surplus power into State grid, accordingly MSETCL has granted grid connectivity to the Appellant from January, 2011.

12.5 Let us examine the relevant part of the MERC (Transmission Open Access) Regulations, 2005 pertaining to Transmission user, which is as under:

“2.1 (h) **Transmission System User** means a person who has been allotted transmission capacity rights to access an intra-state transmission system pursuant to a Bulk Power Transmission Agreement, except as provided in Regulation 5.1 below”;

“5.1 A user of an intra-state transmission system on the date of notification of these Regulations shall be deemed to be Transmission System User of such intra-state transmission system: .....

...Provided that the Government company of the company referred to in sub-section (2) of Section 131 of the Act shall be deemed to be a Transmission System user of any intra-State transmission system used by the Board with effect from the date on which a transfer scheme is prepared in accordance with that Section:

... Provided further that a user of an intra-state transmission system under this Regulation shall enter into a Bulk Power Transmission Agreement with the Transmission Licensee within sixty days from the date on which such user is deemed to be a Transmission System User under this Regulation.”

“5.2, A Transmission System User under Regulation 5.1 above shall be deemed to have transmission capacity rights in an intra-State transmission system equivalent to the total generation capacity contracted or otherwise arranged, with the approval of the Commission, by such Transmission System User as at the date of notification of these Regulations for injection into such transmission system: Provided that the duration of such transmission capacity rights as at the date of notification of these Regulations shall be the remainder of the period of the contract or arrangement under which such generating capacity is procured by the Transmission System user”.

In this instant case, the Appellant entered into Energy Purchase Agreement with the Distribution Licensee, MSEDCL, to supply surplus power for the periods specified in the EPA. The Appellant has entered into Grid connectivity with MSETCL to

supply power to MSEDCL utilising the State Grid System of MSETCL.

The **Regulation (11)** of MSERC (Transmission Open Access, Regulation, 2005, is reproduced as under:

*“11.1 The Transmission System users of the transmission system shall share in the aggregate revenue requirement of the Transmission Licensee as determined by the Commission in accordance with the terms and conditions for determination of tariff specified under Section 61 of the Act.*

*11.2 The charges for the use of the intra-State transmission system shall be determined and settled on a monthly basis.*

*11.3 The bill with respect to such charges shall be dispatched by the tenth (10) day of each month and shall reflect the charges determined for the preceding month.*

*11.4 A Transmission System user shall also be liable to pay an additional penal charge at the rate of twenty five (25) per cent of the transmission charges for the use of an intra-State transmission system which is in excess of the transmission capacity rights allotted to such user.*

*11.5 The amount so collected by way of penal charge in accordance with Regulation 11.4 above shall be utilized by the Transmission Licensee to reduce the transmission charges payable by Transmission System Users.*

*11.6 A Transmission System User shall not be entitled to a refund of the transmission charges paid for capacity rights not utilized by such user”.*

Thus, every Intra-State Transmission User is liable to share the Transmission user charges.

12.6 According to MERC (State Grid Code) Regulations, 2006, the following State Transmission System Comes under the purview of MSETCL, Intra-State Transmission System (InSTS):

- i) 110 KV/132 KV D.C.Line, 220 KV D.C. Line, i.e. The Transmission lines of capacity above 110 KV comes under the purview of State Transmission Licensee and they are obligated to maintain the Transmission lines of capacity above 110 KV.
- ii) The Transmission lines, below 110 KV, comes under the purview of Distribution Companies of the State. In this case, the Appellant is having connectivity with 132 KV, grid substations of Transmission licensee i.e. MSETCL.

12.7 Section 35, of Electricity Act, 2003 provides as under-

***“35 Intervening transmission facilities*** - *The appropriate Commission may, on an application by any licensee, by order require any other licensee owning or operating intervening transmission facilities to provide the use of such facilities to the extent of surplus capacity available with such licensee:*

*Provided that any dispute, regarding the extent to surplus capacity available with the licensee, shall be adjudicated upon by the Appropriate Commission”.*

12.8 Let us examine, the relevant clause of the EPA which are quoted below:

- “a) *Accordingly Clause 3.2 of the Agreement, M/s UGSL shall install and bring in operation the special Import/Export*

*Special Energy Meter (ABT) at their own cost as per Ruling of MSERC order dated 17.05.2007.*

- b) 4.4, *M/s UGSL shall synchronise power generating set in consultation with the operating staff of 132 KV substation of the MSEDCL/MSETCL. M/s UGSL shall give 7 days prior intimation of its synchronizing programme after shutdown of more than 7 days to S.E., O&M Circle, Pen, and the office of 132 KV sub-station of the MSEDCL/MSETCL. M/s UGSL shall make all necessary arrangement of synchronizing of the Generator in consultation with the Shift incharge of MSEDCL/MSETCL's 132 KV sub-station, to, which the power is to be fed. The MSEDCL/MSETCL shall not accept any responsibility for the damage if any, caused to the plants and equipments of M/s UGSL due to failure of the protective system that would be provided by the M/s UGSL or due to the problems or defect, in the grid system of the MSEDCL/MSETCL or any reason beyond the control of the officer/s of the MSEDCL/MSETCL. In case of shorter at down of less than 7 days and resynchronization of the generator, M/s UGSL shall make all co-ordination for resynchronization with the shift in charge of MSEDCL/MSETCL's 132 KV sub-station".*

As per **Regulation (16)**, of MERC (Transmission Open Access) Regulation 2005, no Transmission System user shall use the intra-State Transmission system except through installation of a Special Energy Meter. Thus, we find that the Appellant is an Intra State Transmission user. Accordingly, the Appellant has entered into agreement with MSETCL for grid connectivity. During the



arguments, the Counsel of the Appellant failed to submit the details of grid connectivity entered with MSETCL. Hence, we have considered the details given in **Para 7**, of the Impugned Order.

- 12.9 The Commission vide its Order dated 27.06.2006, in Case No. 58 of 2014, in the matter of development of Transmission pricing framework for the State of Maharashtra and other related matters, clearly mentioned that as per Clause 4.2.14, the transmission user has to pay the Transmission charges. The relevant Clause is quoted as under:

*“4.2.12 Each distribution licensee and transmission open access user (TSU) having connection with the "intra-State Transmission system" shall enter into Bulk Power Transmission Agreement (Intra-State) (BPTA-IS) with the concerned transmission licensee”.*

*“4.2.14 Each TSU (distribution licensee or Transmission OA User), shall be required to pay intra-State transmission system charges (In STS charges) at the approved rate of "Base Transmission Tariff corresponding to its utilization of 'intra-State transmission' capacity”.*

According to above Clause, the above transmission charges are payable by all long term transmission system users irrespective of their actual utilisation, recorded during the period of operation.

- 12.10 We have gone through the State Commission's Order dated 27.06.2006, in Case No.58 of 2005, and as per Clause 3.2.5.1, the persons availing or intending to avail access to Intra State Transmission System for a period of 25 years or more, shall be termed as Long Term Transmission System User.

According to Clause 3.2.5.2, all available transmission system users, other than long term transmission system users, shall be termed as short Term transmission system users. However, duration for grant of short term open access shall not exceed 3 months at a time to begin with and State Load Dispatch Centre (**SLDC**), shall act as a Nodal Agency for grant of short term open access to short term transmission system users in consultation with State Transmission Utility (**STU**).

Further, Regulation (9) of MERC (Transmission Open Access Regulations, 2005), the transmission system user shall be entitled to use surplus transmission capacity of short term open access subject to payment of short term open access charges and governed by MERC Transmission Open Access Regulations, 2005.

12.11 The relevant part of the Impugned Order is quoted below:

**“Summary of findings :**

15. *The Commission observed that the MSETCL has granted the grid connectivity to the Petitioner from January, 2011, accordingly, Petitioner has the access to the Intra State Transmission System as short term Transmission System user and hence the Petitioner entitled for payment of short term open access charges.*

16. *In view of above, the Commission is of the opinion that MSETCL has levied the transmission charges to the Petitioner in accordance with Transmission pricing mechanism framed by the Commission in its Order dated 27<sup>th</sup> June, 2006 in Case No. 58 of*

2005 and InSTS Order issued vide dated 10<sup>th</sup> September, 2010 by the Commission in Case No. 120 of 2009.

17. The Commission observed that while determining InSTS Tariff of Maharashtra Total Transmission System Cost (TTSC) has been considered, after deducting the revenue recovered from short term transmission open Access charges by the respective transmission licensees forming the InSTS. Hence, the Commission is of the view that MSETCL has not acquired excess transmission charges from both i.e. the Petitioner and the end consumer.

18 In view of above analysis and observation, the Commission is of the opinion that MSETCL has levied the legitimate transmission charges on the Petitioner and also not acquired excess transmission charges from both i.e. the Petitioner and the end consumer & hence the Petitioner is not eligible for any refund from the Respondents”.

12.12 Thus, we do not agree with the arguments of learned counsel for the Appellant, that the Appellant is delivering excess power from their captive plant bus bar to Respondent No. 2, MSEDCL, directly without State grid connectivity. If the Appellant injects his surplus power directly to Distribution–Licensees Network, then, there is no need to enter into grid connectivity agreement.

Further, the Appellant is directly injecting power by synchronizing with the Intra-State grid substation at 132 KV level by erecting Special Energy Meter as specified in the **Regulation (16)** of MERC (Transmission Open Access) Regulations, 2005. Hence, the Appellant has to be treated as a Transmission user and is liable for payment of Transmission charges.

12.13 Accordingly, we decide that the Respondent No.1, MSETCL has correctly and legally levied the legitimate transmission charges on the Appellant/Petitioner and as Intra-State Transmission line user, the Appellant is liable to pay the short term open Access Transmission user charges. The Respondent No.1, MSETCL is not required to repay the Transmission charges collected from the Appellant.

Thus, we do not find any infirmity in the Impugned Order dated 27.03.2014, and the decision of the State Commission is upheld.

**ORDER**


The instant Appeal, being Appeal No.161 of 2014, is hereby dismissed and the Impugned Order, dated 27.03.2014, is upheld. No costs

Pronounced in the Open Court on this **25<sup>th</sup> day of May, 2016.**

**( T Munikrishnaiah )**  
**Technical Member**

**( Justice Surendra Kumar )**  
**Judicial Member**

**Dated: 25<sup>th</sup> May, 2016**

 **REPORTABLE / ~~NON-REPORTABLE~~**