

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

**REVIEW PETITION NO.7 OF 2024**

Dated: 14.11.2024

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

**In the matter of:**

**RATTANINDIA POWER LIMITED**

*Through its Authorized Representative,  
Mr. Rajesh Kumar, Assistant Vice President,  
Procurements, Contracts and Commercial*  
World Mark 1, Tower B,  
5<sup>th</sup> Floor, Aerocity,  
Indira Gandhi International Airport  
New Delhi – 110037  
*Email: [Rajesh.k@rattanindia.com](mailto:Rajesh.k@rattanindia.com)*

... Review Petitioner

*Versus*

**1. MAHARASHTRA ELECTRICITY  
REGULATORY COMMISSION**

*Through its Secretary,  
World Trade Centre,  
Centre No. 1, 13<sup>th</sup> Floor,  
Cuffe Parade, Colaba,  
Mumbai – 400005  
*Email: [mercindia@merc.gov.in](mailto:mercindia@merc.gov.in)**

**2. MAHARASHTRA STATE ELECTRICITY  
DISTRIBUTION COMPANY LIMITED**

*Through the Chairman and Managing Director,*

**Earlier At:** 4<sup>th</sup> Floor, Prakashgad,  
Plot No. G-9, Anant Kanekar Marg,  
Bandra (East),  
Mumbai – 400051

**Now At:** 6<sup>th</sup> Floor, Prakashgad,  
Plot No. G-9, Anant Kanekar Marg,  
Bandra (East),  
Mumbai – 400051

*Email:* [gmpmsedcl@gmail.com](mailto:gmpmsedcl@gmail.com)

... Respondents

Counsel for the Review Petitioner : Vishrov Mukerjee  
Janmali Gopal Rao Manikala  
Yashaswi Kant  
Girik Bhalla  
Pratyush Singh  
Damodar Solanki  
Raghav Malhotra  
Priyanka Vyas  
Juhi Senguttuvan  
Anamika Rana  
Shreya Sundraraman  
Ashabari Basu Thakur

Counsel for the Respondents : K. Parameshwar, Sr. Adv.  
Udit Gupta  
Anup Jain  
Sneha Singh  
Pragya Gupta  
Vyom Chaturvedi  
Nitin Sharma  
Nishtha Goel for Res. 2

## ORDER

### PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. By way of this review petition, the petitioner/appellant has sought review of judgment dated 06.02.2024 passed by this Tribunal in appeal No.41/2019.

2. The petitioner, RattanIndia Private Limited (in short "RIPL") owns and operates 1350 MW coalfired power plant located at Nandgaonpet, Distt. Amravati, Maharashtra. Pursuant to case-I competitive bidding process initiated by 2<sup>nd</sup> respondent Maharashtra Sate Electricity Distribution Company Limited (in short "MSEDCL"), it executed two Power Purchase Agreements (PPAs) with MSEDCL for supply of 1200MW power in aggregate to the discom at levelized tariff of Rs.3.260/kWh for the period of 25 years. It has been supplying power to MSEDCL under these PPAs since June 2013.

3. The petitioner had also executed a fuel Supply Agreement (in short "FSA") dated 22.12.2012 with South Eastern Coal Fields Limited (in short "SECL") for supply of coal for the power project.

4. It appears that during the year 2016-17, there was reduction in scheduling of power by MSEDCL and accordingly, petitioner was unable to procure the minimum guaranteed quantum of coal from SECL under the FSA dated 22.12.2012. Therefore, in terms of the relevant clauses of the FSA,

SECL imposed a penalty of Rs.39,76,78,719.63 on the petitioner, which it paid to SECL on 25.01.2018 and thereafter raised invoice of the same date upon MSEDCL for reimbursement of the said amount. However, MSEDCL did not made payment of the invoiced amount by the due date. Subsequently, the petitioner RIPL filed petition bearing No.146/2018 before the 1<sup>st</sup> respondent Maharashtra Electricity Regulatory Commission (in short “the Commission”) seeking recovery of the said amount of Rs.39,76,78,719.63 from MSEDCL in terms of clause 4.5 of Schedule 4 of the PPAs executed between them. The petition came to be dismissed by the Commission vide order dated 23.10.2018.

5. Accordingly, the petitioner had approached this Tribunal by way of appeal No.41/2019 assailing therein the said order dated 23.10.2018 of the Commission. The appeal was allowed by this Tribunal vide judgment dated 06.02.2024 directing the MSEDCL to compensate the appellant / petitioner for the penalty imposed upon it by SECL. We extract the operative portion of the judgment hereunder: -

*“For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 41 of 2019 filed by Rattan India Power Limited has merit and is hereby allowed.*

*The Impugned Order dated 23.10.2018 passed by the Maharashtra Electricity Regulatory Commission is set aside to the extent whereby the Appellant was denied compensation for the penalty imposed by the fuel company for nonprocurement of minimum quantity of fuel.*

*We also direct the Respondent No. 2 i.e. MSEDCL*

- i) to make payment of Rs. 39,76,78,719.63 to the Appellant which was paid by RattanIndia as penalty to SECL for the period April 2016 to March 2017, along with Carrying Cost, and*
- ii) to make payment of Rs. 7,15,82,170 towards GST imposed by SECL on the Appellant, along with Carrying Cost.”*

6. This Tribunal had directed the MSEDCL to make payments to the petitioner along with carrying cost. However, it is the contention of the petitioner RIPL that since the delay relates to the period after the invoice dated 25.01.2018 was raised, petitioner is entitled to LPS also in terms of the PPAs. It is on this ground that the petition has sought review of the said judgment dated 06.02.2024 of this Tribunal.

7. We have heard learned counsel for the petitioner as well as learned senior counsel appearing on behalf of the 2<sup>nd</sup> respondent MSEDCL. We have also gone through the judgment dated 06.02.2024, which is sought to be reviewed, as well as the review petition and the reply filed on behalf of the 2<sup>nd</sup> respondent. PPAs executed between the petitioner and the 2<sup>nd</sup> respondent have also been perused.

8. As would be seen, vide judgment dated 06.02.2024, which is under review, this Tribunal had held the petitioner entitled to be compensated by MSEDCL for the penalty amount imposed upon the petition by the SECL and accordingly MSEDCL was directed to make payment of Rs. 39,76,78,719.63 together with Rs. 7,15,82,170/- towards GST along with carrying cost. The issue for consideration before us in this review petition is whether the petition is entitled to these amounts along with carrying cost or along with LPS or both as contended in this review petition.

9. In this regard, we find clause 8.8 of the PPAs relevant and we quote the same hereunder: -

***“8.8 Payment of Supplementary Bill***

8.8.1 *Either Party may raise a bill on the other Party (“Supplementary Bill”) for payment on account of:*

- i) Adjustments required by the Regional Energy Account (if applicable);*
- ii) Tariff Payment for change in parameters, pursuant to provisions in Schedule 4; or*
- iii) Change in Law as provided in Article 10,*

*and Such Supplementary Bill shall be paid by the other Party.*

8.8.2 *The Procurer shall remit all amounts due under a Supplementary Bill raised by the Seller to the Seller’s Designated Account by the Due Date and notify the Seller of such remittance on the same day or the Seller shall be eligible to draw such amounts through the Letter of Credit. Similarly, the Seller shall pay all amounts due under a Supplementary Bill raised by Procurer by the Due Date to concerned Procurer’s designated bank account and notify such Procurer of such payment on the same day. For such payments*

*by the Procurer, Rebate as applicable to Monthly Bills pursuant to Article 8.3.6 shall equally apply.*

*8.8.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 8.3.5.*

*8.9 The copies of all notices which are required to be sent as per the provisions of this Article 8, shall be sent by either Party to the other Party.”*

*(Emphasis supplied)*

10. Invoice dated 25.01.2018 raised by petitioner in the name of MSEDCL for the penalty amount of Rs.39.76 crores was a supplementary invoice and hence, in terms of the above noted clause 8.8 of the PPAs, the same was payable by MSEDCL within the due date as communicated by the petitioner and in the event of delay in payment, LPS has to be levied at the same terms as applicable to the monthly bills as per clause 8.3.5 of the PPAs. Clause 8.3.5 of the PPAs is reproduced hereinbelow: -

*“8.3.5 In the event of delay in payment of a Monthly Bill by the Procurer beyond its Due Date, a Late Payment*



*Surcharge shall be payable by such Procurer to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly rest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.*

*(Emphasis supplied)*

11. Upon reading of the clause 8.8 of the PPAs in conjunction with clause 8.3.5, it is manifest that in the event of delay in payment of supplementary bill, the bill amount has to be paid by the defaulting party along with LPS at the rate of two per cent (2%) in excess of the applicable SBAR per annum. Therefore, petitioner was entitled to the penalty amount as well as GST along with LPS as provided in clause 8.3.5 of the PPAs.

12. It appears that the above noted two clauses of the PPAs escaped the attention of this Tribunal while passing the judgment in question, even though, submissions in this regard had been made by the petitioner's counsel. We are of the considered opinion that the judgment dated 06.02.2024 of this

Tribunal suffers from a glaring patent error which needs to be rectified by way of these proceedings.

13. Hence, the review petition is allowed and the operating portion of the judgment dated 06.02.2024 is modified, which shall now read as under: -

*“For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 41 of 2019 filed by Rattan India Power Limited has merit and is hereby allowed.*

*The Impugned Order dated 23.10.2018 passed by the Maharashtra Electricity Regulatory Commission is set aside to the extent whereby the Appellant was denied compensation for the penalty imposed by the fuel company for nonprocurement of minimum quantity of fuel.*

*We also direct the Respondent No. 2 i.e. MSEDCL*

*i) to make payment of Rs. 39,76,78,719.63 to the Appellant which was paid by RattanIndia as penalty to SECL for the period April 2016 to March 2017, along with LPS at the rate of two per cent (2%) in excess of the applicable SBAR per annum, and*

*ii) to make payment of Rs. 7,15,82,170 towards GST imposed by SECL on the Appellant, along with LPS at the rate of two per cent (2%) in excess of the applicable SBAR per annum.”*

Pronounced in the open court on this the 14<sup>th</sup> day of November, 2024.

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

*tp*