IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

EXECUTION PETITION NO. 05 OF 2024

Dated: 9th January 2025

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

1. GMR Energy Limited
Mr. Ashwani Kumar Maini, Legal Head
Registered Office: 25/1, 3rd Floor,
Skip House, Museum Road,
Bangalore – 560 001

Corporate Office:
Building No. 302, New Shakti Bhawan,
New Udaan Bhawan Complex,
Opposite Terminal – 3,
Indira Gandhi International Airport,
New Delhi – 110037. … Petitioner No. 1

2. GMR Energy Trading Limited
Mr. Ashwani Kumar Maini, Legal Head
Registered Office: 25/1, 3rd Floor,
Skip House, Museum Road,
Bangalore – 560 001

Corporate Office:
Building No. 302, New Shakti Bhawan,
New Udaan Bhawan Complex,
Opposite Terminal – 3,
Indira Gandhi International Airport,
New Delhi – 110037. … Petitioner No. 2

VERSUS

1. Bangalore Electricity Supply Company Limited
Through its Managing Director,
Paradigam Plaza, A.B. Shetty Circle
Mangalore 575001
Now at: 1st Floor, MESCOM Bhavan,

Kavoor, Cross Road, Bejai,
Mangalore – 575004. ... Respondent No.1

2. Power Company of Karnataka Limited
Through its Managing Director,
Cauvery Bhavan, K.G. Road,
Bangalore – 560001.
Now at: Room No. 501, 5th Floor,
KTPCL Building,
Kaveri Bhavan, K.G. Road,
Bangalore – 560009. ... Respondent No.2

3. Mangalore Electricity Supply Company Limited
Through its Managing Director,
Paradigam Plaza, A.B. Shetty Circle
Mangalore – 575001
Now at: 1st Floor, MESCOM Bhavan,
Kavoor, Cross Road, Bejai,
Mangalore – 575004. ... Respondent No.3

4. Chamundeshwari Electricity Supply Corporation Limited
Through its Managing Director,
927, L.J. Avenue, New Kantharaj Urs Road
Saraswathipuram.
Now at: 29, Vijayanagara, 2nd Stage,
Hinkal, Mysuru – 570017. ... Respondent No.4

5. Hubli Electricity Supply Company Limited
Through its Additional Chief Secretary,
Saraswathipuram, Mysore – 570009
Now at: P.B. Road, Navanagar
Hubblli – 580025. … Respondent No. 5

6. Gulbarga Electricity Supply Company Limited
Through its Managing Director,
Station Road, Gulbarga – 585101
Now at: Main Road, Gulbarga – 585101. ... Respondent No.6

7. Karnataka Electricity Regulatory Commission
Through its Secretary,
6th and 7th Floor, Mahalaxmi Chambers,
No. 9/2, M.G. Road, Bangalore – 560001. ... Respondent No.7

8. Government of Karnataka
Through its Principal Secretary,

Department of Energy,
Vikasa Soudha, Dr. B.R. Ambedkar Street,
Bangalore – 560001. ... Respondent No.8

9. Karnataka Power Transmission Corporation Limited
Through its Managing Director,
K.R. Circle, Bangalore – 560009.
Now at: Kaveri Bhavan, K.G. Road,
Bangalore – 560009. ... Respondent No.9

10. State Load Despatch Centre - Karnataka
Through its Chief Engineer,
Ananda Rao Circle,
Bangalore – 560009. … Respondent No. 10

Counsel on record for the Petitioner	:	Vishrov Mukerjee Yashaswi Kant Girik Bhalla Pratyush Singh Damodar Solanki Raghav Malhotra Priyanka Vyas Juhi Senguttuvan Anamika Rana Shreya Sundraraman for App. 1 & 2
Counsel on record for the Respondent(s)	:	Anand K. Ganesan Swapna Seshadri Ritu Apurva Amal Nair Kriti Soni Utkarsh Singh Karthikeyan M Kritika Khanna for Res.2 to 6

O R D E R

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

This Petition has been filed by GMR Energy Limited ("**GEL**") and GMR Energy Trading Limited ("**GETL**"), under Section 120(3) of the

Electricity Act, seeking execution of the Judgment of this Tribunal in Appeal Nos. 37 and Appeal No. 303 of 2013 dated 23.05.2014, read with the Orders passed by the Supreme Court in Civil Appeal Nos. 8439-8440 of 2014 dated 30.03.2022 and in Miscellaneous Application No. 1388 of 2022 dated 28.11.2023.

By way of this Petition, the Petitioners are seeking directions for payment of the outstanding dues, from Bangalore Electricity Supply Company Limited ("BESCOM" for short) and the other Distribution Licensees in the State of Karnataka (the "Respondent Discoms" for short), amounting to Rs. 135.65 Crore (Computed till 31.12.2023) comprising of the following:- (a) Rs. 42.78 Crore payable as interest due in accordance with the directions of this Tribunal in its Judgment dated 23.05.2014 read with the Orders of the Supreme Court in Civil Appeal Nos. 8439-8440 of 2014 dated 30.03.2022 and in Miscellaneous Application No. 1388 of 2022 dated 28.11.2023; (b) Rs. 0.19 Crores towards balance principal amount which was short paid by the Respondents; and (c) Rs. 92.68 Crores towards time value of money as the Petitioners were entitled to payment of tariff of Rs. 6.90 from March 2009 onwards.

According to the Petitioners, the outstanding amounts are due and payable to them in terms of the Judgment of this Tribunal dated 23.05.2014 which has been confirmed by the Order of the Supreme Court dated 30.03.2022; the outstanding dues pertain to power supplied to the Government of Karnataka during the period 01.01.2009 to 31.05.2009 pursuant to the State Government's Orders dated 30.12.2008 and 01.01.2009 issued under Section 11 (1) of the Electricity Act, 2003.

A. JUDGEMENT OF THIS TRIBUNAL WHICH IS SOUGHT TO BE EXECUTED:

Appeal Nos. 37 and 303 of 2013 were filed before this Tribunal against the order of the Karnataka Electricity Regulatory Commission ('KERC' for short) dated 30.11.2012 determining the rate, at which the generating company must be paid by the distribution companies, to offset the adverse financial impact suffered by it as a result of the State Government's order under Section 11(1) of the Electricity Act, 2003 for supply of power to the distribution companies. While Appeal No. 37 of 2013 was filed by GMR Energy Ltd-the generating company, Appeal No. 303 of 2013 was filed by the distribution licensees and the Power Company of Karnataka Ltd, the State owned trading company responsible for procuring power for supply to the distribution licensees.

In its order in Appeal Nos.37 and 303 of 2013 dated 23.05.2014, this Tribunal, after noting that (1) M/s. GMR had sought compensation for supplies made up to 6.6.2009, (2) the State Commission had determined the rate upto 31.5.2009 in terms of the Section 11(1) order of the State Government dated 1.1.2009 which required M/s. GMR to effect supply upto 31.5.2009, (3) the State Commission had ignored the period of 6 days in June 2009 holding that it was a short period, and (4) GMR had been paid Rs. 5.50 per unit during this period, this Tribunal, in its judgement dated 23.05.2014, held that they did not wish to interfere with the above findings of the State Commission considering that the State Government's order dated 1.1.2009 specified the period of Section 11(1) up to 31.5.2009, and bills for the period 1.6.2009 to 6.6.2009 had been settled by PCKL/distribution licensees @ Rs.5.50 per unit.

On the issue regarding interest for the period of delay in payment by the distribution licensees, this Tribunal, after noting that the State Commission, in the impugned order, had directed the Respondents (distribution licensees/PCKL) to pay to GMR the difference between Rs.

6.90 per unit and the actual payments already made i.e. Rs. 5.50 per unit for all electricity supplied from the 1.1.2009 to 31.5.2009 within 4 (four) weeks from the date of the order, observed that the DistributionLicensees had not honoured the directions of the State Commission; this Tribunal had already held, in **HIMATSINGKA SEIDE** case, that payment should have been made to the generating company within a reasonable time after raising of invoice, and the delay in payment had also caused adverse financial impact on the generating company which was required to be compensated; in this case GMR had challenged the validity of the directions of the State Government under Section 11(1) in a Writ Petition before the High Court which was dismissed; thereafter, SLP was filed by GMR before the Supreme Court; during the proceeding before the Supreme Court, GMR had sought leave to raise the issue of offsetting the adverse financial impact before the State Commission which was granted; only then GMR had filed a petition before the State Commission which resulted in passing of the impugned order; therefore, GMR could not claim the benefit of interest, for the period prior to determination of the adverse financial impact under Section 11(2) of the Act by the State Commission through the impugned order, as the delay in filing the petition before the State Commission seeking relief u/s 11(2) was on their own accord; however, money became due for payment to GMR four weeks from the date of the impugned order dated 30.11.2012; accordingly, GMR was entitled to interest for the period commencing after four weeks from 30.11.2012 till the outstanding payment was made fully by PCKL/distribution licensees; GMR had filed an IA for payment of dues as per the order of the State Commission, but it was vehemently opposed by the distribution licensees/PCKL; as payment of money was due to GMR four weeks after 30.11.2012 as per the impugned order, which was not honoured even though there was no stay on the impugned order, GMR was entitled to simple interest @ 12% from the date

when the payment was due to be paid to GMR, as per the impugned order of the State Commission. till 30 days from the date of communication of this judgment; and thereafter, for any further delay in payment, GMR would be entitled to interest @ 12% per annum on the outstanding dues to be compounded on quarterly basis.

This Tribunal summarized its findings holding: (i) off-setting the adverse financial impact on a generator which supplied electricity to the distribution licensees, in compliance with the directions of the State Government under Section 11(1) of the Electricity Act, 2003, would mean fixing a rate keeping in view of the revenue, the generator could have realized in the short term market subject to the condition that the rate covers the cost of generation so that the generating company does not incur a loss. (ii) the judgement of this Tribunal, in **Himatsingka Seide Vs KERC & Others** (judgment in Appeal No. 141 of 2012 and batch dated 3.10.2012: 2013 ELR (APTEL) 0106), would squarely apply to the present case; (iii) but for the directions of the State Government under Section 11(1) of the Act, GMR would have sold its power in the market as its PPA for long term supply with the distribution licensee had expired in June 2008, and since then it was selling power in the short term market; thus, there was no infirmity in the State Commission linking the price of power supplied by GMR against the direction under Section11(1) to the market rate of power; but for the order of the State Government to supply power at Rs. 5.50 per unit, GMR would have sold its power in the market rate and, therefore, the adverse financial impact of the directions under Section 11(1) will be the difference between the rate that GMR would have got in the short term market and the rate fixed by theState Government i.e. Rs. 5.50 per unit; (iii) the State Government cannot regulate supply including the price and other terms and conditionsof supply by a generating company during

the period when Section 11(1) is in vogue under the Essential Commodities Act, 1955; Electricity is not an essentialcommodity within the meaning of the provisions of the Essential Commodities Act, 1955 as held by the Supreme Court in **Tata Power Co. Ltd. Vs. Reliance Energy Ltd:** (2009) 16 SCC 659; the Electricity Act is a complete Code, and the State Commission alone has to offset the adverse financial impact of the direction under Section 11(1) of the Electricity Act, 2003 as per Section 11(2) of the Act; the State Government is only empowered to give directions under Section 11(1) of the Act for operation and maintenance of the generating station; (iv) the principles of determination of tariff under Section 61, 62 and 86(1)(b) of the Electricity Act shall not be applicable for determination of compensation to the generating company to offset the adverse financial impact of the direction under Section 11(1) of the Act; (v) the State Commission had correctly determinedthe rate of power for supply by GMR, during the period of operation of the Section 11(1) order, from January 2009 to May 2009 which fairly offsets the adverse financial impact of the Section 11(1) directions on GMR; (vi) the contention of GMR for rate of Rs. 8.85 per unit for January 2009, and the rates claimed for the period from February, 2009 to May, 2009, was liable to be rejected; (vii) GMR was entitled to simple interest @ 12% from the date when payment was due to be paid to GMR as per the impugned order of the State Commission till 30 days from the date of communication of this judgment; thereafter, for any further delay in payment by the distribution licensees/PCKL, GMR would be entitled to interest @ 12% per month on the outstanding dues to be compounded on quarterly basis.

In view of the above findings, Appeal No. 37 of 2013 filed by GMR was allowed in part, and Appeal No. 303 of 2013 filed by the Distribution Licensee was dismissed.

B. RIVAL CONTENTIONS:

Elaborate submissions, both oral and written, were put forth by Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the Petitioner and Sri P. Chidambaram, Learned Senior Counsel appearing on behalf of the Respondents. It is convenient to consider the rival contentions under different heads.

I. CLAIM FOR COMPOUND INTEREST ON OUTSTANDING DUES:

a. SUBMISSIONS URGED ON BEHALF OF THE PETITIONER:

Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the Petitioners, would submit that, as per the Judgment of this Tribunal (which was confirmed by the Supreme Court), the Petitioners are entitled to compound interest, on all outstanding dues, till the date of complete payment; this Tribunal vide its Judgment: (a) upheld the Order of the KERC in OP No. 47 of 2011 dated 30.11.2012 which held that the Petitioners were entitled for payment of Rs. 6.90/unit instead of Rs. 5.50/unit for the power supplied, pursuant to the directions under Section 11 of the Electricity Act, 2003, from January 2009 to May 2009; the Respondents were directed to pay the difference of Rs. 1.40/unit within 4 weeks of the KERC Order; (b) the petitioners were held entitled to simple interest @12% from the due date of payment in terms of the KERC Order till 30 days from the date of communication of APTEL Judgment*; f*or further delay in payment, the petitioners were held entitled to interest @12% per annum on the outstanding dues, compounded quarterly; thus, in terms of APTEL Judgment, the Petitioners are entitled for payment of the differential amount (Rs. 1.40/unit) as per KERC Order by 28.12.2012 (i.e. 4 weeks from KERC

Order dated 30.11.2012); further, Petitioners are entitled to simple Interest from 28.12.2012 till 23.06.2014, and compound interest (with quarterly rests) for any delay in payment from 24.06.2014 onwards till the date of complete payment of the outstanding dues; in view of the foregoing, the petitioners are entitled to Rs. 47.21 Crores as the balance outstanding dues (comprising of Rs. 47.02 Crores as outstanding interest + 0.19 Crores as balance principal amount); a copy of the computation, of the amounts due and payable to the Petitioners (as on 31.10.2024), is annexed as Annexure-A; evidently, for the period beyond 24.06.2014, computation of interest on compounding basis (with quarterly rests) would entail addition of the interest component qua the first quarter with the principal for the subsequent quarter; thus, interest would be calculated on the new outstanding amount comprising the original principal and the accumulated interest; as a result, the amounts are no longer distinguishable between principal and interest; they are simply to be considered as outstanding dues; it is in recognition of this principle that this Tribunal consciously chose the term 'outstanding dues' in Para 53(viii), instead of the outstanding principal amount; the foregoing position is in accordance with the Supreme Court judgment in ***Hyder Consultancy*** (2015) 2 SCC 189; thus, '*outstanding dues*' necessarily includes the unpaid amounts including outstanding interest; reliance placed by the Respondents on the Interim Order dated 15.05.2015 (whereby the Supreme Court directed payment of principal amount and stayed recovery of interest), and the Judgment in ***Gurpreet Singh*** (2006) 8 SCC 457, to contend that interest is payable only till 15.02.2016 (date when the principal amount was paid) is incorrect since: (a) the APTEL Judgment categorically directed payment of interest on 'outstanding dues', and not the outstanding principal amount; this position is in accordance with the **Hyder Judgment;** thus, the decree itself provided for inclusion of interest in the principal amount; therefore, any reliance on

the **Gurpreet Singh** Judgment is incorrect which was rendered in the context of the Land Acquisition Act involving multiple decrees at various stages; (b) the Interim Order of the Supreme Court dated 15.05.2015 stood vacated pursuant to the final order of the Supreme Court; it is settled law that, upon passing of the final order/judgment, the interim stay stands vacated and the party finally succeeding is entitled to compensation and to be placed in the same situation had the interim order not been passed [***J.K. Synthetics,*** (2011) 12 SCC 518; ***Mineral Area Development Authority*** 2024 SCC OnLine SC 1974; and ***Kanoria Chemicals*** (1997) 5 SCC 772; the Respondents' contention, if accepted, will result in an absurdity since liability to pay interest would only be till 2016, irrespective of when the Supreme Court finally decided the Civil Appeal; for instance, had the Civil Appeal been dismissed in 2040, there would be no liability to pay interest for the period 2016-2040; and such a position is incorrect and cannot be countenanced.

b. SUBMISSIONS ON BEHALF OF THE 2ND RESPONDENT:

Sri P. Chidambaram, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that, by its Order dated 23.05.2014, this Tribunal had directed the distribution licensees to pay (a) the differential tariff (Rs. 6.90 – Rs. 5.50) as per the Order of the State Commission dated 30.11.2012, together with 12% simple interest from 28.12.2012, within 4 weeks of the State Commission's Order, to be paid by 23.06.2014; and (b) failing such payment, to pay compound interest at 12% per annum with quarterly rest. (Para 53 (viii)); the expression '*outstanding dues*' in para 53(viii) of the Order dated 23.05.2014 refers to the payment due as per the Impugned Order of the State Commission referred to earlier in the same paragraph, and not to any fresh amounts; the above Order was subjected

to challenge in the Supreme Court; on 15.05.2015, an interim Order was passed directing payment of the principal amount, and the interest component was stayed; pursuant to the above, the entire principal amount of Rs. 67,41,81,497 was paid by the Distribution Licensees by 15.02.2016; payments were made by the distribution licensees, and appropriated by the Petitioners, only towards the principal amount, and not towards any outstanding or accrued interest; thus, no principal amount is outstanding after 15.02.2016; the Civil Appeal was dismissed by the Supreme Court on 30.03.2022; pursuant thereto, after vacation of the interim order, the outstanding interest was also paid by the distribution licensees by 08.06.2022; this included the accrued simple interest up to 23.06.2014, and the accrued compound interest up to 15.02.2016 (when the principal amount was paid); the Supreme Court's order was dated 30.03.2022, and payment was made within a reasonable time by 08.06.2022.

Sri P. Chidambaram, Learned Senior Counsel, would further submit that the Petitioner's claim now is for interest to be paid on the accrued outstanding interest, which was stayed in terms of the interim Order of the Supreme Court dated 15.05.2015; no interest is payable on the principal amount after 15.02.2016, and reference may be made in this regard to the decision of the Supreme Court in **Gurpreet Singh v Union of India, (2006) 8 SCC 457;** admittedly, appropriation of payment on 15.02.2016 was directed only towards the principal amount, and was admittedly appropriated by the Petitioners only towards the principal amount; it is not open to the Petitioners to now appropriate the same towards accrued interest (Ref: **Gurpreet Singh v Union of India, (2006) 8 SCC 457, para 53)**; no principle of law permits payment of interest solely on accrued interest, when the principal amount has already been paid; further, the interest was stayed under the interim order of the Supreme Court; when the

interim order was vacated, while dismissing the Civil Appeal, it was for the Petitioners to seek any directions on the interest on accrued interest, which they did not do; it was not their case that the DISCOMs had wrongfully delayed payment of interest; the interest was withheld under the interim protection granted by the Supreme Court; the Executing Court cannot go behind the terms of the Decree/order; when the Civil Appeal was dismissed by the Supreme Court, there was no direction that the outstanding interest (that had been stayed), shall be paid, with interest on the outstanding interest, till the date of payment; and what the Petitioner seeks is for this Tribunal to read words into the Supreme Court's order dated 30.03.2022 which simply dismissed the Civil Appeal.

c. JUDGEMENTS RELIED BY EITHER SIDE UNDER THIS HEAD:

1. In Para 52 and 53 (viii) of its judgement in Appeal Nos. 37 and 303 of 2013 dated 23.05.2014, this Tribunal observed thus:-

> *"……52. As the payment of money was due to GMR four weeks after 30.11.2012 as per the impugned order which was not honoured even though there was no stay on the impugned order, we hold that the GMR is entitled to simple interest @ 12% from the date when the payment was due to be paid to GMR as per the impugned order of the State Commission till 30 days from the date of communication of this judgment.*
>
> *Thereafter, for any further delay in payment, GMR will be entitled to interest @ 12% per annum on the outstanding duesto be compounded on quarterly basis. Accordingly, directed.*
>
> ***Para 53. Summary of our findings:***

(viii). GMR is entitled to simple interest @ 12% from the date when payment was due to be paid to GMRas per the impugned order of the State Commission till 30 days from the date of communication of this judgment. Thereafter, for any further delay in payment by the distribution licensees/PCKL, GMR will be entitled to interest @ 12% per month on the outstanding dues to be compounded on quarterly basis……"

2. In **Hyder Consulting (UK) Ltd vs Governor, State of Orissa: (2015) 2 SCC 189,** the Supreme Court observed that Section 31(7)(*a*) of the Arbitration & Conciliation Act employs the words "… *the Arbitral Tribunal may include in the sum for which the award is made interest*…"; the words "*include* in the *sum*" are of utmost importance; this would mean that pre-award interest is not independent of the "*sum*" awarded; if in case the Arbitral Tribunal decides to award interest at the time of making the award, the interest component will not be awarded separately but it shall become part and parcel of the award; an award is thus made in respect of a "*sum*" which includes within the "*sum*" component of interest, if awarded; therefore, for the purposes of an award, there is no distinction between a "*sum*" with interest, and a "*sum*" without interest; once the interest is "*included in the sum*" for which the award is made, the original sum and the interest component cannot be segregated, and be seen independent of each other; and the interest component then loses its character of "*interest*", and takes the colour of "*sum*" for which the award is made.

3. In **Gurpreet Singh v. Union of India, (2006) 8 SCC 457,** the questions which arose for consideration before the Supreme Court was what was the rule of appropriation in execution of money decrees?; was the rule the same in the case of an award-decree under the Land Acquisition Act or was there anything in the Land Acquisition Act, 1894 as amended by

the Land Acquisition (Amendment) Act (68 of 1984) making that rule inapplicable or not wholly applicable?

It is in this context that the Supreme Court observed that, in **Prem Nath Kapur v. National Fertilizers Corpn. of India Ltd: (1996) 2 SCC 71,** a three-Judge Bench of the Supreme Court had held that the expression "compensation" under Section 23(1) of the Land Acquisition Act, 1894 as amended by Act 68 of 1984, read in the context of Section 28 or Section 34 thereof, by necessary implication excluded solatium, and that no interest was payable on solatium or on the additional amount under Section 23(1-A) of the Act; in other words, it was held that the liability to pay interest was only on the excess amount of compensation determined under Section 23(1) of the Act by the civil court either under Section 26 or on appeal under Section 54 of the Act over and above the amount awarded under Section 11 of the Act; the normal rule of appropriation contained in Order 21 Rule 1 of the Code of Civil Procedure, relating to execution of decrees for recovery of money, stood excluded by Sections 28 and 34 of the Land Acquisition Act and the principles of Order 21 Rule 1 of the Code could not be extended to execution of award-decrees under the Land Acquisition Act; the view as regards the content of the expression "compensation" occurring in Section 23(1) and Section 28 of the Land Acquisition Act was overruled by a Constitution Bench in ***Sunder* v. *Union of India*: (2001) 7 SCC 211**, wherein it was held that the expression "compensation" awarded would include not only the total sum arrived at as per Section 23(1) but also the sums under the remaining sub-sections of Section 23; thus, one part of the decision in **Prem Nath Kapur: (1996) 2 SCC 71** stood overruled, though the Constitution Bench did not say anything about the other aspect dealt with therein, namely, the mode of appropriation of the amount due under an award-decree; when these cases came up before a Bench of three Judges,

this aspect was noticed; the learned Judges felt that the question whether this part of the judgment in **Prem Nath Kapur: (1996) 2 SCC 71** would survive the reasoning in **Sunder: (2001) 7 SCC 211** had to be reconsidered and, even otherwise, the correctness of the view expressed therein required reconsideration at the hands of a Constitution Bench; and it was thus that these petitions for special leave to appeal had come up before them.

The Supreme Court opined that the question that was required to be answered was whether the rule, of what may be called the different stages of appropriation, set out in **Prem Nath Kapur: (1996) 2 SCC 71,** was correct or whether the rule was required to be restated on the scheme of the Land Acquisition Act understood in the context of the general rules relating to appropriation and the rules relating to appropriation in execution of money decrees and mortgage decrees; appropriation was the act of setting apart or assigning a thing or substance to a particular use or person to the exclusion of others; application to a special use or purpose; there were three specialised meanings of the term: (*i*) in company accounting, it was the division of pre-tax profits between corporation tax, company tax, company reserves and dividends to shareholders. The term works in the same sense in a partnership situation. (*ii*) in the shipping of produce, the appropriation is the document by which the seller identifies to the buyer the relevant unit in shipment. (*iii*) If a debtor makes a payment to a creditor and does not specify which debt the payment is in settlement of, the creditor may appropriate it to any of the debts outstanding on the debtor's account. This is often known as appropriation of payments. (See *P. Ramanatha Aiyar's Advanced Law Lexicon*, 3rd Edn., 2005, p. 315.); and they were concerned with the last of the specialised meanings assigned to the term.

The Supreme Court observed that the question, in the sense in which they were concerned with, arose when a debtor makes a payment which

does not satisfy the full debt or, in other words, remains a part-payment; the general rule of appropriation was set out in *Halsbury's Laws of England*, 4th Edn., thus, *"where several distinct debts are owing by a debtor to his creditor, the debtor has the right when he makes a payment to appropriate the money to any of the debts that he pleases, and the creditor is bound if he takes the money, to apply it in the manner directed by the debtor. If the debtor does not make any appropriation at the time when he makes the payment, the right of appropriation devolves on the creditor…...*

An appropriation by the debtor need not be made in express terms, but must be communicated to the creditor or be capable of being inferred; it may be inferred where the nature of the transaction or the circumstances of the case are such as to show that there was an intention to appropriate."; the principle of appropriation was set out in *Chitty on Contracts*, 29th Edn., Vol. I in para 21-059, thus: *"Where several separate debts are due from the debtor to the creditor, the debtor may, when making a payment, appropriate the money paid to a particular debt or debts, and if the creditor accepts the payment so appropriated, he must apply it in the manner directed by the debtor; if, however, the debtor makes no appropriation when making the payment, the creditor may do so.";* and the question of appropriation as between principal and interest is set out in para 21-067 in the following words: *"Where there is no appropriation by either debtor or creditor in the case of a debt bearing interest, the law will (unless a contrary intention appears) apply the payment to discharge any interest due before applying it to the earliest items of principal."*

The Supreme Court then held that, though a decree-holder may have the right to appropriate the payments made by the judgment-debtor, it could only be as provided in the decree, if there is provision in that behalf in the decree or, as contemplated by Order 21 Rule 1 of the Code; the Code or

the general rules do not contemplate payment of further interest by a judgment-debtor on the portion of the principal he has already paid; his obligation is only to pay interest on the balance principal remaining unpaid as adjudged either by the court of first instance or in the court of appeal; on the pretext that the amount adjudged by the appellate court is the real amount due, the decree-holder cannot claim interest on that part of the principal already paid to him; out of what is paid, he can adjust the interest and costs first and the balance towards the principal, if there is a shortfall in deposit; but, beyond that, the decree-holder cannot seek to reopen the entire transaction and proceed to recalculate the interest on the whole amount and seek a reappropriation as a whole in the light of the appellate decree; the essential ratio in **Prem Nath Kapur: (1996) 2 SCC 71,** on appropriation being at different stages is justified though if at a particular stage there is a shortfall, the awardee-decree-holder would be entitled to appropriate the same on the general principle of appropriation, first towards interest, then towards costs and then towards the principal, unless, of course, the deposit is indicated to be towards specified heads by the judgment-debtor while making the deposit intimating the decree-holder of his intention; and the ratio of **Prem Nath Kapur [(1996) 2 SCC 71**, on the aspect of appropriation was approved.

The Supreme Court further observed that, on the question of appropriation, the decision in **Sunder: (2001) 7 SCC 211** did not have such an impact as to compel them to jettison the reasoning adopted in **Prem Nath Kapur: (1996) 2 SCC 71**; even going by Order 21 Rule 1 of the Code, the position would be as envisaged in **Prem Nath Kapur: (1996) 2 SCC 71;** that apart, they were inclined to agree with the reasoning in **Prem Nath Kapur: (1996) 2 SCC 71** that, on the wording of Section 34 and Section 28 of the Land Acquisition Act read with and understood in the light of the

stages of the award of compensation, the question of appropriation would be at different stages, and a decree-holder would not be entitled to reopen the entire transaction to claim a reappropriation of the amounts already received by him and appropriated at that particular stage; reliance on the doctrine of merger did not enable the decree-holder to get over the scheme adopted by the Land Acquisition Act; **Prem Nath Kapur: (1996) 2 SCC 71,** also indicated that, when an award-decree is passed specifying the amounts under different heads like the amount under Section 23(1), the amount under Section 23(2), the amount under Section 23(1-A) and the interest under Section 28 and the judgment-debtor makes a deposit of specified sums under these different heads, it will amount to the judgment-debtor intimating the decree-holder as to how the sum deposited is to be applied in discharge of the obligation of the judgment-debtor; once a decree-holder receives the payment of the sums thus deposited, he would be accepting the appropriation made by the judgment-debtor under the award-decree in the scheme of the Land Acquisition Act; **Prem Nath Kapur: (1996) 2 SCC 71**also indicated that, when the decree itself specifies the amount payable under different heads (the decree has to do so under Section 26 of the Land Acquisition Act), and amounts are deposited towards those different heads, appropriation would be on the basis of the direction under the decree which must be taken to be one for crediting the various sums paid under the particular heads; on the scheme of the Land Acquisition Act, especially the wordings of Section 34 and Section 28 of the said Act, it is not possible to say that the said approach made in **Prem Nath Kapur: (1996) 2 SCC 71,** is erroneous or is unreasonable; therefore, when the judgment-debtor State makes a deposit along with the calculation appropriating distinct sums towards various heads of compensation as awarded by the Reference Court or by the appellate court in the appellate decree, and the amount is received by the decree-holder, the decree-holder

must be taken to be not entitled to seek an appropriation as if the judgment-debtor has not made any intimation, and that he is entitled to appropriate at his volition; considering the scheme of compensation under the Land Acquisition Act in the context of the specific nature of the items specifically referred to in Section 23 of the said Act, the approach adopted in **Prem Nath Kapur: (1996) 2 SCC 71** was justified; a reappropriation by seeking to reopen the satisfaction already rendered might result in interest being made payable even on that part of the principal amount that had already been deposited and received by the decree-holder; and that would be in the realm of unjust enrichment.

The Supreme Court also observed that, in case a part of the amount awarded by the Reference Court or by the appellate court is deposited pursuant to an interim order of the appellate court or of the further appellate court and the awardee is given liberty to withdraw that amount, the amount would be received by the decree-holder on the strength of the interim order and the appropriation will be subject to the decision in the appeal or the further appeal and the direction, if any, contained therein; in such a case, if the appeal is disposed of in his favour, the decree-holder would be entitled to appropriate the amount already received by him pursuant to the interim order, first towards interest then towards costs and the balance towards principal as on date of the withdrawal of the amount, and claim interest on the balance amount of enhanced compensation by levying execution; but on the part appropriated towards the principal, the interest would cease from the date on which the amount is received by the awardee; if, while passing the interim order, the court has indicated as to how the deposited amount is to be appropriated, that direction will prevail; and the appropriation could only be done on the basis of that direction.

4. In **Kanoria Chemicals and Industries Ltd. v. U.P. SEB, (1997) 5 SCC 772,** the Supreme Court found it difficult to agree with the contention that, where the operation of a government order is stayed, no surcharge can be demanded upon the amount withheld. The Supreme Court held that the grant of an injunction does not relieve the consumers of their obligation to pay the charges at the enhanced rates and, therefore, the demand for surcharge/interest for such period is not illegal; they agreed with the High Court that **Adoni Ginning: (1979) 4 SCC 560** cannot be read as laying down the proposition that the grant of stay of a notification, revising the electricity charges, has the effect of relieving the consumers/petitioners of their obligation to pay late payment surcharge/interest on the amount withheld by them even when their writ petitions are dismissed ultimately; holding otherwise would mean that even though the Electricity Board, who was the respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulations; it would be a case where the Board suffers prejudice on account of the orders of the court and for no fault of its; it succeeds in the writ petition and yet loses; the consumer files the writ petition, obtains stay of operation of the notification revising the rates and fails in his attack upon the validity of the notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply — which terms and conditions indeed form part of the contract of supply entered into by him with the Board; they did not think that any such unfair and inequitable proposition could be sustained in law; no such proposition flowed from **Adoni Ginning: (1979) 4 SCC 560;** an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding, and it is the duty of the court in such a case to put the parties in the same position they would ve been but

for the interim orders of the court; any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its, and would also mean rewarding a writ petitioner in spite of his failure; such an unjust consequence cannot be countenanced by the courts.

5. On the liability to pay interest for the period of stay when the stay is ultimately vacated, the Supreme Court, in **State of Rajasthan v. J.K. Synthetics, (2011) 12 SCC 518**, relied on **Kanoria Chemicals and Industries Ltd. v. U.P. SEB: (1997) 5 SCC 772,** wherein it was held that grant of stay of a notification revising the electricity charges does not have the effect of relieving the consumer of its obligation to pay interest (or late payment surcharge) on the amount withheld by them by reason of the interim stay, if and when the writ petitions are dismissed ultimately; holding otherwise would mean that even though the Electricity Board, which was the respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulations; it would be a case where the Board suffers prejudice on account of the orders of the court and for no fault of its; it succeeds in the writ petition and yet loses; the consumer files the writ petition, obtains stay of operation of the notification revising the rates and fails in his attack upon the validity of the notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply—which terms and conditions indeed form part of the contract of supply entered into by him with the Board; and such unfair and inequitable proposition cannot be sustained in law; it was equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding, and it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim

orders of the court; any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure; and such unjust consequence cannot be countenanced by the courts.

The Supreme Court, in **State of Rajasthan v. J.K. Synthetics, (2011) 12 SCC 518**, thereafter observed that the above principles had been followed and reiterated by the Supreme Court in **Rajasthan Housing Board v. Krishna Kumari [(2005) 13 SCC 151] and Nava Bharat Ferro Alloys Ltd. v. Transmission Corpn. of A.P. Ltd. [(2011) 1 SCC 216;** the Supreme Court in **South Eastern Coalfields case: (2003) 8 SCC 648** had held that the principle of restitution has been statutorily recognised in Section 144 of the Code of Civil Procedure, 1908; Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree; the scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order; the interim order passed by the court merges into a final decision; the validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage; unless otherwise ordered by the court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it; the successful party can demand (*a*) the delivery of benefit earned by the opposite party under the interim order of the court, or (*b*) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution far from meeting the ends of justice, would rather defeat the same; undoing the effect of an interim order by resorting to principles of

restitution is an obligation of the party, who has gained by the interim order of the court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed; and there is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed."

The Supreme Court, in **State of Rajasthan v. J.K. Synthetics, (2011) 12 SCC 518**, then held that it was therefore evident that whenever there is an interim order of stay in regard to any revision in rate or tariff, unless the order granting interim stay or the final order dismissing the writ petition specifies otherwise, on the dismissal of the writ petition or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order; where the statute or contract specifies the rate of interest, usually interest will have to be paid at such rate; even where there is no statutory or contractual provision for payment of interest, the court will have to direct the payment of interest at a reasonable rate, by way of restitution, while vacating the order of interim stay, or dismissing the writ petition, unless there are special reasons for not doing so; any other interpretation would encourage unscrupulous debtors to file writ petitions challenging the revision in tariffs/rates and make attempts to obtain interim orders of stay; if the obligation to make restitution by paying appropriate interest on the withheld amount is not strictly enforced, the loser will end up with a financial benefit by resorting to unjust litigation, and the winner will end up as the loser financially for no fault of his.

6. In **Mineral Area Development Authority v. SAIL [Enforcement Order], (2024) 10 SCC 257,** the Supreme Court observed that the decision in **BALCO v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC**

552 was applied prospectively to arbitration agreements concluded after the date of the judgment; however, the legal context in the present batch of matters was different; Article 265 of the Constitution prescribed that no tax shall be levied or collected except by authority of law; the law must be valid in the sense that it must be within the legislative competence of the legislature and consistent with other provisions of the Constitution. (**Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536);** further, the power to levy tax was an incidence of sovereignty (**Jindal Stainless Ltd. v. State of Haryana, (2017) 12 SCC 1);** if they were to give a prospective application to *the judgement in* **Mineral Area Development Authority v. SAIL, (2024) 10 SCC 1**, it would result in a situation where the legislation enacted by the States in pursuance of their plenary powers under Entries 49 and 50 of List II may conceivably be invalidated based on a position of law which has been overruled; and this would not be a constitutionally just outcome**.**

d. ANALYSIS:

The Execution Petitioner claims that, in terms of the judgment of this Tribunal dated 23.05.2014, they are entitled to (i) the entire differential amount (ie the Principal sum) as on 28.12.2012 (Rs. 1.40/unit x 48.15 MUs) for the electricity supplied from 01.01.2009 to 31.05.2009 ie Rs. 67.60 Crores; (ii) interest for the period from 28.12.2012 (four weeks from when the KERC passed the order) till 15.02.2016 ie for Rs. 28.78 Crores; (iii) compensation payable for the period from 16.02.2016 till 31.12.2023 for Rs. 39 Crores ie for a total sum of Rs. 135.38 Crores. According to the Execution Petitioner, the Respondents had paid them Rs. 92.60 Crores representing (i) the differential amount paid in tranches up to February, 2016 for Rs. 67.41 Crores and (ii) payment made (after the Civil Appeals were dismissed by the Supreme court on 30.03.2022) till 08.06.2022 ie for

Rs. 25.19 Crores; and the amounts still due and payable by the Respondents to the Petitioner was Rs. 42.78 Crores. The contention of the Respondents, on the other hand, is that, since the entire principal amount was paid by them, in terms of the interim order of the Supreme Court dated 15.05.2015, the petitioner was not entitled to claim any interest after 15.02.2016 when the principal amount was paid in its entirety; and they were not liable to make payment towards interest, after the entire principal amount was paid on 15.02.2016.

In its interim order, in Civil Appeal Nos. 8439 and 8440 dated 15.05.2015, the Supreme Court observed that, though they did not see any reason to stay the impugned order in its entirety, the Appellant (ie the respondents in the EP) should pay the Execution Petitioner the principal amount under the impugned order; however, payment of the interest component shall remain stayed; in so far as the principal amount was concerned, the Execution Petitioner should provide appropriate immovable property security to the satisfaction of the Registrar of the Supreme Court; and security should be furnished after notice to the Appellant. The said interim order, requiring third party security to be furnished, was modified on 24.07.2015 with the requirement to furnish a bank guarantee.

It is settled law that interim relief is granted in aid of, and as ancillary to, the main relief which may be available to the party on the final determination of his rights in a suit or proceedings. (**State of Orissa Vs. Madan Gopal Rungta : AIR 1952 SC 12; Cotton Corporation of India Vs. United Industrial Bank, (1983) 4 SCC 625).** In terms of the afore-said interim order of the Supreme Court dated 15.05.2015, the Respondents herein were required to pay the entire principal amount to the Execution Petitioner on security being provided (which was later modified requiring them to furnish a bank guarantee). The interest component of the

judgement of this Tribunal, in Appeal Nos.37 and 303 of 2013 dated 23.05.2014, was stayed pending disposal of Civil Appeal Nos. 8439 and 8440 of 2014.

The fact, however, remain that the Supreme Court had thereafter, by its order dated 30.03.2022, dismissed Civil Appeal Nos. 8439 and 8440 of 2014 (preferred by the Respondents in this EP against the judgement of this Tribunal in Appeal Nos.37 and 303 of 2013 dated 23.05.2014) holding that they found no substantial question of law in the said appeals.

It is also well settled that once the proceedings, wherein a stay was granted, are dismissed, any interim order granted earlier merges with the final order, (**State of U.P. thr. Secretary v. Prem Chopra, 2022 SCC OnLine SC 1770; South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648; Teesta Urja Ltd. v. CERC, 2023 SCC OnLine APTEL 26),** and an order of stay, which is granted during the pendency of proceedings, comes to an end with the dismissal of the substantive proceedings. (**State of U.P. thr. Secretary v. Prem Chopra, 2022 SCC OnLine SC 1770; Kanoria Chemicals and Industries Ltd. v. U.P. State Electricity Board, (1997) 5 SCC 772; Teesta Urja Ltd. v. CERC, 2023 SCC OnLine APTEL 26).** When the main lis comes to an end, all interim orders merge into that final order, and do not survive once the main lis is decided by the Court. **(Gwaldas Shivkisanji Lakhotia v. Bapurao Arjunji Bandabuche, 2007 SCC OnLine Bom 229).** Further, once a final order is passed, the earlier interim order ceases to exist thereafter. **(Prem Chandra Agarwal v. U.P. Financial Corpn., (2009) 11 SCC 479).** An order of stay granted pending disposal of a suit or proceedings would come to an end with the dismissal of the said proceedings and, in such a case, the parties must be put in the same position they would have been but for the interim orders

passed in the said proceedings. (**Kanoria Chemicals and Industries Ltd. v. U.P. SEB, (1997) 5 SCC 772)**

The Supreme Court, in **South Eastern Coalfields case: (2003) 8 SCC 648,** held that the interim order passed by the court merges into a final decision; the validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage; and, unless otherwise ordered by the court, the successful party at the end would be justified in being placed in the same situation in which it would have been if the interim order would not have been passed against it.

Consequent upon dismissal of Civil Appeal Nos. 8439 and 8440 of 2014, by the order of the Supreme Court dated 30.03.2022, the earlier interim order passed by the Supreme Court on 15.05.2015 ceased to exist and no longer remained in force. After 30.03.2022, when Civil Appeal Nos. 8439 and 8440 of 2014 were dismissed by the Supreme Court, it is the judgment of this Tribunal, in Appeal Nos. 37 and 303 of 2013 dated 23.05.2014, which revived andcontinues to govern, and not the interim order of the Supreme Court dated 15.05.2015. Consequently, it is the judgement of this Tribunal, in Appeal Nos. 37 and 303 of 2013 dated 23.05.2014, which necessitates compliance by the Respondents herein.

As noted hereinabove, this Tribunal, in its judgment in Appeal No. 33 and 303 of 2013 dated 23.05.2014, had observed that, as payment of money was due to the Execution Petitioner four weeks after 30.11.2012, as per the order passed by the KERC in OP No. 47 of 2011 dated 30.11.2022, which was not honoured even though the said order had not been stayed by this Tribunal, the Execution Petitioner was entitled to simple interest at 12% per annum from when the payment was due to them as per the order

of the State Commission till 30 days from the date of communication of this judgment; and thereafter, for any further delay in payment, the Execution Petitioner would be entitled to interest at 12% per annum on the outstanding dues to be compounded on a quarterly basis.

In terms of the afore-said judgement of this Tribunal dated 23.05.2014, the Respondents were obligated to pay the principal amount with simple interest of 12% per annum from 28.12.2012 till 23.06.2014. Since they failed to pay the entire principal amount along with simple interest at 12% PA by 23.06.2014, they were required thereafter (ie from 24.06.2014 onwards) to make payment of the balance principal amount with compound interest at 12 % per annum with quarterly rests till the outstanding dues were paid, in its entirety, to the Execution Petitioner.

The afore-said directions were issued by this Tribunal in its judgement dated 23.05.2014 as, even though no stay had been granted by this Tribunal in Appeal No. 303 of 2013 filed against the order of the KERC, the Respondents had deliberately chosen not to comply with the orders passed by the KERC which continued to remain in force during the pendency of Appeal No. 303 of 2013 filed by the Respondents before this Tribunal. Though the judgement of this Tribunal dated 23.05.2014 required the respondents to pay the Execution Petitioner the principal amount along with simple interest by 23.06.2014, the entire principal amount (apart from the disputed sum of Rs.19 Lakhs) was paid by them only by 15.02.2016. While such payment could have been justified by the Respondents during the period the interim order of the Supreme Court dated 15.05.2015 remained in force, such non-payment was rendered illegal after the main Civil Appeals were dismissed by the Supreme Court on 30.03.2022 as it resulted in the earlier interim order of the Supreme Court dated 15.05.2015 ceasing to

remain in force thereafter, and in revival of the judgement of this Tribunal dated 23.05.2014.

The distinction between simple interest and compound interest must also be borne in mind. Calculation of simple interest at 12% PA can be better explained by way of illustration. On a principal amount payable of say Rs. 1 Lakh, simple interest at 12% per annum would require the Respondents to pay Rs.12,000/- as interest each year. At the end of the first year, the amount payable would be Rs.1,12,000-/- (ie the principal of Rs.1.00 Lakhs plus simple interest of Rs.12,000-/-). At the end of the 2nd year, the amount payable would be Rs.1,24,000/- (ie Rs.1.00 Lakh towards principal plus first year interest of Rs.12,000/- and second year interest of Rs.12,000/-). Compound interest on the other hand, that too with quarterly rests, stands on a different footing.

The expression *"Compound Interest with Quarterly rests"* would require interest to be calculated and added to the principal amount four (4) times a year. The Quarterly interest rate is calculated dividing the annual interest rate by four. In the present case, as the annual interest rate is 12%, the quarterly interest rate would be 3%. Application of this formula can be better explained by way of an illustration. If, say, the principal amount due as on 31.12.2024 is Rupees One Lakh and the interest rate is 12% per annum with quarterly rests then, on 31.03.2025, the outstanding amount due would-be Rupees 1,03,000/- (Rupees One Lakh three thousand). The outstanding dues of Rs. 1,03,000/- represents the principal amount of Rupees One Lakh + Interest of Rs. 3,000/- for the first quarter. For the next quarter ending 30.06.2025, compound interest would be computed at 3% on Rupees One Lakh and Three Thousand, and the total outstanding dues as on 30.06.2025 would therefore be Rs. 1,06,090/- (i.e. Rs. 1,03,000/- towards outstanding dues as on 30.06.2025 and interest thereon of Rs.

3,090/-). For the third quarter ending 30.09.2025, interest would be computed at 3% on Rs.1,06,090/- and the total outstanding dues as on 30.09.2025 would be Rs.1,09,273/-. For the fourth quarter ending 31.12.2025, interest would be computed at 3% on 1,09,273/- and the total outstanding dues as on 31.12.2025 would be Rs.1,12,551/-, As compared to the 1,12,000/- being due at the end of the first year in the case of simple interest, the outstanding dues at the end of the first year, in the case of compound interest, would be Rs.1,12,551/-. This difference of Rs.551/- is because, in the case of compound interest with quarterly rests, interest is to be computed not only on the principal amount, but also on the interest payable for the earlier quarter.

While the distinction between payment of the principal amount and interest thereon, with respect to appropriation, can be maintained in the case of simple interest, this distinction is largely obliterated where interest is payable on a compounding basis, that too with quarterly rests, and it is for this reason that this Tribunal had used the expression "*outstanding dues"* instead of principal amount due in the case of compound interest. Where compound interest, with quarterly rests, is ordered, Interest is not only payable on the principal amount due, but also on the interest component of the outstanding dues.

The law declared by the Supreme Court, in **Gurpreet Singh v. Union of India, (2006) 8 SCC 457,** is that the right of the decree-holder to appropriate the payments made by the judgment-debtor, is only as provided in the decree, if there is provision in that behalf in the decree; the obligation of a judgment-debtor is only to pay interest on the balance principal remaining unpaid as adjudged either by the court of first instance or in the court of appeal; and the decree-holder cannot claim interest on that part of the principal already paid to him; on the part appropriated towards the

principal, the interest would cease from the date on which the amount is received by the decree-holder; if, while passing the interim order, the court has indicated as to how the deposited amount is to be appropriated, that direction will prevail; and the appropriation could only be done on the basis of that direction.

As the respondents appear to have paid the principal amount due, in terms of the order of the KERC dated 30.11.2012 and the order of this Tribunal dated 23.05.2014 (apart from the disputed sum of Rs.19,00 Lakhs), by 15.02.2016, the petitioner is not entitled to claim any interest on the said principal amount after 15.02.2016. The fact, however, remains that the respondents were liable to pay compound interest at 12% PA with quarterly rests on the outstanding dues (ie the unpaid principal amount plus unpaid simple interest) from 24.06.2014 till 15.02.2016. Though the principal amount, as afore-mentioned, was paid on 15.02.2016, the outstanding dues (representing the unpaid simple interest and unpaid compound interest) as on 15.02.2016 was required to be paid along with compound interest, on such outstanding dues, at 12% PA with quarterly rests, till the actual date of payment of the total outstanding dues.

It is not the appropriation test which is relevant, as the dispute under this head is whether the Execution Petitioner is entitled to compound interest on the accumulated interest due and payable as on 15.02.2016 (when they paid the entire principal amount, apart from the disputed sum of Rs.19 Lakhs).

While it is true that the Respondents paid the principal amount (except for the disputed sum of Rs. 19 Lakhs) to the Execution Petitioner by 15.02.2016, the interest component of the outstanding dues, which they did not pay in the light of the interim order passed by the Supreme Court on

15.05.2015, still remained due and payable as on 15.02.2016. Since the main appeal itself was dismissed, by the order of the Supreme Court dated 30.03.2022, the interim order passed earlier on 15.05.2015 ceased to remain in force thereafter. Consequently, the liability of the Respondents, to pay compound interest at 12% PA with quarterly rests, in terms of the judgement of this Tribunal dated 23.05.2014, stood revived, As a result, the outstanding dues payable as on 15.02.2016 would also attract compound interest at 12% per annum with quarterly rests in terms of the judgment of this Tribunal in Appeal Nos. 37 and 303 of 2014 dated 23.05.2014. In other words, on the interest component which remained outstanding as on 15.02.2016, compound interest at 12% per annum with quarterly rests is required to be computed, in terms of the aforesaid judgment of this Tribunal, till the entire outstanding dues are paid to the Execution Petitioner by the Respondent herein.

The submission urged on behalf of the Respondent, that the expression *"outstanding dues"* in para 53 (viii) of the judgment of this Tribunal dated 23.05.2014 refers to the order of the State Commission, does not merit acceptance. It is relevant to note that this Tribunal, in para 52 of the aforesaid judgment, had referred to the amounts payable in terms of the order of the State Commission as *"payment due"*. A similar expression was used by this Tribunal with respect to the entitlement of the Execution Petitioner for simple interest. It is only with respect to the period for which compound interest was directed to be paid were the words *"outstanding dues"* used. Likewise, in the first limb of Para 53 (viii) of its judgement dated 23.05.2014, this Tribunal held that the Execution petitioner was entitled to simple interest at 12% per annum from the date when the *"payment was due"* to be paid to them as per the order of the State Commission till 30 days from the date of communication of the judgment of

this Tribunal. The second limb of Para 53(viii) relates to compound interest and expressly stipulates that, for any further delay in payment by the Respondents, the Execution Petitioner would be entitled for interest at 12% per annum (wrongly referred to as 12% per month) on the *"outstanding dues"* to be compounded on quarterly basis. The distinction in the language used in the first and second limbs of Para 53 (viii) is significant. By use of the expression "outstanding dues" in the second limb of Para 53 (viii), this Tribunal has made it abundantly clear that the interest payable, by the Respondents to the Execution Petitioner, at the end of each quarter is on the outstanding dues ie the principal amount plus interest due till then, and not merely on the principal amount due. Though payment of the principal amount by 15.02.2016 would absolve the Respondent of any further liability to pay interest on the said principal amount thereafter, the Respondents would continue to be liable to pay compound interest at 12% per annum with quarterly rests, on the interest due and outstanding as on 15.02.2016, till the outstanding dues are paid in its entirety.

We are in agreement with the submission, urged on behalf of the Execution Petitioner, that the Respondent were not justified in contending that they were not liable to pay any interest after 15.02.2016 as they had repaid the principal amount on that date. The contention of the Respondents, that no principle of law permits payment of interest solely on accrued interest, ignores the fact that the judgment of this Tribunal dated 23.05.2014 required the Respondent to make such payment. It is impermissible for this Tribunal, in execution proceedings under Section 120(3) of the Electricity Act, to go behind the decree or to examine whether this Tribunal was justified in passing a decree directing payment of compound interest at 12% per annum with quarterly rests, more so as the appeal preferred by the Respondents, against the judgment of this Tribunal

dated 23.05.2014, has been dismissed by the Supreme Court by its order dated 30.03.2022.

Civil Appeal Nos. 8439 and 8440 of 2014 were filed before the Supreme Court by the Respondents herein and not the Execution Petitioner. If they were of the view that they were not liable to pay any interest after 15.02.2016, it was for the Respondents to seek necessary clarifications from the Supreme Court in the said Civil Appeals. Since the decree passed by this Tribunal on 23.05.2014 (now sought to be executed by the Execution Petitioner) continues to remain In force, all that we are required to examine is whether the petitioner's claim for payment of interest is in terms of the said decree, and it is impermissible for us to go behind the decree or to examine the correctness or otherwise of the said judgment of this Tribunal dated 23.05.2014. It is not the execution petitioners, but the Respondents herein who seek to read words into the judgment of this Tribunal dated 23.05.2014, and thereby contend that they were not liable to pay any amount after 15.02.2016 (ie the date on which they had paid the principal amount due in compliance with the interim order of Supreme Court dated 15.05.2015 (except for the disputed sum of Rs. 19 Lakhs).

In the light of the law declared by the Supreme Court, in **Kanoria Chemicals and Industries Ltd. v. U.P. SEB, (1997) 5 SCC 772, (**the principles laid down there in having been followed in **Rajasthan Housing Board v. Krishna Kumari: (2005) 13 SCC 151; Nava Bharat Ferro Alloys Ltd. v. Transmission Corpn. of A.P. Ltd: (2011) 1 SCC 216** and **State of Rajasthan v. J.K. Synthetics, (2011) 12 SCC 518**), the grant of stay does not have the effect of relieving the Respondents herein, in whose favour stay was granted, of their obligation to pay interest, in terms of the judgement of this Tribunal, on the amount withheld by them even after their appeals were dismissed by the Supreme Court.

The Execution Petitioner is justified in their submission that they are entitled for simple interest at 12 % PA from 28.12.2012 (ie four weeks after 30.11.2012 when the Karnataka Electricity Regulatory Commission had passed the order in OP No. 47 of 2011 dated 30.11.2012) till 23.06.2014 (30 days from the date of communication of the judgment of this Tribunal in Appeal No. 37 and 303 of 2013 dated 23.05.2014); and (b) compound interest at 12% PA with quarterly rests from 24.06.2014 till the date the outstanding dues are paid in its entirety. In other words, the judgement of this Tribunal dated 23.05.2014 required the respondent to pay the Execution Petitioner not only the principal amount, but simple interest at 12% pa thereon till 23.06.2014, and compound interest on the outstanding dues at 12% pa with quarterly rests thereafter. The Execution Petitioner is also entitled, in terms of the judgement of this Tribunal dated 23.05.2014, to interest each quarter on the accumulated interest due and payable at the beginning of the said quarter.

II. WAS THERE SHORT PAYMENT OF RS. 0.19 CRORES OF THE PRINCIPAL AMOUNT DUE?

a. SUBMISSIONS ON BEHALF OF THE PETITIONER:

Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the Petitioners, would submit that the Petitioners have consistently claimed that they are entitled to Rs. 67.60 Crores as the principal amount; this is borne out from the Letters dated 28.05.2014, 04.11.2014, 22.01.2016 and 08.04.2022; notably, vide Letter dated 30.04.2022, the Petitioners stated that Rs. 67.41 Crores computed by the Respondents is incorrect; and the Respondents have failed to demonstrate or provide the basis for computation of Rs. 67.41 Crores as the principal amount.

b. SUBMISSIONS ON BEHALF OF THE 2ND RESPONDENT:

Sri P. Chidambaram, Learned Senior Counsel appearing on behalf of the 2nd Respondent, would submit that the Petitioner has also claimed the difference of about Rs.19 lakhs as not having been paid by the DISCOMs; the Petitioner has claimed Rs. 67,60,38,231 as the principal amount, whereas as per the DISCOMs it works out to Rs. 67,41,81,497, which was duly paid; in fact, in the proceedings before the Supreme Court, the Petitioner claimed only Rs.67,15,77,961/- as the principal amount (Ref: Para 4(b) of M.A No. 1388/2022)**;** the principal amount was paid by 05.02.2016; there was no protest by the Petitioner that the principal amount was not fully paid; no dispute about the principal amount was raised by the Petitioner on 15.02.2016; and, in any event, this can be reconciled by the parties and necessary adjustments can be made.

c. ANALYSIS:

Before considering the rival submissions under this head, it is useful to take note of the correspondence between the Petitioner and the respondents with respect to the alleged short payment by the respondents of the principal amount due and payable. By their letter dated 28/05/2014, the petitioner informed the respondents that this Tribunal had, by its Order dated 23.05.2014, directed the respondents to make payment within four weeks from the dated of the Order i.e by 23.06.2014; the principal amount of Rs. 67, 60,38,231/- was due and payable under the order of the KERC as upheld by APTEL; further, the interest component due and payable to them as per the order of APTEL was Rs. 11,44,63,460/- as on 27/05/2014; and Rs.79,05,01,691/- which included the principal sum of Rs. 67,60,38,231/- plus interest (computed up to 27/05/2014) of Rs. 11,44,63,460/- was to be paid forthwith.

By their letter dated 04.11.2015, the petitioner informed the respondents that, as per the interim order of the Supreme Court dated 15,05.2015 which was subsequently modified by the Supreme Court on 24.07.2015, they were submitting a bank guarantee for Rs. 67,60,38,231/. The Respondents were requested to remit payments as per the interim order of the Supreme Court. The table in the said letter noted the total payment due as Rs. 67,60,38,231/-. Again, by their letter dated 22.01.2016, the petitioner informed the respondents that, as per the interim order of the Supreme Court dated 15,05. 2015, which was subsequently modified on 24.07.2015, they had submitted a bank guarantee for Rs. 67,60,38,231/- to the Registrar of the Supreme Court; M/s BESCOM and M/s HESCOM had remitted Rs. 30,97,83,318/- and Rs. 9.94,30,442/- respectively, on 21.01/2016 into their account, and M/s BESCOM had to make total payment of Rs. 41,21,48,964/- based upon the invoices for the period from January, 2009 to May, 2009. M/s BESCOM was requested to remit the differential amount of Rs. 10,23,65,646/-. In addition, all the distribution companies were requested to remit the payment as per the Order of the Supreme Court.

Thereafter, by its letter dated 08.04.2022, the petitioner informed the respondent- distribution Companies that, pursuant to the dismissal of Civil Appeal No. 8439 – 8440 of 2014 by order dated 30.03.2022 by the Supreme Court, the judgment of APTEL dated 23.05.2014 stood upheld by the Supreme Court; consequently, the respondent's liability was to pay Rs. 127,32,14,199/- (comprising of Rs. 67,60,38,231 as principal amount and interest amount of Rs. 59,71,75,968/- as on 07.04.2022) to the petitioner; admittedly, Rs. 67,41,81,497/- was paid by the respondent towards the principal outstanding amount; therefore, the principal amount due was Rs. 18,56,734/- (i.e. Rs. 67,60,38,231/- minus 67,41,81,497/-) plus interest

outstanding as on 07.04.2022 was Rs. 59,71,75,968/-. The Respondents were requested to make payment of the balance amount of Rs. 59,90,32,702/-, within 10 days of receipt of the letter, to the petitioner.

By their letter 30.04.2022, the petitioner informed the respondent that payment of Rs. 67,41,81,497/- was made by the distribution Companies in six tranches from 21.01.2016 to 15.02.2016, whereas the principal amount outstanding was Rs. 67,60,38,231/-. The respondent had considered Rs. 67,15,77,961/- as the principal outstanding for the purpose of interest calculation whereas the amount payable by the distribution Companies as per their own admission was Rs. 67,41,81,497; and the principal amount outstanding as per the petitioner's letter dated 28.05.2014 as well as 08.04.2022 was Rs. 67,60,38,231/-.

Subsequently, in Para 4(b) of MA 1388 of 2022 filed by them, the petitioner had stated *"while the principal amount of Rs. 67,15,77,961/- was finally paid up to 15.02.2016, the balance amount of Rs. 35,39,55,415/- towards the interest from 15/02/2016 till 08.06.2022 of payment remained due".*

The Power Company of Karnataka Ltd. Informed the petitioner, vide letter dated 16.05.2022, that, when the Supreme Court had directed payment of the principal amount at the interim stage, the claim by the petitioner was limited to only Rs. 67,41,81,497; and the present claim of the principle amount was more; and, apart from being factually incorrect, it was a clear after thought.

It does appear, from the letter addressed by the Petitioner to the Respondents on 28.05.2014, that the principal sum which they claimed to be entitled to was Rs.67,60,38,231/-. After the interim order passed by the Supreme Court on 15.05.2015 was modified by order dated 24.07.2015, the

Petitioners informed the Respondents vide letter dated 04.11.2015 that they were submitting a bank guarantee for Rs.67,60,38,231/-. As noted hereinabove, the Petitioners were required, in terms of the interim order of the Supreme Court dated 15.05.2015 as modified by order dated 24.07.2015, to furnish a bank guarantee for the principal amount due to them from the Respondents; and on furnishing which, the Respondents were required to make payment of the principal amount to the Petitioners. The very fact that they submitted a bank guarantee for Rs.67,60,38,231/- does lend credence to their submission that the principal amount which they were entitled to receive was Rs.67,60,38,231/-. Reference to the bank guarantee, furnished with respect to the principal sum of Rs.67,60,38,231/- , is also reflected in the letter addressed by the Petitioner to the Respondents on 22.01.2016 as also in their letter dated 08.04.2022, after the Civil Appeals filed by the Respondents were dismissed by the Supreme Court on 30.03.2022. In fact, in the said letter dated 08.04.2022, the Petitioners made it clear that, since they had received Rs.67,41,81,497/- from the Respondents as against the principal amount due of Rs.67,60,38,231/- the balance principal amount due to them was Rs.18,56,734/-. This was again reiterated by the Petitioners in their letter dated 30.04.2022. While the contents of all the afore-said letters indicate that the Petitioners' claim towards the principal amount was Rs.67,60,38,231/-, Para 4(b) of M.A. 1388 of 2022 filed by them before the Supreme Court refers to the principal amount of Rs.67,15,77,961/- having been finally paid to them up to 15.02.2016. The stand of the Respondents however, as is evident from their letter dated 16.05.2022, is that the principal amount payable is Rs.67,41,81,497/-. The Petitioners' claim, in the present execution proceedings, is for payment of this differential amount of Rs.18,56,734/-.

While the decree of this Tribunal dated 23.05.2014 requires the Respondents to pay the Petitioners the principal amount due in terms of the order of the Karnataka Electricity Regulatory Commission in OP No. 47 of 2011 dated 30.11.2012 along with the simple interest at 12% per annum from 28.12.2012 (four weeks from the order of the KERC dated 30.11.2014 till 23.06.2024 (ie one month after the judgment of this Tribunal dated 23.05.2024), and for compound interest at 12% per annum with quarterly rests thereafter, the quantification of both the principal sum due, and the interest payable thereon, is an exercise which is required to be undertaken. The mode of computing the principal sum payable is also clear from the order of the KERC in OP No. 47 of 2011 dated 30.11.2012 whereby the Petitioner has been held entitled to be paid Rs.6.90 per unit for the electricity supplied during the period covered by the Section 11(1) order. Since they had already received payment of Rs.5.50 per unit, the Respondents were required, in terms of the order of the KERC, to pay the petitioner the differential amount of Rs.1.40 per unit (difference between Rs.6.90 per unit and the actual payment made of Rs.5.50 per unit) for the period from 01.01.2009 to 31.05.2009 within four weeks from the date of its order i.e. before 28.12.2012. The actual quantum of electricity supplied during the said period, ie of 48.15 million units, does not also appear to be in dispute. It would, therefore, not be difficult to ascertain the actual payment made by the Respondents to the Petitioners towards the principal amount, and determine whether the Petitioner is justified in its claim to be entitled to the differential amount of Rs.18,56,734/-.

Suffice it to note the submission urged on behalf of the Respondents that this disputed sum can be reconciled by the parties and necessary adjustment can be made. Since we intend requesting the Karnataka Electricity Regulatory Commission to undertake the exercise of determining

the actual amounts payable under the earlier claim i.e. claim for interest on the outstanding dues, we deem it appropriate, likewise, to request the KERC to undertake the exercise of determining the actual payment made by the Respondent to the Petitioners towards the principal amount due. On the KERC determining the amounts payable to the Petitioners under claims 1 and 2, the Respondents shall make payment of the said amount within four weeks of an order being passed by the KERC in this regard. Needless to state that, in case any amount is held payable to the Petitioner under this head, interest, as stipulated in the order under execution, shall be payable on this amount also till the actual date of payment.

III. DEDUCTION TOWARDS MAT:

a. SUBMISSIONS URGED ON BEHALF OF THE PETITIONER:

Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the Petitioner, would submit that as per the Respondents: (i) Liability to pay interest was only till 15.02.2016; this interest amount of Rs. 25.19 Crores was paid in tranches (last being 02.06.2022) to the Petitioners; (ii) the Principal amount was Rs. 67.41 Crores which was paid in February 2016; contrary to their own accepted position, Respondents have computed interest on Rs. 67.15 Crores by unilaterally deducting amounts towards MAT for 2001-2002 to 2006-07; this is illegal and impermissible as:(a) Respondents have failed to show how MAT is legally recoverable from the Petitioners in the present proceedings; further, MAT is neither connected with nor arises from the transaction in dispute in the present Execution proceedings; admittedly, levy of MAT was for 2007-2008 and 2008-2009 (till 07.06.2008), and supply of power in the present case was from 01.01.2009 to 31.05.2009; (b) deduction is contrary to the requirement of set-off

provided under Order 8 Rule 6 of the CPC as held in this Tribunal's Judgment in Appeal No. 371 of 2023 & Batch dated 09.11.2023; the Respondents cannot be permitted to approbate and reprobate; and, without prejudice, if the principal amount was Rs. 67.41 Crores, interest also is to be computed on Rs. 67.41 Crores

b. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

Sri P. Chidambaram, Learned Senior Counsel appearing on behalf of the second respondent, would submit that there have also been tax adjustments on the tariff payable to the Petitioner, for which MAT credits have been given to the DISCOMs; while credit was given to a few of the DISCOMs, the credits were not fully adjusted to the other DISCOMs; this is also evident from the letter dated 16.05.2022; the MAT credits have to be accounted for in the case of all DISCOMs; and the Petitioner has failed to do so.

c. JUDGEMENTS RELIED UNDER THIS HEAD:

In **Gujarat Urja Vikas Nigam Ltd vs Gujarat Electricity Regulatory Commission** (**Judgment in Appeal No. 371 of 2023 & Batch dated 09.11.2023),** this Tribunal held that Order 8 rule 6 CPC, which deals with legal set-off, requires that the claim sought to be set off should be for an ascertained sum of money and legally recoverable by the claimant; both the parties must fulfil the same character in respect of the two claims sought to be set off or adjusted **(Union of India v. Karam Chand Thapar and Bros. (Coal Sales) Ltd., (2004) 3 SCC 504**); legal set off can be sought, under Order 8 Rule 6 CPC, by a defendant against whom the plaintiff has filed a suit for recovery of money; it is only in such a suit that the defendant is entitled to present a written statement containing the particulars of the debt

sought to be set off; under the said provision, the defendant is entitled to seek set off only of the ascertained sum of money legally recoverable by them from the plaintiff; and as the Appellant has not been able to show how such amounts are legally recoverable from the Respondents in this batch of appeals, the question of their seeking legal set off, of these amounts, with the amounts admittedly payable by them to the Respondents, does not arise.

d. ANALYSIS:

It is no doubt true that the Power Company of Karnataka Ltd, by their letter dated 16.05.2022, informed the petitioner that they had, in their letter 13.11.2012, requested the petitioner to refund the excess recovery of Corporate Tax for the years from 2001-2002, 2006-2007; as the petitioner had not given any credit, BESCOM and MESCOM had adjusted their portion of refundable amount along with the KPTCL portion out of the MAT payment paid for the year 2007 – 2008 and 2008 – 2009 (07.06.2008), and HESCOM had adjusted the outstanding dues payable to the petitioner; whereas GESCOM and CESC had neither adjusted their portion of amount nor received the amount from the petitioner's end in spite of the request made by PCKL vide letter dated 15.01.2010.

It must, however, be borne in mind that the deduction of Minimum Alternate Tax (MAT), a statutory liability, was not the subject matter of dispute either before the KERC or before this Tribunal which culminated in the judgment dated 23.05.2014 being passed. The question whether the Petitioner is liable to pay Minimum Alternate Tax, and whether the Respondents are justified in deducting MAT from the amounts due and payable to them, can only be examined in appropriate independent legal

proceedings instituted by the Petitioner in this regard, and not in execution proceedings under Section 120(3) of the Electricity Act.

An executing court has jurisdiction only to execute the decree, i.e. it can enforce only the decretal liability. It has jurisdiction, conferred by Section 47 CPC, to decide all questions relating to execution, discharge and satisfaction of the decree, but it has no jurisdiction whatsoever over any other matter and cannot enforce any other liability. It is concerned only with enforcing the decretal liability and not any other. (**Maharaj Kumar Mahmud Hasan Khan v. Moti Lal Banker : AIR 1961 All 1 (FB) : 1960 SCC OnLine All 89)**. If a decree-holder wants to enforce a liability other than the judgment-debtor's decretal liability, it would strictly not be a question of execution of the decree, and will not be within the jurisdiction of the executing court. (**Maharaj Kumar Mahmud Hasan Khan v. Moti Lal Banker : AIR 1961 All 1 (FB) : 1960 SCC OnLine All 89).**

The Executing Court cannot travel beyond the original *lis*, between the parties, to any subsequent cause of action. It is also not open to the Executing Court to add to a decree, of which execution is sought, a direction that was neither prayed for nor formed part of the original *lis* between the parties; and the Executing Court cannot travel behind the decree to add or modify the directions contained therein. **(J&K Bank Ltd. v. Jagdish C. Gupta, (2004) 10 SCC 568; Gurdev Singh v. Narain Singh, (2007) 14 SCC 173).** The entire purpose of execution proceedings is to enforce the directions passed in the decree **(Firm Rajasthan Udyog v. Hindustan Engineering and Industries Ltd. (2020) 6 SCC 660).**

There can be no execution or specific enforcement of a liability without a previous determination of the liability by a court which is incorporated in a formal document called a decree. Any question, that does not relate to the

execution of the decree, is not within the jurisdiction of the executing court. The executing court can neither go behind the decree nor can it question its legality or correctness. The decree must either be executed as it stands in one of the ways allowed by law or not at all, unless the Court which passed it alters or modifies it. A Court executing a decree can neither add to such a decree nor vary its terms. It is not within the jurisdiction of the executing court to enforce any liability other than the judgment-debtor's decretal liability. It is also not open to the Executing Court to grant a direction that was neither prayed for nor formed part of the original *lis* between the parties. The entire purpose of execution proceedings is to enforce the directions passed in the decree, and nothing more. **(SPRNG Soura Kiran Vidyut (P) Ltd. v. Southern Power Distribution Co. of Andhra Prdesh Ltd., 2023 SCC OnLine APTEL 9)**

The purpose of execution proceedings is to enforce the verdict of the court. The executing court, while executing the decree, is only concerned with the execution part of it and nothing else. The court has to take the judgment at its face value. (**Meenakshi Saxena v. ECGC Ltd., (2018) 7 SCC 479); SPRNG Soura Kiran Vidyut (P) Ltd. v. Southern Power Distribution Co. of Andhra Prdesh Ltd., 2023 SCC OnLine APTEL 9).**

The scope of inquiry, in proceedings under Section 120(3) of the Electricity Act, is confined only to ascertaining whether the amounts claimed in execution arise out of the decree (order) passed by this Tribunal on 23.05.2014, and nothing more. It is impermissible for this Tribunal, in execution proceedings, to undertake an examination of matters which require it to go behind the decree or determine issues wholly independent of the judgement and decree passed by this Tribunal earlier on 23.05.2014.

Without expressing any opinion on the Petitioners' entitlement to claim refund of the amount deducted by the Respondents towards MAT, suffice it

to reject this claim solely on the ground that adjudication of such a claim is beyond the jurisdiction of this Tribunal under Section 120(3) of the Electricity Act.

IV. CLAIM FOR COMPENSATION WITH RESPECT TO TIME VALUE OF MONEY:

a. SUBMISSIONS URGED ON BEHALF OF THE PETITIONER:

Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the Petitioners, would submit that, in MA 1388 od 2022, the Petitioners sought payment of compensation on account of time value of money from the date of commencement of power supply till 27.12.2012; in terms of the Order dated 28.11.2023, the Supreme Court granted liberty to the Petitioners to initiate appropriate proceedings for recovery of outstanding dues; and, accordingly, the Petitioners are also seeking payment of Rs. 102.32 Crores comprising: (a) Rs. 30.02 Crores towards compensation payable from 01.03.2009 (i.e., due date for payment for power supplied in January 2009) to 27.12.2012; (b) Rs. 6.47 Crores towards compensation payable for delay in payment of Rs. 30.02 Crores from 24.06.2014 till 15.02.2016; (c) Rs. 65.82 Crores towards compensation payable for delay in payment of Rs. 36.49 Crores from 16.02.2016 till 31.10.2024; this claim is without prejudice, and as an alternate ground; the Petitioners are claiming the foregoing compensation/carrying cost as the time value of money on the difference of rate of electricity i.e., Rs. 5.50/unit which was paid to the Petitioners vis-à-vis Rs. 6.90/unit which was finally determined by the KERC, and upheld by this Tribunal and the Supreme Court; this claim is consistent with the principle of time value of money which stands settled (**Central Bank of India** (2002) 1 SCC 637; **Indian Council of Enviro-Legal Action** 2011 (8)

SCC 161; and **Uttar Haryana Bijli Vitran Nigam Ltd.** (2023) 2 SCC 624); and, in view of the foregoing submissions, the Petitioners are entitled to Rs. 149.53 Crores comprising Rs. 47.02 Crores as outstanding interest (as on 31.10.2024), Rs. 0.19 Crores balance principal amount, and Rs. 102.32 Crores towards time value of money.

b. JUDGEMENTS RELIED UNDER THIS HEAD:

After referring to the definition of "interest" in Black's Law Dictionary (7th Edn.). and *Stroud's Judicial Dictionary of Words And Phrases* (5th Edn.), the Supreme Court, in **Central Bank of India v. Ravindra, (2002) 1 SCC 367**, referred to its earlier judgement in **Secy., Irrigation Deptt., Govt. of Orissa v. G.C. Roy: (1992) 1 SCC 508,** wherein the Constitution Bench of the Supreme Court had opined that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name; it may be called interest, compensation or damages; in **Sham Lal Narula (Dr) v. CIT: AIR 1964 SC 1878,** the Supreme Court had held that interest is paid for the deprivation of the use of the money; the general idea is that he is entitled to compensation for the deprivation; the money due to the creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute; a Division Bench of the High Court of Punjab, in **CIT v. Dr Sham Lal Narula: AIR 1963 Punj 411**, had held that the words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation; 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another; in its narrow sense, 'interest' is understood to mean the amount which one

has contracted to pay for use of borrowed money; in whatever category 'interest' in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money; in this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable; and the appeal against this decision of the Punjab High Court was dismissed by the Supreme Court in **Dr Sham Lal Narula case:** AIR 1964 SC 1878.

On Compound interest, the Supreme Court, in **Indian Council for Enviro-Legal Action v. Union of India, (2011) 8 SCC 161,** observed that to do complete justice, prevent wrongs, remove incentive for wrongdoing or delay, and to implement in practical terms the concepts of time value of money, restitution and unjust enrichment noted above—or to simply levelise—a convenient approach is calculating interest; here interest has to be calculated on compound basis—and not simple—for the latter leaves much uncalled for benefits in the hands of the wrongdoer; some of our statute law provide only for simple interest and not compound interest; in those situations, the courts are helpless and it is a matter of law reform which the Law Commission must take note and more so, because the serious effect it has on the administration of justice; however, the power of the Court to order compound interest by way of restitution is not fettered in any way.

In **Uttar Haryana Bijli Vitran Nigam Ltd.** (2023) 2 SCC 624, the Supreme Court held that interest on carrying cost is nothing but time value for money and the only manner in which a party can be afforded the benefit of restitution in every which way; in the facts of the instant case, the Appellate Tribunal was justified in allowing interest on carrying cost in favour

of Respondent 1 Adani Power for the period between the year 2014, when the FGD unit was installed, till the year 2021; there was no justification for the Central Commission to have excluded the period between 2014 and 2018 and grant relief from the date of the passing of the order i.e. from 28-3-2018 [**Adani Power Ltd. v. Uttar Haryana Bijli Vitran Nigam Ltd., 2018 SCC OnLine CERC 8**] to 2021; nor was there any logic to such a segregation of timelines, particularly when Respondent 1 Adani Power was prompt in raising a claim on the appellants and pursuing its legal remedies.

c. ANALYSIS:

What the Petitioner claims under this head is for interest from 01.03.2009 for the shortfall in payment of the differential amount, and for other payments which do not form part of the judgement and decree of this Tribunal, in Appeal Nos.37 and 303 of 2013 dated 23.05.2014. As noted hereinabove, this Tribunal had, in its judgment in Appeal Nos. 37 and 303 of 2013 dated 23.05.2014, only directed payment of simple interest from the date when the payment was due to the Petitioners as per the order of the KERC till 30 days from the date of communication of its judgment dated 23.05.2014. The order of the KERC, in OP No. 47 of 2011 dated 30.11.2012, only required the Respondents to make payment of the differential amount to the Petitioners within four weeks of the order i.e. by 28.12.2012. Consequently, the judgment and decree of this Tribunal dated 23.05.2014 only required the Respondents to pay the Petitioners simple interest at 12% per annum from 28.12.2012 and not from a date anterior thereto. As the Petitioner chose not to prefer any appeal against the judgment and decree passed by this Tribunal on 23.05.2014, and it is the Respondents who had preferred appeals to the Supreme Court, the judgment of this Tribunal dated 23.05.2014 attained finality in so far as the petitioners were concerned. It is, therefore, not open to the Petitioners to

now claim payment of interest for a period not covered by, or claim payments which do not form part of, the judgment of this Tribunal dated 23.05.2014 as adjudication of such claims would require this Tribunal to go behind the decree, which is beyond the jurisdiction conferred on it under Section 120(3) of the Electricity Act. Consequently, the claims, under this head, also stand rejected.

It is no doubt true that the Petitioner had filed M.A. No. 1388 of 2022, in Civil Appeal No. 8439 – 8440 of 2014, before the Supreme Court seeking the following reliefs; (a) to direct the Appellants (Respondents in this EP) to make payment of Rs. 35,39,55,415/- (Rupees Thirty-Five Crore Thirty-Nine Lac Fifty-Five Thousand Four Hundred Fifteen Only) (interest calculated till 08.06.2022 on the basis of the amount due, as on 15.02.2016, of Rs. 28,77,99,191/ as detailed in Annexure A-3) to the Petitioner along with further interest till the date of payment; (b) to direct the Appellants (Respondents in this EP) to pay additional compensation of Rs. 77,02,44,311/- (Rupees Seventy-Seven Crores Two Lakhs Forty-Four Thousand Three Hundred Eleven Only), over and above the amount mentioned in prayer (a) above, as payable to the Petitioner towards interest on the differential amount against the power supplied from January 2009 to May 2009 (as detailed in Annexure A-4) along with further interest till the date of payment.

The outstanding amounts payable by the Appellants (Respondents in this EP), as claimed by the Petitioner in the said application, were under two Claims, namely: -(a) Claim 1: Net Outstanding and payable amount of Rs. 35,39,55,415/- (as on 08.06.2022). Total amount under Claim 1 was Rs. 60,58,69,793/-, out of the which, Rs. 25,19,14,378/- had already been paid by the Appellants (Respondents in this EP) in tranches with the last payment being made on 08.06.2022; accordingly, the balance amount of

Rs. 35,39,55,415/- up to 08.06.2022 was still due and payable by the Appellants (Respondents in this EP) with further interest till the date of payment; (b) Claim 2: Rs. 77,02,44,311/- calculated on the basis the electricity supply rate confirmed in terms of the APTEL Judgment.

Claim 1 was based on the liability of Rs. 28,77,99,191/- as on 15.02.2016 (i.e., date of payment of the principal amount) and compound interest computed thereon till 08.06.2022. However, the Appellants (Respondents in this EP) had admitted liability of Rs 25,19,14,378/- up to 15.02.2016, and had denied payment of interest post 15.02.2016 on the said admitted amount despite withholding the same for more than six (6) years. Claim 2 related to the interest due and payable (till 08.06.2022) on the difference of rate of electricity supplied from January 2009 to May 2009, and excluding the amount considered in Claim 1. The Petitioner also claimed that further interest would also be payable till the date of payment of the said amount.

According to the Petitioner, the Appellants (Respondents in this EP) were liable to pay a total amount of Rs. 137,61,14,104/- to them; the Appellants had paid Rs. 25,19,14,378/-; and, thus, they were liable to pay Rs. 35,39,55,415/- (under Claim 1) and Rs. 77,02,44,311/- (under Claim 2) and further interest till the date of payment.

The basis for Claim 1 for Rs 35,39,55,415/-, as stated by the Petitioner in MA 1388 of 2022, was (a) the Supreme Court, vide its order dated 30.03.2022, had upheld the APTEL Judgment; once the APTEL Judgment had been upheld, the Appellants (Respondents in this EP) were liable to pay interest on the entire outstanding amount till complete payment. (b) while the principal amount of Rs. 67,15,77,961/- was finally paid up to 15.02.2016, the balance amount of Rs. 35,39,55,415/- towards interest

payment from 15.02.2016 till 08.06.2022 remained due; this amount was withheld by the Appellants (Respondents in this EP) for more than six years on account of the interim order dated 15.05.2015 whereby the Supreme Court had stayed recovery of the interest amount; and the stay was granted on the application of the appellants (Respondents in this EP). Under claim (2), the petitioner sought payment of interest from March, 2009 (Payment due commencement date) as it was entitled to the time value of money.

In its order dated 28.11.2023, the Supreme Court recorded the submission of the Learned Senior Counsel appearing on behalf of the Execution Petitioner, on instructions, that they be permitted to withdraw M.A. No. 1388 of 2022 leaving it open for them to pursue appropriate proceedings in accordance with law. While granting permission, the Supreme Court, by its order dated 28.11.2023, dismissed M.A. No. 1388 of 2022 as withdrawn with liberty as prayed for.

It is thus evident that, having filed M.A. No. 1388 of 2022, the Petitioner chose to withdraw the said MA as recorded in the order of Supreme Court dated 28.11.2023. The liberty granted by the Supreme Court, by its order in MA 1388 of 2022 dated 28.11.2023, is only for them to pursue appropriate proceedings in accordance with law. That does not mean that the Petitioner can invoke the jurisdiction of this Tribunal under Section 120(3) of the Electricity Act, since the power conferred on this Tribunal thereby is only to execute its orders, as if it is a decree of a civil court, by exercising the powers conferred on the civil court under the Civil Procedure Code. The Petitioners' claim for interest/ compensation from 01.03.2009, and the other claims under this head, if adjudicated, would require this tribunal to go behind and beyond the judgment and decree of this Tribunal dated 23.05.2014. It is impermissible for this Tribunal, therefore, to adjudicate such a claim in proceedings under Section 120(3)

of the Electricity Act. Consequently, the claim of the Petitioner under this head also necessitates rejection.

Suffice it to make it clear that we have not expressed any opinion on the merits of the Petitioners claims under this head or whether the judgements in **Central Bank of India** (2002) 1 SCC 637, **Indian Council of Enviro-Legal Action** 2011 (8) SCC 161 and **Uttar Haryana Bijli Vitran Nigam Ltd.** (2023) 2 SCC 624), relied on behalf of the Petitioners, justify such claims being granted.

V. CONCLUSION:

The Petitioner is entitled, in terms of the order of this Tribunal dated 23.05.2014, to compound interest at 12% per annum with quarterly rests with respect to the outstanding dues which remained unpaid after 23.06.2014. Consequently, they are entitled to 12% PA compound interest with quarterly rests even on the interest component of the outstanding dues which remained unpaid from 15.02.2016 onwards. Likewise, they are entitled to short payment, if any, by the Respondents towards the principal amount due and payable in terms of the order of the KERC in OP No. 47 of 2011 dated 30.11.2012.

While holding that they are entitled to the afore-said amounts, we do not wish to undertake the exercise of actual quantification/ reconciliation of the amounts due to the petitioner under the afore-said first two heads, and instead request the KERC to undertake such an exercise of determination with utmost expedition. The KERC is requested to complete the exercise of determining the amounts due to the Petitioner under the afore-said two heads at the earliest, preferably within three months from the date of receipt of a copy of this order. On the KERC passing an order, determining the amount to which the Petitioner is entitled to with respect to the afore-said

two claims, the Respondents shall make payment in terms thereof, along with interest, as stipulated in the order under execution, till the date the entire outstanding dues are paid, within four weeks from the date of receipt of a copy of the order passed by the KERC in this regard.

The Petitioner's claims under the third and fourth head, with respect to deduction of MAT and compensation for time value of money are rejected as they are beyond the scope of inquiry in Execution Proceedings under Section 120(3) of the Electricity Act. EP No. 05 of 2024 stands disposed of accordingly.

Pronounced in the open court on this the **9th day of January, 2025**.

(Seema Gupta)	(Justice Ramesh Ranganathan)
Technical Member (Electricity)	Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

tpd