

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)
Appeal No. 50 OF 2018

Dated: 18.03.2025

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

In the matter of:

Talwandi Sabo Power Limited

Village Banawala

Mansa – Talwandi Sabo Road

Dist. Mansa, Punjab - 151302

... Appellant

Versus

1. Punjab State Electricity Regulatory Commission

SCO 220-221, Sector 34A,

Chandigarh – 160022

(Through its Secretary)

2. Punjab State Load Despatch Centre

Chief Engineer,

SLDC Building, near 220KV Grid Substation

PSTCL, Ablawal

Patiala - 147001

3. Punjab State Power Corporation Limited

Chief Engineer (PP & R),
Punjab State Power Corporation Limited,
Shakti Vihar, Shed No. T1,
Patiala – 147001, (Punjab)

4. State Grid Code Review Committee,

SLDC Building, near 220KV Grid Substation,
Punjab State Transmission Corporation Ltd.,
Ablowal, Patiala – 147001
(Through its Chairperson)

... Respondent (s)

Counsel for the Appellant(s) : Mr. Sitesh Mukherjee, Sr. Adv.
Mr. Vishrov Mukherjee
Mr. Deep Rao Palepu
Mr. Vishal Binod
Mr. Syed Jafar Alam

Counsel for the Respondent(s) : Mr. Buddy A. Ranganadhan, Sr. Adv.
Ms. Gargi Kumar
Ms. Nisha for Res.1

Mr. M.G. Ramachandran, Sr. Adv.
Ms. Ranjitha Ramachandran
Ms. Poorva Saigal
Ms. Anushree Bandhan
Mr. Shubham Arya

Mr. Arvind Kumar Dubey for Res.2 &3

JUDGEMENT

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

1. In this appeal, the Appellant has assailed the order dated 26th February 2018 of the 1st Respondent – Punjab State Electricity Regulatory Commission (hereinafter referred to as "Commission") whereby the Commission has held the Appellant guilty for four mis-declarations during January 2017 and thus, liable for penalty as per Regulation 11.3.13 of Punjab State Electricity Regulatory Commission (Punjab State Grid Code), Regulations, 2013 (hereinafter referred to as "PSGC"). As per said impugned order, the penalty amount is around Rs.127.32 crores.

2. The Appellant, Talwandi Sabo Power Limited (in short "TSPL") is a generating company and owns a fully commissioned thermal power plant with a capacity of 1980 MW at Mansa District in the State of Punjab. It has executed a Power Purchase Agreement (PPA) dated 1st September, 2008 to supply entire generated power to 3rd Respondent, Punjab State Power Corporation Limited (PSPCL) through intra state transmission system.

3. Respondent No. 2, Punjab State Load Despatch Centre (in short "PSLDC") is a statutory body established under Section 31 of the Electricity Act, 2003 to ensure the integrated operation of the power system in the State of Punjab.

4. Respondent No. 3, PSPCL formerly known as Punjab State Electricity

Board, is a deemed Distribution Licensee in terms of fifth proviso to Section 14 of the Electricity, Act, 2003. The Appellant and PSPCL (3rd Respondent) are governed by and subject to the PSGC Regulations, 2013 as well as its amendments.

5. Respondent No. 4 is the State Grid Code Review Committee.

6. The Appellant being a generating company in the State of Punjab is required under Regulation 11.3.10 of PSGC Regulations, 2013 to make an advance estimation and declaration of the amount of power that its power plant is capable of generating over the course of the following day i.e., its Declared Capacity ("DC"). The dispute involved in the present appeal relates to the stated mis-declaration by the Appellant on four occasions in the month of January 2017 i.e., on 15th January 2017, 17th January 2017, 24th January 2017, and 31st January 2017.

7. It appears that the 2nd Respondent, PSPCL had directed the Appellant to demonstrate declared capacity on six occasions during the month of January, 2017 i.e., on 10th January, 2017, 15th January, 2017, 17th January, 2017, 24th January, 2017, 30th January, 2017 and 31st January, 2017 as per Regulations 11.3.13 of PSGC Regulations, 2013. PSGC declared that the Appellant has failed to demonstrate DC on four occasions i.e., on 15th January, 2017, 17th January, 2017, 24th January, 2017 and 31st January, 2017 and asked the 3rd Respondent PSPCL to deduct capacity charges for 30 days as per Regulations 11.3.13 resulting in a penalty of Rs.159.155 crores. Thus, a penalty of Rs.127.33 crores has been levied on Appellant, TSPL out of which PSPCL has already recovered Rs.77.86 crores by deducting this amount from the monthly invoice raised by PSPCL for the months of January and February, 2017.

8. The petitioner had initially approached the Hon'ble Punjab and Haryana High Court by way of Civil Writ Petition No. 5269 of 2017 challenging the Final State Energy Accounts to PSLDC as well as the findings of mis-declaration. By order dated 6th February, 2017, the Hon'ble High Court directed Commercial Metering Committee (CMC) to consider the objections of PSPCL after affording an opportunity of hearing to it. Accordingly, the Appellant, PSPCL filed objections before CMC on 13th April, 2017. A meeting of CMC was fixed for 25th April, 2017 but the Appellant expressed its inability to attend the meeting and again approached the Hon'ble High Court by way of Civil Writ Petition No. 8492 of 2017 challenging the constitution of CMC on the ground that two out of three members of the Committee i.e., Chief Engineer, SLDC, Chief Engineer, PP&R are the officers who had filed reply in the previous writ petition No. 5269 of 2017.

9. Vide order dated 25th April, 2017 passed in CWP No. 8492 of 2017, the Hon'ble High Court directed State Grid Code Review Committee (in short "SGCRC") to consider the representation of the Appellant within 15 days from the date of receipt of the order. Accordingly, SGCRC conducted a meeting on 11th May, 2017 and after hearing the Appellant, TSPL, rejected its objections. Thereafter, the Appellant again approached the Hon'ble High Court by way of fresh Civil Writ Petition No. 1055 of 2017 challenging the above referred order dated 11th May, 2017 of SGCRC. However, during the course of hearing of the writ petition, the parties agreed that the matter can be referred to 1st Respondent PSERC for taking appropriate decision on the merits. Accordingly, the writ petition was disposed of.

10. In pursuance to the said order of the Hon'ble High Court, the Appellant

approached the 1st Respondent Commission by way of petition No. 61 of 2017 challenging the legality and correctness of findings of 2nd Respondent, PSLDC regarding mis-declaration of declared capacity on five occasions i.e., 10th August, 2015, 15th January, 2017, 17th January, 2017, 24th January, 2017 and 31st January, 2017. In the impugned order, the Commission did not agree with the findings of PSLDC regarding mis-declaration of DC by the Appellant on 10th August, 2015. However, the Commission found that the Appellant failed to demonstrate the DC on the remaining four occasions in the month of January, 2017 i.e. 15th January, 2017, 17th January, 2017, 24th January, 2017 and 31st January, 2017 and accordingly, upheld the levy of penalty upon the Appellant for these mis-declarations. The Commission also held that the amount of penalty has to be calculated while considering normative availability of 80%.

11. The Appellant is, thus, before us in this appeal against the said order dated 26th February, 2017 of the Commission.

12. We have heard Learned Counsel for the Appellant and the Learned Senior Counsel appearing for Respondent Nos. 2 & 3 extensively. Learned Counsel for 1st Respondent has also been heard. We have also perused the written submissions filed by Learned Counsel for Appellant as well as by Learned Counsel for Respondent Nos. 2 & 3.

13. Undisputedly, the Appellant generates and supplies electricity to 3rd Respondent PSPCL, for its power project having the capacity of 1980 MW at Talwandi Sabo in the State of Punjab in terms of the Power Purchase agreement dated 1st September, 2008. The generation, scheduling, dispatch and delivery of electricity on a day-to-day basis under the PPA is required to be done in accordance with the provisions of PSGC Regulations, 2013 read with

the provisions of PPA. The PPA defines declared capacity (DC) as under: -

“Declared Capacity” In relation to a Unit or the Power Station at any time means the net capacity of the Unit or the Power Station at the relevant time (expressed in MW at the interconnection Point) as declared by the Seller in accordance with the Grid Code and dispatching procedures as per the Availability Based Tariff;”

14. PSGC Regulations, 2013 were notified by 1st Respondent Commission on 14th February, 2013.

15. As per Regulation 11.2.5 of these Regulations, the 2nd Respondent PSLDC is entrusted with the responsibility to coordinate the scheduling of generating stations connected to the State Transmission Network in the State of Punjab. Under Regulation 11.6.1, generating stations have a duty to comply with the schedules instructed by PSLDC unless such compliance would compromise the safety of the plant or the personnel. Under Regulation 11.3.10, a generating station is required to give an advance declaration of its DC on an ex-power plant basis i.e., for all units as a whole and not for each unit. Regulation 11.2.12 makes obligatory for a generating station to declare its capabilities faithfully as per its best assessment and authorizes SLDC to serve notice of gaming upon the generating station to explain any suspected situation of deliberate over/under-declaration of plant capabilities. Regulation 11.3.13 provides for penalty in case a generating station fails to demonstrate the declared capability when asked to do so by SLDC.

16. For the sake of convenience, we extract the Regulations 11.3.10, 11.3.12

& 11.3.13 hereunder: -

“11.3.10 The SGS shall make an advance declaration of ex-power plant MW and MWh capabilities foreseen for the next day, i.e., from 0000 hrs to 2400 hrs. During fuel shortage condition, in case of thermal stations, they may specify minimum MW, maximum MW, MWh capability and declaration of fuel shortage. The generating stations shall also declare the possible ramping up / ramping down in a block. In case of a gas turbine generating station or a combined cycle generating station, the generating station shall declare the capacity for units and modules on APM (Administered Pricing Mechanism) gas, RLNG (Regasified Liquefied Natural Gas) and liquid fuel separately, and these shall be scheduled separately.”

“11.3.12 It shall be incumbent upon the SGS to declare the plant capabilities faithfully, i.e., according to their best assessment. In case, it is suspected that they have deliberately over/under declared the plant capability contemplating to deviate from the schedules given on the basis of their capability declarations (and thus make money either as undue capacity charge or as the charge for deviations from schedule), the SLDC may serve the notice of gaming and ask the SGS to explain the situation with necessary backup data.

11.3.13 The SGS shall be required to demonstrate the declared capabilities of its generating station as and when asked by the SLDC. In the event of the SGS failing to demonstrate the

declared capability, the capacity charges due to the generator shall be reduced as a measure of penalty. The quantum of penalty for the first mis-declaration for any duration/block in a day shall be the charges corresponding to two days fixed charges. For the second mis-declaration the penalty shall be equivalent to fixed charges for four days and for subsequent mis-declarations, the penalty shall be multiplied in the geometrical progression over a period of a month.”

17. We may note that the Regulations 11.3.12 & 11.3.13 of PSGC Regulations, 2013 are in consonance with sub-clause No. 18, 19 & 20 of Clause 6.4 of Central Electricity Regulatory Commission (CERC) Indian Electricity Grid Code Regulations, 2010 hereinafter referred to as (IEGC) which read as under:

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“18. It shall be incumbent upon the ISGS to declare the plant capabilities faithfully, i.e., according to their best assessment. In case, it is suspected that they have deliberately over/under declared the plant capability contemplating to deviate from the schedules given on the basis of their capability declarations (and thus make money either as undue capacity charge or as the charge for deviations from schedule), the RLDC may ask the ISGS to explain the situation with necessary backup data.

19. The ISGS shall be required to demonstrate the declared capability of its generating station as and when asked by the Regional Load Despatch Centre of the region in which the ISGS is situated. In the event of the ISGS failing to demonstrate the

declared capability, the capacity charges due to the generator shall be reduced as a measure of penalty.

20. The quantum of penalty for the first misdeclaration for any duration/block in a day shall be the charges corresponding to two days fixed charges. For the second misdeclaration the penalty shall be equivalent to fixed charges for four days and for subsequent misdeclarations, the penalty shall be multiplied in the geometrical progression over a period of a month.”

18. The day-to-day scheduling of power done by PSLDC is governed by Regulation 11.4 of PSGC Regulations, 2013 which involves following steps: -

“(a) By 10.00/11.00 hours every day, the Generating Company i.e. the Appellant would intimate to PSLDC, the declared capacity i.e. station-wise ex-power plant MW and MWh capabilities foreseen for the next day.

(b) The capacity declared by the Generating Co. would be for the duration of 00.00 hrs to 24.00 hrs of the following day at 15-minute interval time block (96-time blocks).

Note: *As per Regulation 11.5 (vii) of the Punjab State Grid Code the Generating Co. can revise the declared capacity during the actual day of injection of power by with an advance notice of 30-45 minutes to PSLDC.*

(c) Based on the availability declared by all the Generating Stations in the State of Punjab, the Distribution Licensee i.e. PSPCL decides on the overall requirement of electricity for

the State of Punjab in MW and MWh for next day at 15 minutes interval (96 time block).

- (d) The requirement of power as decided by PSPCL is intimated to PSLDC.*
- (e) Thereafter, PSLDC finalizes the injection schedule of each Generating Company and drawl schedule for Distribution Licensee i.e. PSPCL.*
- (f) On the following day, the Generator injects energy into grid and recovers its payment as two-part tariff basis. Firstly, on the basis of the capacity declared and secondly, on the basis of energy injection.*
- (g) The capacity charges are payable to the Generating Co. as per State Energy Account being published in first week of the succeeding month. This account comprises of fixed components so it does not require meter data at the first instance. This is governed by Regulation 14.1.6 of the Punjab State Grid Code.*
- (h) The difference between the actual injection of power by the Generating Co. and the injection schedule given by the PSLDC to the Generating Co. is settled through the deviation account maintained as per Regulation 14.1.5 of the Punjab Station Grid Code after analyzing meter data in the last week of the succeeding month.”*

19. It is thus clear that the capacity charges payable to a generating station are fixed and are paid on the basis of declared valuable capacity by it and are not based on the scheduled given by PSLDC for actual energy injected by the generating station into the grid. We may illustrate the mode of calculating the

payments to be given to generating stations as under: -

- (a) *The Generating Co. declares available 1000 MW on the previous day in terms of the day ahead basis.*
- (b) *PSPCL's requirement for the next day is only 500 MW for 96 time blocks.*
- (c) *PSLDC, thereafter, gives the injection schedule corresponding to 500 MW to the Generating Co. keeping in view the requirement of PSPCL.*
- (d) *On the following day, the Generating Co. generates 400 MW.*
- (e) *The State Energy Account for the purposes of payment to the Generating Co. will show Declared Capacity as 1000 MWs and injection schedule as 500 MWs. The payment shall be made as under:*

For the declared capacity i.e. 1000 MW = fixed charges are payable = 1000 MW x 1.22 Rs x 1000 (approx.) (fixed charges as per PPA) = Rs 1220000 known as capacity charges/fixed charges. This first part of the tariff as stated above. The payment of capacity charges will be made as per the State Energy Account. The State Energy Account gets published in first week of succeeding month. This account comprises of fixed components only and it does not require meter data at the first instance.

For the second part i.e. energy charges, the calculation would be on the basis of injection schedule i.e. 500 Mw x 3 (approx.) x 1000 = Rs 1500000. For the actual injection made by the Generating Co. in comparison to schedule given by PSLDC, the

payment/account shall be settled/adjusted through deviation account maintained as per Regulation 14.1.5 of Punjab State Grid Code in the third/fourth week of the succeeding month.”

Written Submission of the Appellant

20. The Counsel for the Appellant submitted that Talwandi Sabo Power Ltd. has filed the present Appeal challenging the Order dated 26.02.2018 passed by the Punjab State Electricity Regulatory Commission in Petition No. 61 of 2017.

21. The dispute pertains to the Final State Energy Account (“SEA”) for January 2017, issued by Punjab State Load Despatch Centre (“PSLDC”) on 01.03.2017, wherein PSLDC alleged that TSPL mis-declared its Declared Capacity (“DC”) on four occasions—15.01.2017, 17.01.2017, 24.01.2017, and 31.01.2017—under Regulation 11.3.13 of the Punjab State Grid Code, 2013.

22. Consequently, Punjab State Power Corporation Ltd. (“PSPCL”) was directed to deduct the mis-declaration penalty from TSPL’s capacity charges. TSPL challenged PSLDC’s findings before PSERC, contesting the legality and correctness of the alleged mis-declaration.

23. However, PSERC, through the Impugned Order, upheld PSLDC’s determination and directed PSPCL to levy penalties equivalent to fixed charges for 30 days (2+4+8+16 days), as per Clause 1.2.2 of Schedule 7 of the Power Purchase Agreement (“PPA”), assuming a Normative Availability of 80%. As a result, a mis-declaration penalty of Rs. 127.32 Crores was imposed on TSPL, out of which Rs. 77.86 Crores has already been recovered by PSPCL through deductions from TSPL’s invoices for January and February 2017.

24. Further, the Counsel submitted that the allegation of mis-declaration of DC and the resulting penalty imposed by PSERC are erroneous and inconsistent with the Punjab Grid Code. The key submissions are as follows:

(a) No Basis for Mis-Declaration Allegation:

- In each alleged instance (15.01.2017, 17.01.2017, 24.01.2017, and 31.01.2017), TSPL either successfully generated power up to its DC or had informed PSLDC in advance about technical constraints affecting generation.
- Despite prior intimation of technical issues and requests for downward revision, PSLDC, allegedly acting at PSPCL's behest, issued DC demonstration notices.
- PSLDC's notices were based on an unlawful revision of Scheduled Generation (SG), implemented immediately in the next Timeblock, violating the Punjab Grid Code.

(b) Conditions for Gaming/Mis-Declaration Not Met:

- Under Regulations 11.3.4 and 11.3.12 of the Punjab Grid Code, mis-declaration must be intentional, aimed at earning undue capacity charges. Even PSERC acknowledged this principle in the Impugned Order.
- TSPL demonstrated its DC within the required timeframe (4th–8th Timeblock of the same day). As per Regulation 11.3.13, no penalty can be levied if DC is successfully demonstrated.
- Neither PSLDC, PSERC, nor the State Grid Code Review Committee (SGCRC) conducted any investigation or analysis to establish TSPL's alleged commercial gain. Without proving intent or undue financial benefit, no case for mis-declaration or gaming can be made.

(c) No Technical Basis for Mis-Declaration Allegation:

- As per the CERC TPDDL Order (dated 29.11.2023 in Petition No. 199/MP/2019), mis-declaration can only be established if a Thermal Power Plant (TPP) declares DC without having sufficient coal, or while being under shutdown/repair due to faulty machinery.
- No such circumstances were reported or proven in TSPL's case.
- TSPL successfully demonstrated its DC on all days except 17.01.2017, when technical issues in the Coal Handling Plant (CHP) necessitated a downward revision and shutdown, which was duly communicated to PSLDC in advance.

Date	Timeblock in which DC Notice was received	Timeblock in which TSPL demonstrated its DC
15.01.2017	39 th	4 th TB (D: 0.44%). 5 th TB: Over-injection by 1.27 MW. 6 th TB (D: 0.12%)
17.01.2017	Issued in 33 rd . Received in 34 th .	TSPL had downward revised its DC on multiple occasion due to issues in CHP and consequently the Plant was shut down.
24.01.2017	Issued in 59 th . Received in 60 th .	7 th TB (D: 1.02%). 8 th TB (D: 0.34%).
31.01.2017 (1 st Notice)	Issued in 33 rd . Received in 34 th .	6 th TB (D: 1.78%). 7 th TB (Over-injected by 4.77 MW).
31.01.2017 (2 nd Notice)	39 th	3 rd TB (Over-injection by 4.77 MW). PSLDC in email dated 16.02.2017

Date	Timeblock in which DC Notice was received	Timeblock in which TSPL demonstrated its DC
		@Pg. 728 has admitted that TSPL demonstrated its DC.
<i>D: Deviation, TB: Timeblock</i>		

(d) Capability to Generate Power up to DC:

- TSPL consistently generated power up to its declared DC, proving it had sufficient coal stock and technical capability on all alleged dates of mis-declaration.

(e) No Mis-Declaration in Absence of Complete Failure to Meet DC:

- A mis-declaration could only be established if TSPL had failed to generate up to its DC for all 96 Timeblocks in a day or was unable to demonstrate DC upon PSLDC's notice. This did not occur.

(f) Erroneous Interpretation of Regulation 11.5(xi) by PSLDC & PSERC:

- PSLDC and PSERC incorrectly assumed that TSPL was required to demonstrate DC specifically in the 4th Timeblock after receiving notice.
- The Punjab Grid Code and IEGC do not prescribe a specific Timeblock for DC demonstration.
- PSLDC's notice did not specify any particular Timeblock for DC demonstration, and adding such a requirement post facto is legally impermissible.
- The Punjab Grid Code does not mandate demonstration as per a generating station's ramp-up rate or strictly within the 4th Timeblock.

- Regulation 11.5(xi), relied upon by PSLDC, pertains to schedule revision for system operation and does not govern DC demonstration. Similarly, Regulation 11.5(vii) deals with DC and schedule revision but does not mandate specific Timeblock-based DC demonstration.

(g) Unilateral and Arbitrary Revision of State Energy Account (SEA):

- PSLDC initially issued the Final SEA for January 2017 on 14.02.2017, explicitly stating that 15.01.2017 was not a case of mis-declaration, as the deviation was only 4 MW (0.325% of the schedule).
- However, PSLDC unilaterally revised the SEA on 01.03.2017, now treating 15.01.2017 as a mis-declaration based on a deviation of 5.3 MW (0.44% of the schedule).
- The inconsistency in PSLDC's assessment raises questions about the legitimacy of the revised SEA.

(h) Violation of Punjab Grid Code in Revising SEA:

- Regulation 14.1.6 mandates that once the SEA is issued, it can only be revised by the Commercial and Metering Committee (CMC) based on objections raised by stakeholders.
- PSPCL raised no objections to the Final SEA of January 2017, yet PSLDC unilaterally revised it, violating the Punjab Grid Code.

(i) Improper Schedule Revision on 24.01.2017 Leading to Erroneous DC Demonstration Notice:

- On 24.01.2017 (Timeblock 58), PSLDC revised TSPL's schedule from 1450 MW to 1650 MW at PSPCL's request.

- Under Regulation 11.5(vii), a revised schedule takes effect from the 6th Timeblock, meaning the revised schedule of 1650 MW should have been applicable from the 63rd Timeblock.
- However, PSLDC wrongly applied the new schedule immediately from the 59th Timeblock, creating an artificial discrepancy.
- PSLDC then issued a DC Demonstration Notice on this erroneous basis, falsely alleging that TSPL's generation did not match the revised schedule.
- This sequence of actions shows malafide intent by PSLDC—first increasing TSPL's schedule arbitrarily, applying it in violation of regulations, and then penalizing TSPL based on this error.

(j) Erroneous Finding of Mis-Declaration on 31.01.2017 Despite

PSLDC's Own Certification:

- TSPL successfully demonstrated DC on 31.01.2017 through multiple Timeblocks by over-injecting beyond its declared DC.
- PSLDC's email dated 16.02.2017 explicitly confirmed that TSPL had demonstrated DC on 31.01.2017.
- Despite this, PSLDC still held TSPL guilty of mis-declaration in the SEA for January 2017, contradicting its own prior assessment.

25. Governing Provisions of Punjab Grid Code on Mis-Declaration of DC and Penalty are as follows:

- Regulation 11.3.10 & 11.3.12: TSPL must faithfully declare its DC in advance for the next day (0000–2400 hrs), based on its best assessment, to claim Capacity Charges.

- Regulation 11.3.12: If PSLDC suspects deliberate over-declaration to claim undue capacity charges, it may issue a "gaming" notice seeking an explanation.
- Regulation 11.3.13: TSPL must demonstrate its DC upon PSLDC's demand. Failure to do so attracts a penalty in the form of reduced Capacity Charges.
- Penalty Structure: As per Regulation 11.3.13, the first mis-declaration in a month leads to a penalty of two days' Capacity Charges, which increases exponentially (e.g., 2 + 4 + 8 + 16 days) for subsequent mis-declarations.

26. Key Findings of PSERC in the Impugned Order:

- Gaming & Mis-Declaration: "Gaming" under Regulation 11.3.4 is equated with deliberate over/under-declaration of DC to gain undue financial benefits.
- Applicability of Gaming Provisions: Regulations 11.3.12 and 11.3.13 address "gaming," with one form being mis-declaration of DC for financial gain.
- Intent Requirement: A mis-declaration must be deliberate, with the intent to earn undue Capacity Charges.
- Timeblock for DC Demonstration: If PSLDC's notice does not specify a Timeblock, the generator must demonstrate DC immediately, per its ramp-up rate under Regulation 11.3.10.
- 4th Timeblock Interpretation: PSLDC's decision to allow DC demonstration from the 4th Timeblock was given a "liberal interpretation," and TSPL was expected to comply.
- Rejection of TSPL's Interpretation: TSPL's reliance on Regulation 13.3.3 to argue that it could demonstrate DC within a self-determined time was

rejected. Only Regulations 11.3.12 and 11.3.13 apply, and "within the time specified" refers only to the generator's ramp-up/ramp-down rate.

- Deviation Margin Not Applicable: The $\pm 12\%$ deviation margin under Regulation 7(2)(a) of the CERC DSM Regulations, 2014, applies only to scheduled generation (SG) and not to DC demonstration.
- Finding of Mis-Declaration: PSERC held that TSPL did not declare its DC faithfully and intentionally aimed to earn undue Capacity Charges.
- Application of Penalty: Capacity Charges were reduced per Regulation 11.3.13, following a geometric progression for repeated mis-declarations.
- Status of 15.01.2017 Allegation: Despite issuing the Final SEA on 14.02.2017, PSERC maintained that mis-declaration allegations for 15.01.2017 remained open for further review, as PSPCL was asked to comment.
- Penalty Calculation: Fixed charges penalty for mis-declaration was based on an 80% Normative Availability Factor, per Regulation 11.3.13 read with Clause 1.2.2 of Schedule 7 of the PPA.

27. Further the Counsel submitted that this Tribunal granted a stay on the Impugned Order on 06.04.2018.

28. TSPL challenged the validity of Regulation 11.3.13 of the Punjab Grid Code before the Punjab & Haryana High Court in CWP No. 23767/2018. The High Court admitted the petition on 16.10.2018, and it remains pending adjudication.

A. *There was no "Gaming" or "Mis-declaration of DC" by TSPL*

29. Mis-declaration of DC arises when a generating station declares DC without adequate coal stock or technical capability to generate up to its declared DC. In TSPL's case, neither deficiency has been alleged, proven, or pleaded.

30. PSLDC and PSERC have neither established nor investigated TSPL's alleged intent to mis-declare DC for undue commercial gain. Establishing intent is a sine qua non for proving mis-declaration and imposing penalties.

31. The statutory procedure prescribed for investigating gaming allegations has not been followed by PSLDC and PSERC, rendering the proceedings against TSPL legally untenable.

A.1 TSPL had faithfully declared its DC

32. Under Regulation 11.3.10 read with 11.3.12 of the Punjab Grid Code, TSPL is required to declare its Declared Capacity (DC) faithfully, based on its best assessment for the next day (0000 hrs to 2400 hrs). It is a settled legal position that DC for a thermal generating station is declared considering coal stock availability and the plant's technical capability to generate power on the given day.

33. This Tribunal's Judgment dated 19.07.2021 in Appeal Nos. 220 & 317 of 2019 (Talwandi Sabo Power Ltd v. PSERC & Anr.) reaffirmed that DC declaration is linked to coal stock and plant capability.

34. CERC TPDDL Order interpreted an identical provision (Regulation 6.4(18)(19)(20) of IEGC 2010) and held that: -

DC mis-declaration occurs only when:

- (i) The generator lacks necessary fuel/coal to generate as per declared DC.
- (ii) The plant is under shutdown/repair, or key equipment failure restricts its generation capacity.
- (iii) If a generator possesses the required fuel and technical capacity on the date of alleged mis-declaration, it cannot be deemed mis-declaration. - Deviation from Scheduled Generation (SG) should be addressed under Deviation Settlement Mechanism (DSM) Regulations, not under DC mis-declaration.

35. CERC Order dated 13.01.2023 in Petition No. 155/MP/2019 (Udupi Power Corporation Ltd v. Power Company of Karnataka Ltd & Ors.) reaffirmed that declaring DC without backup coal stock constitutes mis-declaration.

36. State Grid Codes must align with IEGC as per Section 86(1)(h) of the Electricity Act and Hon'ble Supreme Court ruling in Central Power Distribution Co. & Ors. v. CERC & Anr. (2007) 8 SCC 197. CERC's interpretation of IEGC is binding on State Commissions, making the CERC TPDDL Order applicable to Punjab Grid Code (Regulations 11.3.12 & 11.3.13).

37. In TSPL's case, neither of the two incidents mentioned in CERC TPDDL Order has been reported, pleaded or established.

38. The following facts with respect to generation of power from TSPL's Plant on the four days of alleged mis-declaration of DC are noteworthy:

Days	Timeblocks in which TSPL was generating upto its SG / DC / over-injection	Timeblocks in which TSPL under-injected against its SG	Timeblock in which TSPL demonstrated its DC after SLDC's Notice
15.01.2017*	72	24	4 th TB (D: 0.44%). 5 th TB: Over-injection by 1.27 MW. 6 th TB (D: 0.12%)
17.01.2017	56	40	TSPL had downward revised its DC on multiple occasion due to issues in CHP and consequently the Plant was shut down.
24.01.2017	48	48	7 th TB (D: 1.02%). 8 th TB (D: 0.34%).
31.01.2017	66	30	1st Notice: 6 th TB (D: 1.78%). 7 th TB (Over-injected by 4.77 MW). 2nd Notice: 3 rd TB (Over-injection by 4.77 MW).
D: Deviation, TB: Timeblock			

*DC was 1841.40 MW. 1 Unit of 660 MW was in RSD. Therefore, operational DC was 1227.60 MW only. PSLDC and Ld. PSERC was checking DC Demonstration basis 1227.60 MW only.

39. On all four days of alleged mis-declaration, TSPL's plant successfully generated power up to its declared capacity (DC) in multiple Timeblocks and even over-injected in certain instances.

40. Following PSLDC's DC Demonstration Notice, TSPL demonstrated its DC between the 4th and 8th Timeblock, confirming the availability of necessary coal stock and technical capability to generate power as per its declared DC.

41. Regulation 11.3.10 read with 11.3.12 of the Punjab Grid Code confirms that TSPL declared its DC faithfully based on its best assessment. CERC TPDDL Order establishes that a generator cannot be held liable for DC mis-declaration if it possesses the requisite fuel stock and technical capacity, making PSERC's finding of mis-declaration incorrect.

42. Mis-declaration could have been established if TSPL had failed to generate power up to its DC throughout the day (across all 96 Timeblocks) or had been unable to demonstrate its DC after PSLDC's Notice. Since neither of these conditions occurred, the allegation of mis-declaration against TSPL is unfounded.

Re: DC Demonstration Notices were issued on an erroneous pretext

43. PSLDC issued DC Demonstration Notices against TSPL for alleged under-injection compared to Scheduled Generation (SG) or Declared Capacity (DC) on 15.01.2017, 17.01.2017, 24.01.2017, and 31.01.2017.

44. However, deviations from SG are common in Thermal Power Plants (TPPs) due to fluctuating auxiliary consumption and variations in the Gross

Calorific Value (GCV) of coal.

45. CERC TPDDL Order and Regulation 11.3.6(C) of the Punjab Grid Code (1st Amendment, 2019) confirm that deviations between scheduled and actual generation are addressed under Deviation Settlement Mechanism (DSM) Regulations. Such deviations do not constitute “gaming” or “mis-declaration of DC” under either the Punjab Grid Code or the IEGC.

A.2 Intention to mis-declare the DC to earn undue commercial gain has not been established or even investigated

46. Regulation 11.3.4 defines gaming as an intentional mis-declaration of a commercial parameter to gain undue financial advantage. Regulation 11.3.12 allows SLDC to issue a notice if a generating station is suspected of deliberate over/under declaration to earn undue capacity charges. Regulation 11.3.13 mandates that a generator must demonstrate its DC when asked, failing which penalties may be imposed. DSM Regulations (Regulation 2(1)(i)) align with the Punjab Grid Code’s definition of gaming.

47. The concept of “gaming” under Regulation 11.3.4 and “deliberate over/under declaration” under Regulation 11.3.12 are synonymous—both require an intentional act to gain financial benefit. Mere deviation from DC is insufficient; mis-declaration must be deliberate and motivated by financial gain to justify penalties under Regulation 11.3.13. This interpretation has not been challenged by PSLDC or PSPCL.

48. PSLDC, PSERC, and SGCRC failed to analyze or investigate whether TSPL actually gained undue financial benefits from the alleged mis-declaration.

49. In contrast, CERC has previously conducted thorough investigations in similar cases (e.g., RRVPNL v. Gujarat Fluorochemicals Ltd, Southern RLDC v. Meenakshi Energy Pvt. Ltd.).

50. If TSPL intended to gain financially, it would have declared full capacity (1841 MW) instead of lower DC values:

- 15.01.2017 & 17.01.2017 – Well below full capacity (average)
- 24.01.2017 – 1650 MW
- 31.01.2017 – 1473.12 MW

51. This contradicts any claim of intentional mis-declaration for financial gain.

52. Even assuming mis-declaration (without admitting), the financial benefit, if any, is negligible compared to the significant penalty imposed on TSPL, which is as follows:

Date	TS PL DC (M U)	Actu al injection by TSPL (MU)*	Differ ence in DC vs. injection (MU)	Per unit capaci ty charge (Rs/k Wh)*	Extra amount allegedly earned by TSPL (Rs Cr.)	Penalty at Normative Availability (Rs Cr.)
	1	2	3 = (1- 2)	4	5 = (3x4)	6
15.01. 2017	42. 26	18.82	23.43	1.3314	3.12	8.49

17.01. 2017	10. 26	4.31	5.95		0.79	16.98
24.01. 2017	39. 59	28.50	11.08		1.48	33.95
31.01. 2017	35. 35	25.74	9.61		1.28	67.90
Total					6.67	127.32

**Capacity charge taken as per the relevant time (January 2017).*

53. Evidently, it cannot be said that TSPL would have risked levy of penalty totalling to Rs. 127.32 Crores for making undue commercial gain of Rs. 6.67 Crores.

54. Evidently, in the present case, TSPL's intention to make commercial gain by alleged mis-declaration of DC has not been established. Hence, penalty under Regulation 11.3.13 of the Punjab Grid Code could not have been imposed on TSPL. In this regard reliance is placed on ***Hindustan Steel Ltd v. State of Orissa: (1969) 2 SCC 627*** ("SC Hindustan Steel Judgment") [Para 8]:

*"8. Under the Act penalty may be imposed for failure to register as a dealer: s. 9(1) read with s. 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and **penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also***

be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out.”

55. SC Hindustan Steel Judgment was also followed by Hon’ble Supreme Court in ***Akbar Badridin Jiwani v. Collector of Customs Bombay***, 1990 AIR 1579.

A.3 Statutory procedure applicable in case of gaming has not been followed by PSLDC and PSERC

56. The Counsel submitted that as per Regulation 11.3.4 if gaming is suspected, PSLDC must disallow the corresponding energy from the UI account until a final decision. However, PSLDC failed to do so despite holding TSPL liable for mis-declaration, undermining its own finding of intentional mis-declaration for financial gain.

57. As per Regulation 11.3.12 PSLDC must issue a gaming notice and seek an explanation with supporting data. No such notice was issued to TSPL by PSLDC or PSERC.

58. Vide Regulation 11.3.20 PSLDC must periodically review deviations and report any gaming cases to SGCRG. No such review or report regarding TSPL was made.

59. As per Regulation 6(3) of DSM Regulations, the Commission can suo-motu or upon petition initiate proceedings and conduct an inquiry before concluding gaming. No inquiry was conducted by PSERC.

60. PSERC reached a finding of gaming without following statutory procedures, rendering the decision legally untenable.

61. A prescribed statutory procedure must be mandatorily followed; failure to do so invalidates the consequential decision (*Dipak Babaria v. State of Gujarat* (2014) 3 SCC 502).

B. PSERC has incorrectly held that DC shall be demonstrated as per the ramp up rate declared by TSPL / in the 4th Timeblock after the Notice.

62. PSERC incorrectly ruled that if PSLDC does not specify a Timeblock in the DC Demonstration Notice, TSPL must demonstrate DC immediately based on its declared ramp-up rate under Regulation 11.3.10 of the Punjab Grid Code. PSERC held that since PSLDC allowed TSPL to implement directions from the 4th Timeblock, TSPL must demonstrate DC in the 4th Timeblock after receiving

the notice (Regulation 11.5(vii)).

63. PSERC wrongly concluded that TSPL cannot specify the time for demonstrating DC, stating that only Regulations 11.3.12 and 11.3.13 apply for DC demonstration.

64. TSPL complied with PSLDC's DC Demonstration Notice on all days except 17.01.2017, where technical issues in CHP forced a downward revision and plant shutdown. PSLDC's DC Demonstration Notice did not specify a Timeblock for demonstration. Thus, adding a post-facto requirement for the 4th Timeblock is legally untenable.

65. Regulation 11.5(xi) pertains to SLDC's revision of schedule for better system operation and does not govern DC demonstration or revision of DC. The DC Demonstration Notice was not issued for better system operation, making PSLDC's reliance on this regulation misplaced.

B.1 DC is not to be demonstrated as per the ramp up rate declared by TSPL

66. PSERC wrongly held that if PSLDC did not specify a Timeblock in the DC Demonstration Notice, TSPL must demonstrate DC immediately as per its declared ramp-up rate. This interpretation is legally flawed because:

- PSERC is imposing additional conditions on TSPL's DC Demonstration Notice that were not originally present, which is impermissible.
- No provision in the Punjab Grid Code or IEGC mandates that DC must be demonstrated per the ramp-up rate declared by the generator.
- PSERC misinterpreted the phrase "within the time specified by the

generator” in Regulation 13.3.3 to mean ramp-up/ramp-down rate under Regulation 11.3.10, which is unsupported by statutory language or legislative intent.

67. Courts must not add or interpolate words into statutes that the legislature has not expressly included (Union of India v. Sankalchand Himatlal Sheth, (1977) 4 SCC 193; Sonia Bhatia v. State of U.P., (1981) 2 SCC 585).

68. The principle *expressum facit cessare tacitum* applies—when specific inclusions are made in a statute, exclusions are presumed. Since the phrase “as per ramp-up rate” is not explicitly stated in Regulation 13.3.3, it cannot be inferred. PSERC, as a statutory authority, must adhere to the regulations and cannot introduce procedures contrary to express statutory provisions (Chief Information Commr. v. State of Manipur, (2011) 15 SCC 1).

69. The Hon’ble Supreme Court in *Excel Crop Care Limited v. Competition Commission of India*: (2017) 8 SCC 47 (Excel Crop Judgment) held that if two possible and reasonable interpretation can be put upon a penal provision, the court must lean towards the interpretation which exempts the party from penalty rather than the one which imposes penalty. Hence, Regulation 13.3.3 must be interpreted to the advantage of TSPL i.e., TSPL can demonstrate the DC in any Timeblock on the same day when DC Demonstration Notice is issued by PSLDC, especially when the Notice does not mention any specific Timeblock for demonstration of DC. Relevant extract of Excel Crop Judgment is as follows:

*“89. The principle of strict interpretation of a penal statute would support and supplement the aforesaid conclusion arrived at by us. In a recent Constitution Bench judgment in *Abhiram Singh v. C.D. Commachen* [*Abhiram Singh v. C.D. Commachen*, (2017) 2 SCC*

629 : (2017) 2 SCC (Civ) 68 : AIR 2017 SC 401] , this Court scanned through the relevant case law on the subject and applied this principle even while construing “corrupt practice” in elections which is of a quasi-criminal nature. We would like to reproduce the following discussion from the said judgment: (SCC p. 694, para 100)

“100. Election petitions alleging corrupt practices have a quasi-criminal character. Where a statutory provision implicates penal consequences or consequences of a quasi-criminal character, a strict construction of the words used by the legislature must be adopted. The rule of strict interpretation in regard to penal statutes was enunciated in a judgment of a Constitution Bench of this Court in *Tolaram Relumal v. State of Bombay* [*Tolaram Relumal v. State of Bombay*, (1955) 1 SCR 158 : AIR 1954 SC 496 : 1954 Cri LJ 1333] wherein it was held as follows: (AIR pp. 498-99, para 8 : SCR p. 164)

‘8. ... It may be here observed that the provisions of Section 18(1) are penal in nature and it is a well-settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature. As pointed out by Lord Macmillan in *London and North Eastern Railway Co. v. Berriman*[*London and North Eastern Railway Co. v. Berriman*, 1946 AC 278 (HL)] : (AC p. 295)

“... Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language.”

This principle has been consistently applied by this Court while construing the ambit of the expression “corrupt practices”. The rule of strict interpretation has been adopted in AmolakchandChhazed v. Bhagwandas Arya [AmolakchandChhazed v. Bhagwandas Arya, (1977) 3 SCC 566] ...

90. In such a situation even if two interpretations are possible, one that leans in favour of infringer has to be adopted, on the principle of strict interpretation that needs to be given to such statutes.”

70. In the present case, pursuant to the Notices issued by PSLDC, TSPL had demonstrated its DC between the 4th Timeblock to 8th Timeblock. In terms of Regulation 11.3.13, penalty cannot be levied if the generating station has been able to demonstrate its DC.

B.2 PSERC relying on Regulation 11.5(vii) of Punjab Grid Code has incorrectly held that DC has to be demonstrated in the 4th Timeblock after the Notice

71. Regulation 11.5(vii) provides that revision of DC by the generating stations and revision of SG by the Distribution Licensee is permissible, and the revised DC / SG shall become effective from the 6th Timeblock after the request for revision is made. Evidently, PSERC has misinterpreted Regulation 11.5(vii) to hold that DC shall be demonstrated by TSPL in the 4th Timeblock after the

Notice.

C. 12% Deviation margin provided under DSM Regulations applies for demonstration of DC also

72. The Punjab State Electricity Regulatory Commission (PSERC) incorrectly held that Deviation Settlement Mechanism (DSM) Regulations do not apply to Demonstration of Declared Capacity (DC), asserting that DC demonstration is solely governed by the Punjab Grid Code.

73. Regulation 7(2)(a) of the CERC DSM Regulations permits generating stations to deviate within $\pm 12\%$ of the scheduled injection or 150 MW, whichever is lower. Regulation 11.3.6 C of the Punjab Grid Code (First Amendment) affirms this allowance by capping maximum permissible deviation per time block as per CERC DSM Regulations.

74. Thermal power plants, such as Talwandi Sabo Power Limited (TSPL), inherently experience fluctuations due to fuel quality, water supply, and component synchronization, making precise adherence to scheduled generation impractical. Recognizing this, DSM Regulations and the Punjab Grid Code permit a deviation of $\pm 12\%$ from the schedule. The provisions of DSM Regulations and Punjab Grid Code are binding on PSERC, Punjab SLDC (PSLDC), and Punjab State Power Corporation Limited (PSPCL), and hence, the permitted $\pm 12\%$ deviation cannot be disregarded.

75. The DSM Regulations govern Actual Injection, which is the same parameter used for DC demonstration. Since generating stations demonstrate DC through their actual injection, the permissible $\pm 12\%$ deviation must also

apply in DC demonstrations. The technical realities remain constant, and inconsistent interpretation cannot be allowed.

76. Regulation 2(1)(i) of DSM Regulations defines "Gaming" as the intentional misdeclaration of DC for undue commercial gain. PSERC invoked this provision to allege gaming by TSPL. If DSM Regulations apply for adjudicating gaming charges, their other provisions—including the $\pm 12\%$ deviation margin—must also be applicable.

77. TSPL, pursuant to PSLDC's DC Demonstration Notices, injected power within the permitted $\pm 12\%$ margin in the 4th to 6th Timeblocks, demonstrating compliance.

C.1 TSPL has already paid deviation charges under the DSM Regulation for the period in dispute

78. Regulation 5 of the DSM Regulations specifies the charges for deviation against different frequencies. Further, Regulation 7 provides for levy of Additional Deviation Charges for deviation in actual injection (volume) beyond the prescribed permissible limit of $\pm 12\%$. For the period in dispute, TSPL has already been levied with and paid the deviation charges.

79. Hence, the levy of mis-declaration penalty will amount to double jeopardy, since the same is based on same cause of action and hence not permissible. In this regard reliance is placed on *Ld. Governor, Delhi & Ors v. HC Narinder Singh*; (2004) 13 SCC 342 [Para 4].

D. Malafide actions of PSLDC

80. PSLDC has targeted TSPL in a mala fide and discriminatory manner and treated it on a wholly unreasonable footing compared with other similarly situated IPP in Punjab i.e., Nabha Power Limited (Nabha). To the best of the TSPL's knowledge: -

(a) Nabha had also under injected beyond the $\pm 12\%$ margin in November 2016 (7 occasions); December 2016 (27 occasions) and January 2017 (17 occasions).

(b) Out of all the time blocks in November 2016 to January 2017, Nabha under injected in the range of 61% to 74% of the time.

81. However, neither any DC demonstration notice was issued to Nabha, nor any findings of mis-declaration had been issued against Nabha. Details are as under:

Month	Total time blocks in the month	Number of 15-minute Time blocks when there was under-injection by		Number of 15-minute Time blocks when there was over-injection by	
		TSPL	NPL	TSPL	NPL
Nov-16	2880	1281	1991	1554	889
Dec-16	2976	1535	1801	1310	1097
Jan-17	2976	1325	2213	1561	763

82. The aforesaid evidence that under-injection / deviation from Schedule is a normal phenomenon in operation of a TPP and is not considered as mis-declaration of DC.

TSPL DATE-WISE SUBMISSIONS ON ALLEGED MISDECLARATION ON 15.01.2017, 17.01.2017, 24.01.2017 AND 31.01.2017

E. Alleged Misdeclaration on 15.01.2017

83. On 15.01.2017, PSLDC issued DC Demonstration Notice (Memo No. 170) (“DC Notice 15.01.2017”) to TSPL at 09:32 hrs, i.e., in the 39th Timeblock. Details of TSPL’s DC, SG and actual injection on 15.01.2017 for the relevant Timeblocks are as under:

Time block	DC (MW)	SG (MW)	Injection (MW)	Deviation		Within 12%	Remarks
				MW	%		
39 09:30 - 09:45	1841.40	1227.60	1175.78	51.82	4.22	Yes	Allegation of Misdeclaration @9:32 hrs.
42 10:15 - 10:30	1841.40	1227.60	1222.25	5.35	0.44	Yes	Marginal deviation of 5.35 MW (0.44%) - 4th Timeblock.
43 10:30 - 10:45	1841.40	1227.60	1228.87	-1.27	-0.10	Yes	Over injection of 1.27 MW - 5th Timeblock.
44 10:45 - 11:00	1841.40	1227.60	1226.18	1.42	0.12	Yes	Marginal deviation of 1.42 MW (0.12%) -

Time block	DC (MW)	SG (MW)	Injection (MW)	Deviation		Within 12%	Remarks
				MW	%		
0							6th Timeblock.

84. PSERC's findings and PSLDC's allegation that TSPL mis-declared its DC on 15.01.2017 are incorrect for the following reasons:

-On 15.01.2017, one unit of TSPL's project was under Reserve Shut Down (RSD), and the applicable Scheduled Generation (SG) was 1227.60 MW, based on the DC of two operational units. At 09:32 hrs (39th Timeblock), when TSPL received the DC Notice, its declared DC was 1841.41 MW, SG was 1227.60 MW, and actual injection was 1193 MW. The deviation at that moment was 34.6 MW (2.81%), significantly lower than 51.82 MW (4.22%) for the entire time block. This deviation was well within the $\pm 12\%$ margin permitted under Regulation 7(2)(a) of the DSM Regulations.

-Following the DC Notice, TSPL successfully demonstrated its DC in the subsequent time blocks:

- In the 42nd Timeblock (4th after notice), TSPL injected 1222.25 MW against an SG of 1227.60 MW, with a deviation of 5.35 MW (0.44%).
- In the 43rd Timeblock (5th after notice), TSPL injected 1228.87 MW against an SG of 1227.60 MW, with an over-injection of 1.27 MW.
- In the 44th Timeblock (6th after notice), TSPL injected 1227.60 MW against an SG of 1226.18 MW, with a deviation of 1.42 MW (0.12%). 4. TSPL's project generated power up to its DC and even exceeded SG in the 43rd Timeblock.

-The minor deviations of less than 1% in the 42nd and 44th Timeblocks

do not amount to intentional mis-declaration for commercial gain or gaming. In this regard reliance is placed on this Tribunal Judgment dated 11.12.2007 in Appeal No. 79 of 2007 titled 'Punjab State Electricity Board v. CERC ("PSEB Judgment") [Para 26, 31] wherein it was held that deviation of less than 1% of DC is within practical limits and shall not be considered as gaming by the Generating Company since such deviation could be attributable to varying auxiliary consumption or Gross Calorific Value ("GCV") of fuel. Relevant extracts are as follows:

"26.....The Commission in para 22 of its Impugned order had observed as under:-

"22 As per Northern Regional Power Committee (NRPC), there appears to be no fool-proof mechanism to bifurcate the actual generation into gas and liquid generation separately. C&AG report is not offering any assistance to us in resolving the issue in regard to gaming by under declaring capacity based on gas firing and thus making undue financial gains. Further net generation may vary based on actual auxiliary consumption. On the electrical side, only the total generation of the generating units/stations can be authentically metered, and it is not possible to actually meter what energy has come from gas firing and what from liquid firing, particularly in case of mixed firing. This practical aspect has to be kept in view.".....

Analysis and decision.

[..]

31. We observe that though the declared capacity by the second respondent for Auraiya Gas based power station was 3250 MUs, there remained an unrequisioned capacity on gas to the extent of 143 MUs. It was well open to the beneficiaries to exhaust the

available generation capacity on gas before opting for the liquid fuel generation capacity. The records produced by the respondent show that low frequency conditions prevailed varying from 7% to 62% of the time during the year 2003-04 as per NRLDC report. It is during the low frequency conditions that the generators are expected to generate to their maximum capacity in order to help the system approach 50 Hz. Frequency. The total excess generation by the respondent has been 174.5 MUs on gas beyond the scheduled generation of 3107 MU which means that the estimated excess generation beyond the declared capacity of 3250 MU on gas was only 31.5 MUs which is less than 1% of the total 3250 MUs declared capacity on gas. We are satisfied that this extent of deviation is well within the practical limits as this difference could be ascribed to the varying Gross Calorific Value (GCV) of gas received on day to day basis. The consumption of gas is also dependent upon the loading of the gas turbine and the prevailing system frequency which varies the output of the gas turbine per se.”

85. It is a settled principle that the law does not concern itself with trifling and immaterial matters. In working out equities, courts generally apply the principle of "de minimis non curat lex". For example, PSLDC and PSERC ought not to have considered 15.01.2017 as a mis-declaration because TSPL's deviation was a mere ~5 MW out of a total DC of 1227.60 MW. Mis-declaration findings should not be arrived at, out of legal malice and take the shape of a witch-hunt against the generating company by imposing enormous penalties for venial breaches. In this regard reliance is placed on Umesh Chand Gandhi v. 1st Addl. Dist. & Sessions Judge and Another; (1994) 1 SCC 747 ("SC Umesh Chand

Judgment”) [Para 2]. wherein it was held that:

“2. ... But when there is a bona fide mistake in calculation, the burden is on the tenant to establish by adduction of evidence his bona fide in committing the mistake. On the court's satisfying that the tenant committed bona fide mistake in computation of the three components referred to earlier or any one and there is a default in compliance thereof, if the amount in deficit is small, court would ignore the said mistake applying de minimis principle and refuse decree for eviction. Therefore, the tenant has to act in good faith. The mistake in calculation must be due to the above bona fide mistake. It is settled law that the courts of justice generally do not take trifling and immaterial matters into account except under peculiar circumstances. The strictness or harshness or inflexibility would lead to injustice or miscarriage of justice. Therefore, in working out equities, the court would apply in general the maxim "de minimis non curat lex". The Division Bench, therefore, rightly pointed out that the doctrine deserves extension giving the benefit to the tenant, but it is a question of fact to be decided in each case. Bona fide mistake may occur in myriad circumstances but it depends upon each case. Neither rigid nor exhaustive nor inflexible rule could be laid cutting its amplitude into mathematical formula, in which event also it would lead to miscarriage of justice or injustice. Accordingly we find that the Division Bench has rightly left the question to the discretion of the courts under the Act to consider in each case in the given facts and circumstances whether non-compliance was bona fide and was a trifle, and then to grant relief accordingly.”

86. Even PSLDC in the Final State Energy Account (“SEA”) dated 14.02.2017 issued for January 2017 had stated that the deviation of 4 MW on 15.01.2017 was marginal and will not qualify as misdeclaration. However, this finding was subsequently reversed in the Revised SEA issued on 01.03.2017. Thus, PSLDC unilaterally revised the SEA which was illegal and contrary to the Punjab Grid Code as demonstrated below.

Re: Unilateral revision of SEA by PSLDC is not permitted under the Punjab Grid Code

87. The Counsel for the Appellant submitted that PSERC’s finding that the issue of TSPL’s alleged mis-declaration of DC on 15.01.2017 remained open even after the issuance of the Final SEA on 14.02.2017 is incorrect. The reasoning given by PSERC was that PSPCL was invited to provide comments or objections, and PSLDC’s email dated 16.02.2017 (sent after SEA issuance) indicated an ongoing review. Based on this, PSERC concluded that PSLDC had not unilaterally reopened the issue or revised the SEA.

88. There are regulatory and procedural flaws in this finding. Regulation 14.1.6 of the Punjab Grid Code grants stakeholders the right to raise objections post-issuance of the SEA. Thus, PSLDC’s request for PSPCL’s comments was a routine procedural requirement, not an indication that the matter was still open. The email dated 16.02.2017 was sent after the Final SEA was issued on 14.02.2017 and did not mention any ongoing review of SCADA or SEM data for 15.01.2017. PSLDC must prepare the SEA based on its own independent verification and analysis rather than stakeholder comments. If PSLDC were to alter SEA findings based on external inputs, its transparency and neutrality

would be compromised.

89. The SEA, once issued, cannot be revised unilaterally by PSLDC. If PSLDC had doubts regarding its mis-declaration finding for 15.01.2017, it should not have issued the SEA on 14.02.2017 and should have waited for SEM data verification. Regulation 14.1.6 provides that any revision must occur through the Commercial and Metering Committee (CMC) upon an objection raised by a party within 15 days. PSPCL did not raise any objection on the SEA dated 14.02.2017, meaning there was no basis for its revision.

90. Regulation 14.1.6 of the Punjab Grid Code mandates PSLDC to issue the Monthly State Energy Accounts (SEA) for Punjab by the 7th of every month. Once issued, stakeholders have 15 days to raise objections, which, if any, must be deliberated by the Commercial and Metering Committee (CMC), whose decision finalizes the SEA.

91. PSLDC does not have the authority to unilaterally revise an SEA post-issuance. In this case, PSLDC issued the Final SEA for January 2017 on 14.02.2017, clearly stating that the alleged misdeclaration of DC on 15.01.2017 was not valid, as the deviation was only 4 MW. PSLDC also invited objections from PSPCL, but PSPCL did not challenge the SEA.

92. Instead, PSPCL acted upon PSLDC's SEA findings and imposed penalties of Rs. 74,27,27,159/- via Memo No. 239/ISB-468 dated 02.03.2017 for three other alleged misdeclarations in January 2017. Since PSPCL did not raise any objection and PSLDC had already finalized its position in the SEA, any subsequent review or revision by PSLDC was procedurally and legally untenable.

93. Subsequently, PSLDC unilaterally revised the SEA for January 2017 on its own and issued the Revised SEA on 01.03.2017 holding that 15.01.2017 has now been considered as misdeclaration of DC by TSPL:

“DC demonstrated for date 15.01.2017 was not considered earlier as misdeclaration due to marginal difference of 4 MW & availability of instantaneous SCADA data only. Now same is verified with SEM data. As per SEM data also TSPL failed to demonstrate declared capacity in response to message no. 170 dated 15.01.2017. Accordingly, same has also been taken as misdeclaration.”

94. The Revised SEA, which retrospectively declared 15.01.2017 as a misdeclaration of DC by TSPL, is illegal, irrational, and contrary to Regulation 14.1.6 of the Punjab Grid Code. Accordingly, PSERC ought to have disregarded its findings for the following reasons:

- PSLDC has no authority under the Punjab Grid Code to unilaterally revise the Final SEA for January 2017.
- As per Regulation 14.1.6, any revision of an SEA must be processed through the Commercial and Metering Committee (CMC). Since no objections were raised by PSPCL, the CMC was never convened, making the Revised SEA procedurally invalid.
- PSPCL explicitly admitted that it had not raised any objections to the Final SEA's finding that 15.01.2017 was not a misdeclaration. Since no statutory objections were raised and due process was not followed, the Revised SEA is void ab initio and legally unsustainable.

95. It is a settled principle that when a statutory procedure is prescribed, it

must be strictly followed. Any action in violation of the prescribed procedure must be set aside. Consequently, the Revised SEA is void, and PSERC erred in relying on it while determining misdeclaration of DC by TSPL. Reliance is placed on *Dipak Babaria & Anr. v. State of Gujarat & Ors*; (2014) 3 SCC 502:

“61. It is well settled that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. This proposition of law laid down in Taylor Vs. Taylor (1875) 1 Ch D 426,431 was first adopted by the Judicial Committee in Nazir Ahmed Vs. King Emperor reported in AIR 1936 PC 253 and then followed by a bench of three Judges of this Court in Rao Shiv Bahadur Singh Vs. State of Vindhya Pradesh reported in AIR 1954 SC 322. This proposition was further explained in paragraph 8 of State of U.P. Vs. Singhara Singh by a bench of three Judges reported in AIR 1964 SC 358 in the following words:-

“8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted....”

96. The aforesaid legal proposition has been reiterated in *Chandra Kishore Jha v. Mahavir Prasad*; 1999 (8) SCC 266, *Dhananjaya Reddy v. State of Karnataka*; 2001 (4) SCC 9 and *Gujarat Urja Vikas Nigam Limited v. Essar*

Power Limited 2008 (4) SCC 755.

97. Initially, a deviation of 4 MW (0.325% of the Schedule) was considered marginal and not a misdeclaration of DC. Later, a deviation of 5.3 MW (0.44% of the Schedule) was no longer deemed marginal. PSLDC provided no explanation for this contradictory stance, undermining the credibility of the revision.

98. Under Regulations 14.1.5 and 14.1.6 of the Punjab Grid Code, PSLDC was required to verify both SCADA System data and SEM data before issuing the Final SEA by 07.02.2017 for January 2017. The Final SEA dated 14.02.2017 was published without considering SEM data, and PSLDC subsequently attempted to revise its findings based on this data. Since PSLDC was obligated to have both datasets before finalizing the SEA, its reliance on subsequent SEM data for revision is procedurally invalid and legally unjustified.

F. Alleged Misdeclaration on 17.01.2017

99. On 17.01.2017, PSLDC issued DC Demonstration Notice (Memo No. 172) (“DC Notice 17.01.2017”) to TSPL at 08:10 hrs, i.e., in the 33 Timeblock. This Notice was received by TSPL @08:15 hrs, i.e., in the 34th Timeblock. Details of TSPL’s DC, SG and actual injection on 17.01.2017 for the relevant Timeblocks are as under:

Time block	DC (MW)	SG (MW)	Injection (MW)	Deviation		Within 12%	Remarks
				MW	%		
33 08:00 - 08:15	922.80	309	246.18	62.82	20.33	No	Allegation of Misdeclaration @ 8:10 hrs.
34 08:15 - 08:30	922.80	309	248.73	60.27	19.51	No	DC Notice 15.01.2017 received by TSPL.
36 08:45 - 09:00	922.80	309	257.02	51.98	16.82	No	TSPL requested PSLDC @08:58 hrs for revision of DC to 250 MW.
37 09:00 - 09:15	922.80	309	247.56	61.44	19.88	No	
38 09:15 - 09:30	250	250	238.91	11.09	4.44	Yes	DC revised from 922.80 to 250 MW.

Time block	DC (MW)	SG (MW)	Injection (MW)	Deviation		Within 12%	Remarks
				MW	%		
39 09:30 - 09:45	250	250	232.22	17.78	7.11	Yes	
42 10:15 - 10:30	250	250	153.89	96.11	38.44	No	TSPL requested PSLDC @10:26 hrs for revision of DC to 150 MW.
44 10:45 - 11:00	150	150	150.76	-0.76	-0.51	Yes	DC revised from 250 MW to 150 MW.
52 12:45 - 13:00	150	150	157.53	-7.53	-5.02	Yes	TSPL requested PSLDC @12:48 hrs for revision of DC to 0 MW.
53 13:00 - 13:15	NIL	N.A.	90.47	90.47	-	13:00 - 13:15	TSPL DC was revised to 0 MW and Plant was shut down.

100. The allegation of misdeclaration of Declared Capacity (DC) by TSPL on

17.01.2017 is incorrect and contrary to the facts, as TSPL's inability to meet the Scheduled Generation (SG) was due to technical issues beyond its control, rather than any deliberate act for commercial gain. The key points are as follows:

Status of Units on 17.01.2017

- Unit 1 was operational, Unit 2 was under RSD (Reserve Shutdown), and Unit 3 was non-operational due to a technical fault.
- TSPL declared DC only for the operational Unit and the RSD Unit in line with grid regulations.

DC and Generation Data at the Time of DC Demonstration Notice

- In the 34th Timeblock (when the DC Demonstration Notice was received), the DC was 922.80 MW, SG was 309 MW, and the actual power injection was 248.73 MW, leading to a deviation of 60.27 MW (19.51%).

Progressive Downward Revision of DC Due to Technical Issues

- TSPL faced continuous technical issues in the Coal Handling Plant (CHP) due to poor coal quality, affecting its generation.
- TSPL promptly informed PSLDC and PSPCL about the issue through multiple emails throughout the day: 2:30 AM, 8:58 AM, 10:26 AM, 11:44 AM, 12:48 PM, and 7:20 PM.
- **Timeline of DC Revisions:**
 - 2:30 AM (11th Timeblock): DC reduced from 1229.8 MW to 922.80 MW.
 - 8:58 AM (36th Timeblock): DC further reduced to 250 MW.
 - 10:26 AM (42nd Timeblock): DC reduced to 150 MW
 - 12:48 PM (52nd Timeblock): DC revised to 0 MW, as the plant was forced to shut down at 13:00 hrs to resolve technical issues.

TSPL Did Not Gain Commercially but Incurred Losses

- TSPL continuously reduced its DC even before PSLDC's DC Demonstration Notice, sacrificing capacity charges.
- TSPL shut down the entire plant at 13:00 hrs, foregoing additional capacity charges.
- Had TSPL intended commercial gain, it would not have reduced DC for the RSD Unit.
- TSPL also used oil support (a costlier and non-reimbursable alternative) to sustain generation, further disproving any motive for profit.

TSPL's Actions Were in Compliance with Punjab Grid Code

- Regulation 11.6.1 of the Punjab Grid Code requires generators to comply with PSLDC's despatch instructions unless doing so compromises plant or personnel safety.
- Given the technical difficulties since 2:30 AM, TSPL could not physically comply with the DC Demonstration Notice issued in the 34th Timeblock.
- By 42nd Timeblock, TSPL's DC was already reduced to 150 MW, making PSLDC's expectation of 309 MW generation unrealistic.
- The legal principle "Lex non cogit ad impossibilia" (the law does not compel the impossible) applies—TSPL could not be penalized for circumstances beyond its control.

101. Since TSPL's inability to meet the SG was due to unforeseen technical difficulties, the allegation of misdeclaration of DC on 17.01.2017 is unsustainable. TSPL's compliance with regulatory procedures, transparent communication, and financial sacrifices further demonstrate that no intentional misdeclaration occurred.

Re: TSPL was not able to meet the SG on 17.01.2017 due to PSPCL's breach of its Coal Obligation

102. The Counsel for the Appellant submitted that on 17.01.2017, the Coal Handling Plant (CHP) of TSPL's Project encountered operational challenges due to the poor quality of coal affecting power generation and necessitating a downward revision of its Declared Capacity (DC).

103. Prior to 17.01.2017, one of the two conveyor belts in CHP had dislocated. On 17.01.2017, due to extended usage, the second conveyor belt also malfunctioned due to coal choking, requiring substantial manpower deployment for repairs.

104. TSPL continued power generation despite challenges, utilizing oil support for flame stability in the boiler. However, oil is costlier than coal and its cost is not reimbursed by PSPCL. Due to persistent CHP issues, poor coal quality, and safety concerns, TSPL had to shut down the operational unit at 13:00 hrs on 17.01.2017.

105. The coal received in January 2017 was of inferior and erratic quality. TSPL, through multiple communications dated 11.11.2016, 24.11.2016, and 10.12.2016, requested PSPCL to release withheld payments for earlier alternate coal procurement and sought approval to procure alternate/imported coal to maintain full-capacity generation.

106. PSPCL did not respond or approve these requests, restricting TSPL to using only the inferior domestic coal received at the site. Thus, the non-availability of quality coal, operational disruptions in CHP, and PSPCL's inaction

significantly impacted TSPL's ability to meet its scheduled generation in January 2017.

107. In the present case, the responsibility to ensure the adequate quality and quantity of coal for power generation at TSPL's Project rests with PSPCL. This is reinforced by this Tribunal's Judgment dated 07.04.2016, in Appeal Nos. 56 & 84 of 2013 (TSPL v. PSPCL & Anr.), which categorically held that:

- a) PSPCL is obligated to execute the Fuel Supply Agreement (FSA) with the designated fuel supplier, Mahanadi Coalfields Limited.
- b) PSPCL must ensure an adequate supply of quality coal for power generation at TSPL's Project.
- c) PSPCL cannot be absolved of its obligation to supply the required coal for TSPL's power plant.

108. This "PSPCL Coal Obligation", as established by this Tribunal, confirms PSPCL's liability in ensuring uninterrupted coal supply, making it accountable for any disruptions in TSPL's power generation due to coal deficiencies. Relevant extracts of this Tribunal Judgment dated 07.04.2016 is as follows:

"12.32 In our opinion, it is the Obligation of the Respondent as per RfP, LoA, PPA & MoU to arrange for the Fuel for the Generating Station. Further, we also direct the Appellant to pursue with Ministry of Coal, MCFL and other relevant departments for the fuel even though the Obligation of arranging Fuel lies with the Respondent PSPCL for smooth and timely operation of the Plant.

12.33. The Obligation of signing FSA was clearly specified in the PPA and MoU including arrangement of fuel for the generating plant. Further, the bidding was conducted under Case-2, Scenario-4 of the Standard Bidding documents and as per guidelines

specified by Govt of India under Section 63 of Electricity Act, 2003, the procurer has to arrange fuel for the contracted capacity of the Generating Plant.”

...

13. In view of the above discussion and analysis of the provisions of law including guidelines issued by the Government of India, RFP's request for proposal, Power Purchase Agreement (PPA) and Memorandum of Understanding, we clearly hold that the Respondent No. 1, PSPCL/Procurer is under obligation to sign the Fuel Supply Agreement with the Fuel Supplier, namely Mahanadi Coalfields Limited and the Procurer cannot be absolved of its obligation to supply fuel to the Appellant/Petitioner for its power generating station and further to sign the Fuel Supply Agreement with the coal supplier.”

109. This Tribunal, in its judgment dated 19.07.2021 (Appeal Nos. 220 & 317 of 2019, TSPL v. PSPCL & Anr.) [Paras 149, 183, 197] reaffirmed PSPCL's obligation to supply adequate quantity and quality of coal to TSPL. TSPL's power generation obligations (DC & SG) are directly dependent on PSPCL's coal supply obligations.

110. The agreement between the parties is based on reciprocal promises, meaning PSPCL's failure to provide coal directly impacts TSPL's ability to generate power. This Tribunal held that PSPCL's failure to fulfill its coal supply obligation adversely affects TSPL's performance, and in such a scenario, TSPL cannot be penalized. This reinforces the binding nature of PSPCL's Coal Obligation, as established in earlier rulings, including this Tribunal's Judgment dated 07.04.2016, making PSPCL liable for any disruption in power generation

due to coal deficiencies. In this regard, reliance is placed on this Tribunal Judgment dated 19.07.2021 in Appeal Nos. 220 & 317 of 2019 titled TSPL v. PSPCL & Anr:

“178 – Coming to the issue of payment of Deemed Capacity Charges, according to the Appellant, the thermal plant of the Appellant was available and was declared based on the technical capacity to generate and coal stock position. As envisaged in the PPA and coupled with the Judgment dated 07.04.2016, the Respondent-PSPCL was obliged to arrange adequate quantity and quality of coal to the Appellant’s plant. Apparently, the said obligation was not kept up by the Respondent-PSPCL. Added to this, the inaction of the PSPCL to give approval for procuring coal from other CIL mines and so also coal offered by CIL through RCR mode has resulted in continuous shortage of coal for running the plant of the Appellant. Ultimately, this has compelled the Appellant to declare lower operational availability of its plant though it was technically available to generate and supply much higher quantum of electricity to Respondent No.2-PSPCL. We see the force in the contention of the Appellant that the obligation of the Appellant to operate the Plant at its full capacity is interdependent and linked to the obligation of PSPCL to supply adequate quantity and quality of coal. The terms of agreement between the parties, discussed above, goes to show the fulfilment of obligation depends upon the mutual compliance of reciprocal commitments. Therefore, the failure of PSPCL to discharge its obligation, definitely, affects TSPL adversely. Hence, we are of the opinion that the Appellant is justified in claiming deemed capacity charges between September

2016 to May 2017 and October 2017 till 2018 for the reasons stated above.”

111. On 17.01.2017, TSPL faced operational difficulties in meeting its Scheduled Generation (SG) and demonstrating its Declared Capacity (DC) due to:

- Poor quality of coal received at the project site, constituting a breach of PSPCL's Coal Obligation.
- PSPCL's failure to approve procurement of alternate/imported coal, despite TSPL's repeated requests.
- TSPL's downward revision of DC was a consequence of coal-related issues, not a deliberate misdeclaration for commercial gains.
- TSPL cannot be penalized for failing to demonstrate DC on 17.01.2017, as its power generation was directly impacted by PSPCL's breach.

112. Judicial Precedents Supporting TSPL's Position are as follows:

Sikkim Subba Associates v. State of Sikkim (2001) 5 SCC 629 [Para 16(a)]: In contracts involving reciprocal obligations, a party failing to fulfill its own obligation cannot demand performance or claim damages from the other party.
Mohd. Ghazi v. State of M.P. (2000) 4 SCC 342: No one should be penalized for no fault of their own.

113. Thus, TSPL's inability to demonstrate DC was a direct consequence of PSPCL's failure to fulfill its coal supply obligations, making any penalty unjust and legally unsustainable.

G. *Alleged Misdeclaration on 24.01.2017*

114. On 24.01.2017, PSLDC had issued DC Demonstration Notice (Memo No. 179) (“DC Notice 24.01.2017”) to TSPL at 14:41 hrs (i.e., in the 59th Timeblock). This Notice was received by TSPL @14:48 hrs, i.e., in the 60th Timeblock. Details of TSPL’s DC, SG and actual injection on 24.01.2017 for the relevant Timeblocks are as under:

Time block	DC (MW)	SG (MW)	Injection (MW)	Deviation		Within 12%	Remarks
				MW	%		
58 14:15 - 14:30	1650	1450	1420.36	29.64	2.04	Yes	PSLDC issued revision to TSPL SG from 1450 MW to 1650 MW @14:21 hrs.
59 14:30 - 14:45	1650	1650	1401.31	248.69	15.07	No	Revised SG of 1650 MW applied by PSLDC. Allegation of Misdeclaration @14:41 hrs.
59 14:30 - 14:45	1650	1450	1401.31 [1411 @ 14:41 hrs]	39	2.68	Yes	As per Punjab Grid Code, SG shall be 1450 MW.
60 14:45 -	1650	1650	1403.71	246.29	14.93	No	DC Notice 24.01.2017

Time block	DC (MW)	SG (MW)	Injection (MW)	Deviation		Within 12%	Remarks
				MW	%		
15:00							received by TSPL @14:48 hrs.
60 14:45 - 15:00	1650	1450	1403.71	46.29	3.19	Yes	As per Punjab Grid Code, SG shall be 1450 MW.
63 15:30 - 15:45	1650	1650	1496.58	153.42	9.30	Yes	Within 12% margin (4 th and 6 th Timeblocks after receipt of DC Notice)
65 16:00 - 16:15	1650	1650	1580	70	4.24		
66 16:15 - 16:30	1650	1650	1633.16	16.84	1.02	Yes	Successfully demonstrated DC. Deviation is less than 1%.
67 16:30 -	1650	1650	1642.54	7.46	0.34	Yes	

Time block	DC (MW)	SG (MW)	Injection (MW)	Deviation		Within 12%	Remarks
				MW	%		
16:45							

115. The DC Demonstration Notice dated 24.01.2017, issued by PSLDC, is erroneous, invalid, and contrary to the Punjab Grid Code, as it is based on incorrect data and a flawed interpretation of scheduling regulations.

116. PSLDC incorrectly considered Scheduled Generation (SG) as 1650 MW for the 59th Timeblock, whereas the actual SG was 1450 MW. As a result, PSLDC wrongly calculated a deviation of 248.69 MW (15.07%) instead of the actual deviation of only 39 MW (2.68%), which is marginal and does not qualify as misdeclaration of DC.

117. Violation of Punjab Grid Code (Regulation 11.5(vii)): On 24.01.2017 at 14:21 hrs. (58th Timeblock), PSLDC revised TSPL's SG from 1450 MW to 1650 MW. As per Regulation 11.5(vii), the revised SG should have been effective from the 63rd Timeblock (sixth Timeblock from revision). However, PSLDC wrongly applied the revised SG from the very next Timeblock (59th) instead of the 63rd, leading to the erroneous notice against TSPL.

118. PSLDC first increased TSPL's SG by 200 MW, then wrongly applied the revision immediately (59th Timeblock instead of 63rd), and subsequently issued a notice alleging deviation. This action reflects malafide intent, abuse of

dominant position, and non-compliance with legal provisions.

119. Judicial Precedents Supporting TSPL's Position is *Tata Chemicals Ltd. v. Commr. of Customs* (2015) 11 SCC 628 (Para 18): A statutory requirement must be followed exactly as prescribed, and any deviation renders the action legally non-existent and PSEB Judgment & SC Umesh Chand Judgment: Marginal deviation (2.68%) does not constitute a misdeclaration of DC, further proving that the notice against TSPL is unsustainable.

120. TSPL's ramping rate for power generation was 1% of its Declared Capacity (DC) per minute. Given a DC of 1650 MW, TSPL could increase generation by only 16.50 MW per minute. However, on 24.01.2017 at 14:21 hrs, PSLDC increased TSPL's schedule from 1450 MW to 1650 MW, effective from 14:30-14:45 hrs, thereby allowing only 9 minutes to ramp up generation by 200 MW, which was technically impossible. Based on TSPL's ramping rate, the maximum achievable generation by 14:30 hrs was 1598.50 MW, making PSLDC's directive unreasonable and impractical.

121. TSPL achieved DC of 1650 MW in the 66th and 67th Timeblocks with injections of 1633.16 MW and 1642.54 MW, resulting in marginal deviations of 1.02% and 0.45%, which are within acceptable limits.

122. All subsequent injections remained within the 12% deviation margin, as permitted under Regulation 7(2)(a) of DSM Regulations.

123. On 24.01.2017, TSPL over-injected power in 48 out of 96 Timeblocks, including multiple consecutive over-injections in later Timeblocks (75th–96th). This reaffirms that TSPL's plant was capable of achieving the declared

generation capacity.

124. PSLDC issued 10 revisions to TSPL's Scheduled Generation (SG) on 24.01.2017, causing operational challenges and erratic deviation patterns. The frequent and arbitrary revisions contributed to generation fluctuations, making any allegation of misdeclaration against TSPL untenable.

125. In view of the above it cannot be said that TSPL was intentionally misdeclaring its DC to make commercial gains. Over injection in 50% of the Timeblock itself indicates that TSPL's Plant was capable of generating power upto the Declared Capacity.

H. Alleged Misdeclaration on 31.01.2017

126. On 31.01.2017, PSLDC issued two separate DC Demonstration Notices to TSPL as follows:

First DC Notice ("1st DC Notice 31.01.2017")

- Issued via Memo No. 184 at 08:13 hrs (during the 33rd Timeblock).
- Received by TSPL at 08:20 hrs (during the 34th Timeblock).

Second DC Notice ("2nd DC Notice 31.01.2017")

- Issued via Memo No. 185 at 09:16 hrs (during the 38th Timeblock).
- Received by TSPL at 09:23 hrs (within the 38th Timeblock itself).

127. Details of TSPL's DC, SG and actual injection on 31.01.2017 for the relevant Timeblocks are as under:

Time block	DC (MW)	SG (MW)	Injection (MW)	Deviation		Within 12%	Remarks
				MW	%		
33 08:00 - 08:15	1473.12	1473.12	1456.36	16.76	1.14	Yes	Allegation of 1st Misdeclaration @08:13 hrs.
34 08:15 - 08:30	1473.12	1473.12	1457.60	15.52	1.05	Yes	1 st DC Notice 31.01.2017 received by TSPL @08:20 hrs.
37 09:00 - 09:15	1473.12	1473.12	1407.49	65.63	4.46	Yes	Marginal Deviation of 4.46% (4 th Timeblock after 1 st DC Notice 31.01.2017).
38 09:15 - 09:30	1473.12	1473.12	1396.58	76.54	5.20	Yes	Allegation of 2nd Misdeclaration @9:16 hrs.
39 09:30 -	1473.12	1473.12	1445.83	26.29	1.78	Yes	Marginal Deviation of 1.78% (6 th

Time block	DC (MW)	SG (MW)	Injection (MW)	Deviation		Within 12%	Remarks
				MW	%		
09:45							Timeblock after 1 st DC Notice 31.01.2017)
40 09:45 - 10:00	1473.12	1473.12	1477.89	4.77	0.32	Yes	DC Demonstrated by TSPL (Over Injection by 4.77 MW) - 3 rd Timeblock after 2 nd DC Notice 31.01.2017
41 10:00 - 10:15	1473.12	1473.12	1418.83	54.29	3.69	Yes	4 th Timeblock after 2 nd DC Notice 31.01.2017.
42 10:15 - 10:30	1473.12	1473.12	1473.38	0.26	0.02	Yes	DC Demonstrated by TSPL. (Over Injection by 0.26 MW) - 5 th Timeblock after 2 nd DC Notice 31.01.2017.

Time block	DC (MW)	SG (MW)	Injection (MW)	Deviation		Within 12%	Remarks	
				MW	%			
43	10:30 - 10:45	1473.12	1473.12	1461.67	11.45	0.78	Yes	DC Demonstrated by TSPL. (0.78% deviation) - 6 th Timeblock after 2 nd DC Notice 31.01.2017.
44	10:45 - 11:00	1473.12	1473.12	1463.56	9.56	0.65	Yes	7 th Timeblock after 2 nd DC Notice 31.01.2017.
45	11:00 - 11:15	1473.12	1473.12	1471.93	1.19	0.08	Yes	8 th Timeblock after 2 nd DC Notice 31.01.2017.
	1 st DC Notice		2 nd DC Notice					

Re: 1st DC Notice dated 31.01.2017

128. The 1st DC Demonstration Notice issued on 31.01.2017 by PSLDC is erroneous as TSPL's deviation from Scheduled Generation (SG) in the 33rd

Timeblock was only 1.14%, a marginal deviation within practical limits.

129. Deviation of 1% of Declared Capacity (DC) is considered acceptable and does not constitute gaming, as such variations may be due to auxiliary consumption fluctuations or changes in coal's Gross Calorific Value (GCV).

130. Hon'ble Supreme Court in Umesh Chand Judgment held that courts apply the de minimis principle, disregarding minor bona fide errors and refusing disproportionate penalties for insignificant deviations.

131. Without prejudice to the contention that the 1st DC Notice was issued on an erroneous basis, TSPL's power injection demonstrated compliance with its Declared Capacity (DC) of 1473.12 MW, as follows:

- 4th Timeblock after Notice – Injection of 1407.49 MW, with a marginal deviation of 4.46%.
- 6th Timeblock after Notice – Injection of 1445.83 MW, with a minor deviation of 1.78%.
- 7th Timeblock after Notice – Injection of 1477.89 MW, exceeding DC, thereby demonstrating compliance.
- Subsequent Timeblocks – All injections were within the permissible 12% deviation limit under Regulation 7(2)(a) of DSM Regulations.

Re: 2nd DC Notice dated 31.01.2017

132. TSPL successfully demonstrated its Declared Capacity (DC) in multiple Timeblocks following the 2nd DC Notice. PSLDC, in its email dated 16.02.2017, certified that TSPL had demonstrated its DC. However, PSERC erroneously concluded that TSPL had misdeclared its DC for financial gains, without

assigning any reason.

133. Upon receipt of the 2nd DC Notice in the 38th Timeblock, when TSPL's DC and SG stood at 1473.12 MW, its subsequent generation performance was as follows:

- 3rd Timeblock after Notice (40th Timeblock) – Injected 1477.89 MW (over-injection by 4.77 MW).
- 5th Timeblock after Notice (42nd Timeblock) – Injected 1473.38 MW (over-injection by 0.26 MW).
- 6th Timeblock after Notice (43rd Timeblock) – Injected 1461.67 MW (minor deviation of 0.78%).
- 7th and 8th Timeblocks after Notice – Injection levels were commensurate with DC and SG, with marginal deviations of 0.65% and 0.08%, well within practical limits.
- All subsequent Timeblocks – Injection remained within the 12% permissible deviation under Regulation 7(2)(a) of DSM Regulations.

134. TSPL's generation consistently matched its DC, proving that its declaration was accurate. The project was capable of generating power at the declared capacity over a sustained period. Consequently, PSPCL should be directed to refund the deducted amount of ₹77,86,41,825 along with Late Payment Surcharge (LPS).

Written Submissions of the Respondent No. 2, Punjab State Load Despatch Centre

135. Submitted that the relevant provisions of the power purchase agreement and Punjab State Grid Code applicable to the present case are as under:

136. The relevant provisions of the PPA are as under:

“Declared Capacity” In relation to a Unit or the Power Station at any time means the net capacity of the Unit or the Power Station at the relevant time (expressed in MW at the Interconnection Point) as declared by the Seller in accordance with the Grid Code and dispatching procedures as per the Availability Based Tariff;”

.....
Schedule 6: AVAILABILITY FACTORS

The following matters shall be determined as per the provisions of the Grid Code and ABT:

- a. Availability declaration and calculation of Availability or Availability Factor;
- b. Requirement for Spinning Reserves;
- c. Procedure for revision of Availability;
- d. Consequences of failure to demonstrate capacity or mis-declarations of capacity; and
- e. Other matters which may be related to Availability or Availability Factor.”

137. Regulation 11.3.12 and 11.3.13 of the Punjab State Grid Code provides as under:

“11.3.12 It shall be incumbent upon the SGS to declare the plant capabilities faithfully, i.e., according to their best assessment. In case, it is suspected that they have deliberately over/under declared the plant capability contemplating to deviate from the schedules given on the basis of their capability declarations (and

thus make money either as undue capacity charge or as the charge for deviations from schedule), the SLDC may serve the notice of gaming and ask the SGS to explain the situation with necessary backup data.

11.3.13 The SGS shall be required to demonstrate the declared capability of its generating station as and when asked by the SLDC. In the event of the SGS failing to demonstrate the declared capability, the capacity charges due to the generator shall be reduced as a measure of penalty. The quantum of penalty for the first mis-declaration for any duration/block in a day shall be the charges corresponding to two days fixed charges. For the second mis-declaration the penalty shall be equivalent to fixed charges for four days and for subsequent mis-declarations, the penalty shall be multiplied in the geometrical progression over a period of a month.”

138. The Counsel for the Respondent No. 2 submitted that the Regulation 11.3.13 of the Punjab State Grid Code mandates that the Appellant, as a generator, must demonstrate its declared capacity whenever required by the PSLDC. Failure to do so results in a penalty in the form of reduced capacity charges payable by PSPCL, with the penalty amount explicitly prescribed. The penalty structure is ad valorem and escalates with repeated deviations to ensure that the Appellant accurately declares its available capacity and does not exploit situations where PSPCL schedules lower electricity than declared.

139. The regulation is strict and leaves no discretion to the State Commission or any authority regarding the imposition, extent, or waiver of the penalty. The

penalty is fixed, non-negotiable, and strictly enforceable as a binding obligation on the generator for any misdeclaration or failure to demonstrate capacity.

140. Regulation 11.3.13 of the Punjab State Grid Code is a statutory regulation notified by the State Commission under its delegated legislative authority derived from Section 181 read with Section 86(1)(h) of the Electricity Act, 2003. The Hon'ble Supreme Court in PTC India Ltd. v. CERC, (2010) 4 SCC 603, has held that such regulations can only be challenged through a writ petition under Article 226 of the Constitution of India and not through an appeal before this Tribunal.

141. Additionally, in proceedings before the Punjab and Haryana High Court, the Appellant voluntarily withdrew its challenge to the vires of the regulation, thereby accepting its validity. The order dated 16.05.2017 passed in Civil Writ Petition No 10553 of 2017 filed by the Appellant before the Hon'ble High Court of Punjab and Haryana reads as under:

“Learned counsel for the petitioner submitted that he does not wish to press for challenge to the vires of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 (for short ‘the Regulation’) in the present petition and reserves its rights to challenge the same in future, if need arises.

Only challenge in the present petition is to order dated 11.05.2017 passed by the State Grid Code Review Committee in terms of order passed by this Court in C.W.P. No. 8492 of 2017 on 25.04.2017.

As the vires of the Regulations is no more under challenge, the present writ petition is to be listed before a Single Bench.”

142. Regulation 11.3.13 serves a valid purpose and safeguards public interest by ensuring that misdeclaration of capacity is treated strictly. The generator, having complete control over operational data, is responsible for accurately declaring its available capacity, while the procurer lacks independent means to verify this information, especially during periods of lower electricity demand. This creates a risk of overstated capacity declarations, allowing the generator to claim undue capacity charges, resulting in financial loss to the procurer and consumers.

143. Since the procurer cannot preemptively assess the generator's actual capability, the regulation mandates a demonstration of declared capacity when required by PSLDC. Failure to do so leads to strict financial penalties, serving as a deterrent against misdeclaration.

144. Regulation 11.3.13 is thus an absolute liability provision, leaving no room for leniency or discretionary enforcement. The only relevant factor for its application is the generator's failure to demonstrate its declared capacity upon request.

145. The aforementioned Regulation 11.3.12 and 11.3.13 of the Punjab State Grid Code are in consonance with Sub-clause No. 18, 19 and 20 under Clause 6.4 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 ('the Indian Electricity Grid Code') which reads as under:

“18. It shall be incumbent upon the ISGS to declare the plant capabilities faithfully, i.e., according to their best assessment. In case, it is suspected that they have deliberately over/under declared the plant capability contemplating to deviate from the schedules given on the basis of their capability declarations (and thus make money either as undue capacity charge or as the charge for deviations from schedule), the RLDC may ask the ISGS to explain the situation with necessary backup data.

19. The ISGS shall be required to demonstrate the declared capability of its generating station as and when asked by the Regional Load Despatch Centre of the region in which the ISGS is situated. In the event of the ISGS failing to demonstrate the declared capability, the capacity charges due to the generator shall be reduced as a measure of penalty.

20. The quantum of penalty for the first misdeclaration for any duration/block in a day shall be the charges corresponding to two days fixed charges. For the second misdeclaration the penalty shall be equivalent to fixed charges for four days and for subsequent misdeclarations, the penalty shall be multiplied in the geometrical progression over a period of a month.”

146. The scheduling process under Regulation 11.4 of the Punjab State Grid Code involves the following steps:

- By 10:00/11:00 hours daily, the Appellant must inform PSLDC of the declared capacity for the next day. The declared capacity is provided for 24 hours at 15-minute intervals (96 time blocks).

- The Appellant can revise the declared capacity during the day with 30-45 minutes' notice to PSLDC, as per Regulation 11.5(vii).
- Based on the declared capacities of all generators, PSPCL determines the overall power requirement for Punjab, which is communicated to PSLDC.
- PSLDC finalizes the injection and drawal schedule for the generators and PSPCL.
- The generator injects energy into the grid the following day, and payment is made on a two-part tariff basis—one part for the declared capacity and the other for actual energy injected.
- Capacity charges are fixed and paid based on the declared capacity, as reflected in the State Energy Account published in the first week of the following month. Deviations from the injection schedule are settled through the deviation account after meter data is analyzed.

147. For example, if the Appellant declares 1000 MW but the actual requirement is 500 MW, PSLDC adjusts the schedule to 500 MW. Payment is made for 1000 MW as capacity charges, and energy charges are based on the injection schedule (500 MW). Any deviation is settled in the following month through the deviation account.

148. The Appellant is required to declare the plant's capabilities accurately under Regulation 11.3.12. If there is suspicion of over/under-declaring capacity to manipulate the capacity charges, PSLDC may serve a notice. Over-declaring capacity leads to unfair gains at the cost of consumers, and such actions are deemed to lack good faith, as the Appellant would be generating at a lower capacity than declared, resulting in unjust enrichment.

149. The Appellant is required not only to declare its declared capacity (DC) but also to specify the ramping rate, which indicates how quickly the generation capacity can be increased from a lower scheduled level to the declared capacity. When asked to demonstrate the DC, the generator must reach the declared capacity within the time frame specified by the ramping rate. It is not acceptable for the generator to claim it reached the DC after the allotted time.

150. Failure to meet the DC within the specified ramping rate is considered a breach of the Punjab State Grid Code, subjecting the generator to penalties. In this context, the Appellant's DC declaration on 24.01.2017 mentions that the unit is capable of ramping up or down at a rate of 1% per minute.

FACTUAL BACKGROUND:

151. In the month of December 2016 and January 2017, PSLDC suspected that the Appellant is not declaring its plant capabilities faithfully. On account of not declaring its plant capabilities faithfully, PSLDC issued notices to the Appellant for the month of December 2016 and January 2017. The following gaming notices, which serve as a prior warning so as to avoid a notice for misdeclaration:

S. No.	Date	Time	Message Type	Brief contents of Message
1	09.12.2016	10:23 hrs	Warning	The Appellant was directed to maintain the generation as per Schedule to avoid misdeclaration

2	16.12.2 016	17:08 hrs	Advisory	The Appellant was requested to avoid frequent changes in Declared Capacity i.e. reduced DC in peak hours & increased DC in off-peak hours.
3	20.12.2 016	10:11 hrs	Warning	The Appellant was directed to avoid frequent changes in Declared Capacity & to maintain the generation as per Schedule to avoid Misdeclaration
4	30.12.2 016	11:36 hrs	Warning	The Appellant was directed to Maintain the generation as per Schedule to avoid mis declaration
5	05.01.2 017	07:04 hrs	Warning	The Appellant was decreasing Declared Capacity during requirement and was directed to avoid such unfair things.
6	06.01.2 017	10:09 hrs	Warning	The Appellant was again directed to avoid frequent changes in Declared Capacity and to Maintain the generation as per Schedule to avoid mis declaration

152. In addition to the above, while analyzing the data of December 2016, it was found that the Appellant had not delivered required generation when

required by PSLDC. This would be clear from the following (**Analysis of Energy Account for December 2016**):

S. No.	Particulars for the Month of December 2016	Time blocks
1.	No. of blocks for which the Appellant has given maximum Declared Capacity	1769
2	No. of blocks for which PSPCL has given maximum schedule corresponding to Declared Capacity in the month of December 2016	459
3.	No. of blocks for which the Appellant had not delivered required generation corresponding to blocks mentioned at S. No. 2	387

153. The above warning messages had no effect on the Appellant and the Appellant continued to violate the provisions of the Punjab State Grid Code.

154. After every warning notice, instead of increasing its generation to match the capacity declared by the Appellant earlier, the Appellant started revising/reducing the declared capacity itself.

155. The fact that the Appellant was not able to come up to the capacity declared and the correction being done by revising/reducing the declared capacity itself establishes the gaming undertaken by the Appellant and therefore, it is a clear case of misdeclaration as stipulated in 11.3.13 of the Punjab State Grid Code quoted above.

156. Due to consistent non-compliance of the directions issued by PSLDC, in January, 2017, PSLDC instructed the Appellant to demonstrate the declared

capacity as per Regulation 11.3.13 of the Punjab State Grid Code as quoted above. The list of messages given to the Appellant regarding demonstration of declared capacity is as under:

S. No.	Date & Time	Message No.	Brief contents of Message	Status of Compliance
1	10.01.201 7 8:46 hrs	162 (Page 598, Vol. III of the Appeal Paperbook)	Under injection by the Appellant i.e. injection of 1000MW against generation schedule of 1086.20MW. The Appellant was directed to demonstrate declared capacity.	Demonstrated
2	15.01.201 7 9:32 hrs	170/SLDC/ PSPCL (Page 513, CC Vol. II)	Under injection by the Appellant i.e. injection of 1193MW against generation schedule of 1227.6. The Appellant was directed to demonstrate declared capacity.	Failed

3	17.01.201 7 8:15 hrs	172 (Page 514, CC Vol. II)	Under injection by the Appellant i.e. injection of 252 MW against generation schedule of 308 MW. The Appellant was directed to demonstrate declared capacity.	Failed
4	24.01.201 7 14:48 hrs	179 (Page515, CC Vol. II)	Under injection by the Appellant i.e. injection of 1411 MW against generation schedule of 1650 MW. The Appellant was directed to demonstrate declared capacity.	Failed
5	30.01.201 7 9:00 hrs	183	Under injection by the Appellant i.e. injection of 1499 MW against generation schedule of 1524	Demonstrated

			MW. The Appellant was directed to demonstrate declared capacity.	
6	31.01.201 7 8:20 hrs	184 (Page 516, CC Vol. II)	Under injection by the Appellant i.e injection of 1451 MW against generation schedule of 1473.12 MW. The Appellant was directed to demonstrate declared capacity.	Failed
7	31.01.201 7 9:23 hrs	185 (Page 516, CC Vol. II)	Under injection by the Appellant i.e injection of 1397 MW against generation schedule of 1473.12 MW. The Appellant was directed to demonstrate declared capacity.	

157. Thus, the Appellant failed to demonstrate its Declared Capacity against messages conveyed by PSLDC on 15.01.2017, 17.01.2017, 24.01.2017 and 31.01.2017. These were treated as mis-declaration and penalty corresponding to 30 days was imposed on the Appellant as follows:

Name of the Thermal Plant	Mis-declaration date	Message No.	Number of Days for which Fixed Charges Deductible
Talwandi	15.01.2017	170	2
Sabo Power	17.01.2017	172	4
Limited	24.01.2017	179	8
(TSPL)	31.01.2017	184	16

158. The total amount of penalty payable for the above misdeclaration worked out to Rs. 159.15 Crores (approx.) as per Regulation 11.3.13 of the Punjab State Grid Code for the mis-declarations by the Appellant in the month of January, 2017.

159. Before dealing with each individual mis-declaration on the above occasions, PSLDC is first dealing with the primary contention of the Appellant that the time block in which Appellant was to demonstrate DC was not specified.

Re: TIME BLOCK NOT SPECIFIED BY PSLDC

160. The Appellant's claim that PSLDC did not specify the time blocks for demonstrating the declared capacity (DC) is unfounded and an afterthought for several reasons:

- The notice from PSLDC regarding the demonstration of DC was in line with the ramp-up/ramp-down rate specified by the Appellant in its DC

declaration. Specifically, the Appellant stated on 24.01.2017 that its unit is capable of ramping up/down at 1% per minute.

- The Appellant was aware of the timelines for demonstrating the DC, as evidenced by its letter dated 31.01.2017, in which it claimed to have demonstrated the DC for 10.01.2017 before the issuance of the State Energy Account on 14.02.2017.
- According to Regulation 11.5 of the Punjab State Grid Code, the generator can revise its capacity with 30-45 minutes' notice, and PSLDC's directions take effect from the 4th time block, counting from the block in which PSLDC issues the directions.

161. The 4th time block specified by PSLDC was actually more generous, giving the Appellant additional time to achieve the declared capacity compared to its own ramp-up/ramp-down rate.

162. The submissions in regard to each individual misdeclaration are as under:

DEMONSTRATION OF DECLARED CAPACITY (DC) ON 15.01.2017:

163. On 15.01.2017, one unit of the Appellant's plant was under reserve shutdown while two units were operational. From 00:00 to 06:45 hrs, the declared capacity (DC) was 1563.8 MW, and the generation schedule was 616 MW. During this period, the Appellant over-injected in 23 time blocks and under-injected in 4 blocks. At 07:15 hrs, the Appellant revised the DC to 1841.4 MW.

164. At 08:15 hrs, PSLDC revised the generation schedule (Revision R2), requiring 1000 MW by 08:45-09:00 hrs. A further revision (R3) increased the schedule to 1227.6 MW from 09:15 hrs, which was considered the maximum

capacity of the two running units. However, from 09:00 to 09:30 hrs, the Appellant under-injected by over 50 MW in both time blocks.

165. As a result, PSLDC issued Memo No. 170 at 09:32 hrs, noting that the plant was generating only 1193 MW against the required 1227.6 MW, and directed the Appellant to demonstrate its DC. The demonstration instruction applied only to the two running units, requiring them to reach 1227.6 MW by 10:15 hrs and sustain it until 11:00 hrs or until the next dispatch instruction (DI).

166. The Appellant managed to achieve 1227.6 MW from 10:30 to 10:45 hrs but failed to sustain it in the 10:45-11:00 hrs block. Consequently, this failure was recorded as the first misdeclaration for January 2017 under Clause 11.3.13 of the Punjab State Grid Code.

167. The Appellant's failure to demonstrate the declared capacity was assessed based on the capacity of the running units only. The instructions provided were clear and self-explanatory. As per Regulation 13.3.3 of the Punjab State Grid Code, a generating station must achieve its declared availability within the timeframe specified by the generator, based on its own declared ramp rate.

168. Furthermore, under the Indian Electricity Grid Code, generators must be capable of instantaneously increasing output to 105% of the Maximum Continuous Rating (MCR), subject to machine capability. However, the Appellant failed to meet its declared capacity as required. The relevant extract of Regulation (5.2) (h) of the Indian Electricity Grid Code (as amended) is as under:

“(h) All thermal generating units of 200 MW and above and all hydro units of 10 MW and above operating at or up to 100% of their Maximum Continuous Rating (MCR) shall normally be capable of (and shall not in any way be prevented from) instantaneously picking up to 105% and 110% of their MCR, respectively, when frequency falls suddenly. After an increase in generation as above, a generating unit may ramp back to the original level at a rate of about one percent (1%) per minute, in case continued operation at the increased level is not sustainable. Any generating unit not complying with the above requirements, shall be kept in operation (synchronized with the Regional grid) only after obtaining the permission of RLDC.”

169. As per above Regulation, the plant shall have the capability of instantaneously picking up to 105% of MCR. However, the Appellant was asked to operate at their declared capacity which is always less than or equal to MCR.

Re. Issue regarding over injection in the 5th time block:

170. The Appellant's argument that over-injection in the fifth time block compensates for under-injection in the fourth is baseless. At the time PSLDC issued the notice on 15.01.2017, the Appellant was under-injecting by approximately 51 MW. Given the Appellant's own declared ramp rate of 1% per minute, it should have reached the declared capacity within the next time block (15% of 1227.6 MW = 184.14 MW). However, even in the fourth time block, the appellant failed to achieve the declared capacity.

171. Declared Capacity (DC) is set separately for each 15-minute time block,

and the generator is required to meet the declared levels in every such block, subject to the ramp rate. Even if the Appellant over-injected in one block, it again under-injected in the subsequent block.

Re: ISSUE REGARDING MISDECLARATION OF 4 MWs

172. The Appellant's claim that PSLDC reconsidered its finding of mis-declaration on 15.01.2017 is misleading. The discrepancy of 4 MW required verification with additional data sources. The State Energy Account (SEA) was published on 14.02.2017, and the Appellant was informed via email on 16.02.2017 that the mis-declaration was under review. Upon receiving SEM data on 17.02.2017, the 4 MW discrepancy was verified, and the mis-declaration for 15.01.2017 was confirmed, leading to a revision in the account.

173. PSLDC's initial assessment identified the wrong declaration of 4 MW, but it awaited SEM data verification before finalizing the mis-declaration. The State Energy Account of 14.02.2017 noted that, pending verification, the mis-declaration was not considered due to the marginal difference. However, after receiving SEM data, the mis-declaration was confirmed at 5.34 MW, and PSLDC proceeded without requiring further confirmation from PSPCL. The Appellant's objections are an attempt to divert attention from its failure to meet the declared capacity per the ramping rate and technical requirements of the Punjab State Grid Code.

174. As per Regulation 14.1.6 of the Punjab State Grid Code, the State Energy Accounts for the previous month are published by the 7th of the following month, based on declared capacity and injection schedules, without requiring SEM data initially. However, after receiving meter data (SEM), actual injections are compared with schedules, and deviations are settled through a Deviation

Settlement Account, typically published in the last week of the succeeding month. In this case, SEM data was received on 17.02.2017, leading to the final confirmation of mis-declaration.

175. The Appellant's claim that PSLDC reviewed or revised its decision in February 2017 is baseless. PSLDC is a statutory authority, not a judicial or quasi-judicial body, and its reference to "review" pertained only to the finalization of data verification upon availability of metered accounts (SEM data), not a legal review under Order 47 Rule 1 of the CPC, 1908, or Section 94 of the Electricity Act, 2003.

176. No decision was made in January 2017 that there was no mis-declaration. A 4 MW deviation was identified, and PSLDC waited for SEA data verification before finalizing its determination. The Punjab State Grid Code does not permit any deviation in demonstrating declared capacity, even by 1 MW. The Appellant had four-time blocks to reach the declared capacity, exceeding the time required as per its own ramp rate declaration.

177. The Appellant cannot misdeclare availability beyond actual generation capacity to gain unjust capacity charges. The regulatory framework enables PSLDC to demand a capacity demonstration at any time, ensuring accurate declarations by generators. Monetary penalties for mis-declaration are non-negotiable and serve as a deterrent against false declarations. Therefore, the Appellant's argument that the deviation was trivial is invalid, as the quantum of deviation does not determine the applicability of penalties under the regulations.

DEMONSTRATION OF DECLARED CAPACITY (DC) ON 17.01.2017:

178. On 17.01.2017, the Appellant had one operational unit, while the second unit was under reserve shutdown due to low demand, and the third unit was shut down due to a fault. The Appellant declared a capacity of 922.8 MW for two units (one running and one under reserve shutdown). However, PSLDC determined the demonstration capacity as 309 MW for the single running unit, after deducting 613.8 MW of the reserve shutdown unit from the total declared capacity.

179. Between 03:30 and 08:00 hrs (18-time blocks), the PSPCL generation schedule and the Appellant's declared capacity were both 309 MW, but the Appellant under-injected in 14 out of these 18 blocks, with under-injection reaching 63.037 MW (over 20%) of the scheduled generation.

180. Due to consistent under-injection, PSLDC issued Memo No. 172 at 08:10 hrs, noting the Appellant was generating 252 MW instead of 308 MW, and directed it to demonstrate its declared capacity. However, the Appellant failed to meet the 309 MW requirement even by 09:00 hrs and continued to under-inject in the 09:00-09:15 block. Subsequently, the Appellant reduced its declared capacity to 250 MW but still failed to generate even this revised capacity over six consecutive time blocks, leading to a further reduction to 150 MW from 10:45 hrs.

181. Given the failure to demonstrate its declared capacity, PSLDC classified this as the second misdeclaration for January 2017 under Regulation 11.3.13 of the Punjab State Grid Code.

182. The Appellant's claim that its failure to meet the declared capacity was due to uncontrollable and bona fide reasons is baseless and appears to be an

afterthought. If there were genuine technical issues, the Appellant should have either accurately declared its capacity initially or revised it in a timely manner.

183. Under Regulation 11.5(vii) of the Punjab State Grid Code, the Appellant had the option to revise its declared capacity intra-day with a 30- 45-minute advance notice to PSLDC, but it failed to do so. In its letter dated 31.01.2017, the Appellant itself cited Regulation 6.5(18) of the Indian Electricity Grid Code, which allows for capacity revision. However, despite facing technical issues from 04:00 hrs on 17.01.2017, the Appellant continued under-injecting instead of revising its declared capacity.

184. PSLDC issued a demonstration message at 08:15 hrs, yet the Appellant only notified PSLDC of technical issues via email at 19:20 hrs—over 11 hours later. This delayed intimation cannot be considered a valid reason for non-compliance, as the information was provided only after failing to demonstrate the declared capacity, rather than beforehand. The Appellant's claim of prior telephonic intimation is erroneous and unsubstantiated.

DEMONSTRATION OF DECLARED CAPACITY (DC) ON 24.01.2017:

185. On 24.01.2017, the Appellant declared a capacity of 1650 MW from 00:00 hrs. At 14:30 hrs, PSPCL revised the generation schedule to match the declared capacity of 1650 MW through revision R9. However, the Appellant under-injected by approximately 250 MW in the 14:30-14:45 hrs time block.

186. In response, PSLDC issued Memo No. 179 at 14:41 hrs, noting that the Appellant was generating only 1411 MW against the scheduled 1650 MW in the 14:45-15:00 hrs block and directing it to demonstrate the declared capacity. The

Appellant was required to demonstrate capacity by the fourth time block (15:30-15:45 hrs) but continued under-injecting. Even by 16:00 hrs, after receiving the demonstration notice at 14:48 hrs, the Appellant failed to reach 1650 MW. PSPCL later revised its requirement to 1200 MW at 18:30 hrs. Consequently, this was considered the third mis-declaration under Regulation 11.3.13 of the Punjab State Grid Code for January 2017.

187. PSLDC issued the demonstration notice during the 14:45-15:00 hrs block, and the Appellant had sufficient time to comply by 15:30 hrs. The real-time revision process involves telephonic approvals and manual email communications, and any objections should have been raised immediately.

188. The Appellant did not raise concerns about timeline confusion in its letter dated 31.01.2017, and the current claim appears to be an afterthought to avoid penalties. Furthermore, based on the Appellant's own ramp-rate (1% of unit capacity per minute), it should have been able to increase generation by 276 MW in a single time block. However, PSLDC only required an increase of 200 MW, which the Appellant still failed to achieve.

DEMONSTRATION OF DECLARED CAPACITY (DC) ON 31.01.2017:

189. On 31.01.2017, the Appellant declared a capacity of 1473.12 MW for all 96-time blocks starting from 00:00 hrs. PSPCL scheduled generation at this declared capacity from 07:45 hrs, but the Appellant under-injected by approximately 54 MW in the 07:45-08:00 hrs time block.

190. In response, PSLDC issued Memo No. 184 at 08:13 hrs, noting that the Appellant was generating only 1451 MW against the scheduled 1473.12 MW

and directing it to demonstrate the declared capacity. Despite this notice, the Appellant failed to demonstrate 1473.12 MW even by 09:15 hrs after receiving the demonstration message at 08:20 hrs. Consequently, this was considered the fourth mis-declaration for January 2017 under Regulation 11.3.13 of the Punjab State Grid Code.

191. Although the Appellant briefly achieved the required generation between 09:45-10:00 hrs, it failed to sustain it in the following 10:00-10:15 hrs block. The Appellant again reached the required generation in the 10:15-10:30 hrs block but could not maintain it consistently in subsequent blocks. The under-injection continued until PSLDC reduced the generation schedule from 11:30 hrs onwards.

Re: THE CONTENTION OF APPELLANT THAT THE PENALTY CANNOT BE IMPOSED WITHOUT ESTABLISHING THAT THE APPELLANT HAD THE INTENTION TO MIS-DECLARE:

192. The Appellant's argument that a penalty cannot be imposed without proving intent to mis-declare is unfounded and contrary to the Punjab State Grid Code. The regulations provide a statutory mechanism for determining mis-declaration, which does not require proof of intent. The Appellant's failure to demonstrate its declared capacity is sufficient to establish mis-declaration.

193. Furthermore, the Appellant repeatedly declared a capacity exceeding its actual generation capability and only sought to revise its declared capacity after receiving warning notices or demonstration instructions. If the Appellant had made an honest mistake, it would have promptly corrected its declaration upon realizing the discrepancy.

194. In legal terms, the requirement to prove intent applies in criminal proceedings where imprisonment is a potential consequence. However, in civil adjudicatory proceedings imposing penalties, there is no such requirement, and the standard of proof is not as stringent as in criminal cases. In this regard, the Hon'ble Supreme Court in SEBI v. Shriram Mutual Fund, (2006) 5 SCC 361= AIR 2006 SC 2287 has held as under:

“29. The Tribunal set aside the order passed by the adjudicating officer on the ground that the penalty to be imposed for failure to perform a statutory obligation is a matter of discretion which has to be exercised judicially and on a consideration of all the relevant facts and circumstances. The Tribunal also held that the adjudicating officer has to be satisfied with the material placed before him that the violation deserves punishment. It was held that the penalty is warranted by the quantum which has to be decided by taking into consideration the factors stated in Section 15-J of the SEBI Act. In our opinion, the Tribunal has miserably failed to appreciate that by setting aside the order of the adjudicating officer the Tribunal was setting a serious wrong precedent whereby every offender would take shelter of alleged hardships to violate the provisions of the Act. In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil Act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact

whether the contravention was made by the defaulter with any guilty intention or not. This apart, unless the language of the statute indicates the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred. Under a close scrutiny of Sections 15-D(b) and 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary. Discretion has been exercised by the adjudicating officer as is evident from imposition of lesser penalty than what could have been imposed under the provisions. The intention of the parties is wholly irrelevant since there has been a clear violation of the statutory Regulations and provisions repetitively, covering a period of 6 quarters. Hence, we hold that the respondents have wilfully violated statutory provisions with impunity and hence the imposition of penalty was fully justified. The Tribunal, in this context, failed to appreciate that every mutual fund has to redeem the units as per terms and conditions of the scheme on the request of the unit-holders and this cannot, in any manner, be considered as an extraordinary circumstance or something which was not known to the respondents. The facts and circumstances of the present case in no way indicate the existence of special circumstances so as to waive the penalty imposed by the adjudicating officer. A perusal of the order passed by the adjudicating officer would clearly go to show that factors such as small size of the funds, low volume of transactions, thinly traded securities, administrative and operational exigencies were duly

considered and appreciated by the adjudicating officer while passing the order and that is why the adjudicating officer did not impose the maximum permissible penalty. The Tribunal failed to appreciate that the objective behind imposing certain limit on the business that can be conducted by mutual fund through the associate broker is to eliminate any undue advantage to the class of brokers by virtue of their close association with the asset management company, sponsors, etc. In other words, the object of imposing such limits is to ensure that there is no concentration of business only in such entities, so that there is an indirect pecuniary advantage to the person associated with the asset management company, sponsors, etc. Any undue concentration on the business of the mutual fund with its affiliated brokers by paying huge commissions to such brokers is neither desirable nor in the interest of the unit-holders. It is a matter of record that in the 12 admitted instances of violation by the respondents, the percentage of the business through the associated brokers was as high as 91.68% and 52.2% in certain factors. This apart, the respondent's excessive exposure to the associate brokers is not only established from the record, but has also been admitted by the respondents.

30. *It is settled law that when a penalty is imposed by an adjudicating officer, it is done so in adjudicatory proceedings and not by way of fine as a result of prosecution of an accused for commission of an offence in a criminal proceeding. In the instant case, the Tribunal has failed to appreciate that the respondents had given undue and unfair advantage to the associated brokers, which is detrimental to the interest of the unit-holders.*

31. *In the present case, it has been established by the adjudicating officer as well as admitted by the respondents that there has been a conscious disregard of the obligation inasmuch as the respondents were aware that they were acting in violation of the provisions of the Regulations. The adjudicating officer had, after taking into account all the facts and circumstances of the case, imposed only a token of Rs 5 lakhs against the respondents for its failure on 12 occasions though the charging section permits imposition of a maximum penalty of Rs 5 lakhs for each such violation.*

32. *The appellant Board has been established by Parliament under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto. The Board was set up to promote orderly and healthy growth of the securities market and for investors' protection SEBI has been monitoring and regulating the activities of stock exchanges, mutual funds and merchant bankers, etc. to achieve these goals. The capital market has witnessed tremendous growth in recent times, characterised particularly by the increasing participation of the public. Investors' confidence in the capital market can be sustained largely by ensuring investors' protection. That it became imperative to impose monetary penalties also in addition to other penalties in cases of default.*

Mens rea: Whether an essential element for imposing penalty for breach of civil obligations?

33. This Court in a catena of decisions has held that mens rea is not an essential element for imposing penalty for breach of civil obligations:

(a) *Director of Enforcement v. MCTM Corpn. (P) Ltd.* [(1996) 2 SCC 471 : 1996 SCC (Cri) 344] : (SCC pp. 478 & 480-81, paras 8 & 12-13)

“8. It is thus the breach of a ‘civil obligation’ which attracts ‘penalty’ under Section 23(1)(a), FERA, 1947 and a finding that the delinquent has contravened the provisions of Section 10, FERA, 1947 that would immediately attract the levy of ‘penalty’ under Section 23, irrespective of the fact whether the contravention was made by the defaulter with any ‘guilty intention’ or not. Therefore, unlike in a criminal case, where it is essential for the ‘prosecution’ to establish that the ‘accused’ had the necessary guilty intention or in other words the requisite ‘mens rea’ to commit the alleged offence with which he is charged before recording his conviction, the obligation on the part of the Directorate of Enforcement, in cases of contravention of the provisions of Section 10 of FERA, would be discharged where it is shown that the ‘blameworthy conduct’ of the delinquent had been established by wilful contravention by him of the provisions of Section 10, FERA, 1947. It is the delinquency of the defaulter itself which establishes his ‘blameworthy’ conduct, attracting the provisions of Section 23(1)(a) of FERA, 1947 without any further proof of the existence of ‘mens rea’. Even after an adjudication

by the authorities and levy of penalty under Section 23(1)(a) of FERA, 1947, the defaulter can still be tried and punished for the commission of an offence under the penal law,

12. In Corpus Juris Secundum, Vol. 85, at p. 580, para 1023, it is stated thus:

'A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws.'

13. We are in agreement with the aforesaid view and in our opinion, what applies to 'tax delinquency' equally holds good for the 'blameworthy' conduct for contravention of the provisions of FERA, 1947. We, therefore, hold that mens rea (as is understood in criminal law) is not an essential ingredient for holding a delinquent liable to pay penalty under Section 23(1)(a) of FERA, 1947 for contravention of the provisions of Section 10 of FERA, 1947 and that penalty is attracted under Section 23(1)(a) as soon as contravention of the statutory obligation contemplated by Section 10(1)(a) is established. The High Court apparently fell in error in treating the 'blameworthy conduct' under the Act as equivalent to the commission of a 'criminal offence', overlooking the position that the 'blameworthy conduct' in the adjudicatory proceedings is established by proof

only of the breach of a civil obligation under the Act, for which the defaulter is obliged to make amends by payment of the penalty imposed under Section 23(1)(a) of the Act irrespective of the fact whether he committed the breach with or without any guilty intention.”

(emphasis in original)

(b) J.K. Industries Ltd. v. Chief Inspector of Factories and Boilers [(1996) 6 SCC 665 : 1997 SCC (L&S) 1] : (SCC p. 692, para 42)

“42. The offences under the Act are not a part of general penal law but arise from the breach of a duty provided in a special beneficial social defence legislation, which creates absolute or strict liability without proof of any mens rea. The offences are strict statutory offences for which establishment of mens rea is not an essential ingredient. The omission or commission of the statutory breach is itself the offence. Similar type of offences based on the principle of strict liability, which means liability without fault or mens rea, exist in many statutes relating to economic crimes as well as in laws concerning the industry, food adulteration, prevention of pollution, etc. in India and abroad. ‘Absolute offences’ are not criminal offences in any real sense but acts which are prohibited in the interest of welfare of the public and the prohibition is backed by sanction of penalty.”

(c) *R.S. Joshi v. Ajit Mills Ltd.* [(1977) 4 SCC 98 : 1977 SCC (Tax) 536] : (SCC p. 110, para 19)

“Even here we may reject the notion that a penalty or a punishment cannot be cast in the form of an absolute or no-fault liability but must be preceded by mens rea. The classical view that ‘no mens rea, no crime’ has long ago been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude mens rea. Therefore, the contention that Section 37(1) fastens a heavy liability regardless of fault has no force in depriving the forfeiture of the character of penalty.”

(d) *Gujarat Travancore Agency v. CIT* [(1989) 3 SCC 52 : 1989 SCC (Cri) 509 : 1989 SCC (Tax) 389] : (SCC p. 55, para 4)

“It is sufficient for us to refer to Section 271(1)(a), which provides that a penalty may be imposed if the Income Tax Officer is satisfied that any person has without reasonable cause failed to furnish the return of total income, and to Section 276-C which provides that if a person wilfully fails to furnish in due time the return of income required under Section 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what is intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of

Section 276-C, which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the legislature is that the penalty should serve as a deterrent. The creation of an offence by statute proceeds on the assumption that society suffers injury by the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. In the case of a proceeding under Section 271(1)(a), however, it seems that the intention of the legislature is to emphasise the fact of loss of revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection the terms in which the penalty falls to be measured is significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision.”

(e) *Swedish Match AB v. SEBI [(2004) 11 SCC 641] : (SCC p. 671, para 113)*

“The provisions of Section 15-H of the Act mandate that a penalty of rupees twenty-five crores may be imposed. The Board does not have any discretion in the matter and, thus, the adjudication proceeding is a mere formality. Imposition of penalty upon the appellant would, thus, be a forgone conclusion. Only in the criminal proceedings initiated against the appellants, existence of mens rea on the part of the appellants will come up for consideration.”

(f) SEBI v. Cabot International Capital Corpn. [(2005) 123 Comp Cas 841 (Bom)] : (Comp Cas pp. 862 & 864-65, paras 47, 52 & 54)

“47. Thus, the following extracted principles are summarised:

(A) Mens rea is an essential or sine qua non for criminal offence.

(B) A straitjacket formula of mens rea cannot be blindly followed in each and every case. The scheme of a particular statute may be diluted in a given case.

(C) If, from the scheme, object and words used in the statute, it appears that the proceedings for imposition of the penalty are adjudicatory in nature, in contradistinction to criminal or quasi-criminal proceedings, the determination is of the breach of the civil obligation by the offender. The word ‘penalty’ by itself will not be determinative to conclude the nature of proceedings being criminal or quasi-criminal. The

relevant considerations being the nature of the functions being discharged by the authority and the determination of the liability of the contravenor and the delinquency.

(D) Mens rea is not essential element for imposing penalty for breach of civil obligations or liabilities.

(E) There can be two distinct liabilities, civil and criminal, under the same Act.

52. The SEBI Act and the Regulations, are intended to regulate the securities market and the related aspects, the imposition of penalty, in the given facts and circumstances of the case, cannot be tested on the ground of 'no mens rea, no penalty'. For breaches of provisions of the SEBI Act and Regulations, according to us, which are civil in nature, mens rea is not essential. On particular facts and circumstances of the case, proper exercise of judicial discretion is a must, but not on foundation that mens rea is essential to impose penalty in each and every breach of provisions of the SEBI Act.

54. However, we are not in agreement with the Appellate Authority in respect of the reasoning given in regard to the necessity of mens rea being essential for imposing the penalty. According to us, mens rea is not essential for imposing civil penalties under the SEBI Act and Regulations.”

(emphasis in original)

34. The Tribunal has erroneously relied on the judgment in Hindustan Steel Ltd. v. State of Orissa [(1969) 2 SCC 627 : AIR 1970 SC 253] which pertained to criminal/quasi-criminal proceedings. That Section 25 of the Orissa Sales Tax Act which was in question in the said case imposed a punishment of imprisonment up to six months and fine for the offences under the Act. The said case has no application in the present case which relates to imposition of civil liabilities under the SEBI Act and the Regulations and is not a criminal/quasi-criminal proceeding.

35. In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On

a careful perusal of Section 15-D(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow.

36. In our view, the impugned judgment of the Securities Appellate Tribunal has set a serious wrong precedent and the powers of the SEBI to impose penalty under Chapter VI-A are severely curtailed against the plain language of the statute which mandatorily imposes penalties on the contravention of the Act/Regulations without any requirement of the contravention having been deliberated or contumacious. The impugned order sets the stage for various market players to violate statutory regulations with impunity and subsequently plead ignorance of law or lack of mens rea to escape the imposition of penalty. The imputing of mens rea into the provisions of Chapter VI-A is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VI-A to give teeth to the SEBI to secure strict compliance with the Act and the Regulations.

(emphasis supplied)

195. The Counsel for the Respondent No. 2 submitted that the burden of proof lies with the Appellant, which it has failed to discharge. The Appellant was fully

aware of its obligation to declare capacity accurately under the Punjab State Grid Code and the PPA, especially given the multiple warning notices issued. It cannot claim ignorance of its plant's capability or that it overestimated capacity by mistake.

196. The Appellant is raising technical and irrelevant objections despite being clearly guilty of mis-declaration by failing to demonstrate its declared capacity as required by regulations.

197. Furthermore, the Appellant's reliance on the 11.12.2007 judgment in Appeal No. 79 of 2007 (Punjab State Electricity Board v. CERC & Ors.) is misplaced. That case involved claims based on a CAG report, whereas in the present case, mis-declaration is established by comparing scheduled and actual generation in accordance with the scheduling procedure under the Indian Electricity Grid Code.

198. Thus, the Appellant's reliance on this precedent is baseless.

199. Similarly, the reliance placed on the Order dated 29.11.2023 passed by Central Commission in Petition No. 199/MP/2019 in the matter of TPDDL v. Pragati Power Corporation Limited (CERC TPDDL Order) is baseless. In the above case, the finding of the Central Commission that there was no misdeclaration was, in fact, based on findings of SLDC (similarly placed as PSTCL). Para 27 of the Order dated 29.11.2023 is as follows:

27. SLDC, being the statutory body responsible for adjudicating misdeclarations and any consequent penalties, has verified and confirmed that the reported incidents mentioned by TPDDL do not amount to

misdeclaration and any deviation between the scheduled and actual generation are to be addressed under the DSM Regulations. In light of the information submitted and based on confirmation from the Respondent SLDC, it is concluded that there have been no misdeclaration by the Respondent PPCL. The submissions of the Petitioner are therefore not entertained.

Re: APPLICABILITY OF DEVIATION SETTLEMENT REGULATIONS

200. The Appellant's assertion regarding the applicability of the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 (DSM Regulations) is unfounded. The DSM Regulations do not govern the demonstration of Declared Capacity, which pertains to a generator's obligation to achieve its declared availability. The appellant is incorrectly conflating mis-declaration with the deviation settlement mechanism.

201. The DSM Regulations aim to maintain grid discipline and security through a commercial settlement mechanism for deviations from scheduled energy injection. However, these regulations do not permit mis-declaration of capacity merely by paying deviation charges. Regulation 11.3.13 of the Punjab State Grid Code specifically addresses mis-declaration at the threshold level, without allowing for any deviation in demonstrating Declared Capacity.

202. As per the Power Purchase Agreement (PPA), PSPCL pays a two-part tariff:

- (i) Capacity Charges (fixed charges) based on declared capacity and
- (ii) Energy Charges (variable charges) based on scheduled injection.

203. The DSM Regulations apply only to deviations in energy scheduling (variable charges) and do not govern the fixed capacity charges, which are paid solely based on the declared availability. For instance, PSPCL was liable to pay Rs. 120-130 crores in capacity charges for January 2017, independent of penalties for deviations.

204. Furthermore, the DSM Regulations provide a 12% margin for deviations, with additional charges imposed beyond this threshold. However, the Appellant has frequently under-injected beyond 12% in multiple instances during November 2016, December 2016, and January 2017. Thus, DSM Regulations do not apply to the issue of mis-declaration, And the appellant's reliance on them is misplaced.

205. The detail of the Appellant's under injection more than 12% during the month of November 2016, December 2016 and January 2017 is as follows:

Month	No. of time-blocks in which the Appellant has under-injected more than 12% of schedule or 150 MW, whichever is less (there are 96 time blocks of 15minutes in a day)
November 2016	63
December 2016	122
January 2017	66

206. The purpose of the 12% margin under the Deviation Settlement Mechanism (DSM) Regulations differs from the strict compliance requirement for declared capacity and its demonstration. Strict compliance ensures that generators do not intentionally overdeclare capacity when they anticipate lower scheduling under the Merit Order Dispatch principles. Inflated capacity declarations, despite the physical inability to generate the declared quantum, constitute gaming intended to secure higher capacity charges, resulting in unlawful gains at the expense of procurers and consumers.

207. Generators must declare capacity based on actual machine capability. Allowing a 12% margin in declared capacity, as claimed by the Appellant, would enable generators to consistently declare their physical capacity plus an additional 12%, particularly when they foresee lower scheduling. This would lead to excessive capacity charges and unjust enrichment at the cost of procurers and the public.

208. The comparison of applicability of Deviation Settlement Regulations and Declared Capacity demonstration is as follows:

S. No.	Applicability of DC demonstration	Applicability of Deviation Settlement Mechanism Regulations
1.	Applicable on Plant capacity declared by seller/generator.	Applicable to settle deviation in schedule Provided by SLDC.

2.	As per PPA, two part tariff 1 st part: Capacity Charges based on Declared capacity. Payments are being made by PSPCL as per the self-declaration of DC by the Appellant. Capacity charges of Rs. 120-130 crores for the month of Jan-2017 were payable (without taking into account penalties) independently without referring Deviation Settlement Mechanism Regulations	Deviation Settlement Mechanism is independent of Capacity charges paid by procurer to Seller i.e. Independent of 1 st part of tariff.
3.	Power can be taken less or equal to Declared capacity. But full capacity charges are payable even without getting single unit of power without referring Deviation Settlement Mechanism or any deviations.	2 nd Part of Tariff: Energy Charges based on the power taken by PSPCL/ energy Injected by IPP is applicable on Appellant. Deviation Settlement Mechanism regulations are applicable to settle deviations in 2nd part (i.e. variable part) of tariff.
4.	In case 12% margin is considered even during	Wrong declared capacities cannot be settled through DSM.

<p>demonstration also, the plants may consider it as their right to always declare its capability by keeping the margin of 12% to earn fixed charges sensing lower schedules from the procurer due to low load demand of the state. For example in case of the Appellant, whose max. plant capability is 441.936 LU/day can declare the DC of 441.936 LU/day when actual plant capability is 10-12% less i.e. actual 397.742-388.90LU/day & thus can earn Rs.53 to 63 lacs/day taking the self-proclaimed 12% margin which is otherwise termed as "Gaming" & this unjustified claim shall have to borne by consumers (people of state)</p>	<p>However, clause 8 of DSM "Compliance with instructions of Load Despatch Centre states that: "Notwithstanding anything specified in these Regulations, the sellers and the buyers shall strictly follow the instructions of the Regional Load Despatch Centre on injection and drawl in the interest of grid security and grid discipline."</p>
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5.	Fixed charges/MW are payable for declared capacity. Penalties are imposed as mentioned in Punjab State Grid clause 11.3.13 for mis declaration.	<p>As per Deviation Settlement Mechanism, there are normal charges when volume of deviation is within 12% & additional charges when deviation is beyond 12%. There are so many instances when the Appellant has injected more than 12%. As per Deviation Settlement Mechanism, additional charges are levied to settle 2nd part of tariff. The detail of the Appellant's under injection more than 12% during the month of Nov-2016, Dec-2016, Jan-2017 is as follows:</p> <table border="1" data-bbox="896 1133 1430 1962"> <thead> <tr> <th data-bbox="896 1133 1066 1839">Month</th> <th data-bbox="1066 1133 1430 1839">No. of time-blocks in which the Appellant has under-injected more than 12% of schedule or 150 MW, whichever is less (there are 96 time blocks of 15minutes in a day)</th> </tr> </thead> <tbody> <tr> <td data-bbox="896 1839 1066 1962">Nov-2016</td> <td data-bbox="1066 1839 1430 1962">63</td> </tr> </tbody> </table>	Month	No. of time-blocks in which the Appellant has under-injected more than 12% of schedule or 150 MW, whichever is less (there are 96 time blocks of 15minutes in a day)	Nov-2016	63
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Nov-2016	63					

			Dec-2016	122
			Jan-2017	66

Re: APPLICABILITY OF REGULATION 13.3.3/13.3.4 OF THE PUNJAB STATE GRID CODE TO THE FACTS OF THE PRESENT CASE:

209. The Appellant is erroneously conflating Regulations 11.3.13 and 13.3.3/13.3.4 of the Punjab State Grid Code. Regulations 13.3.3 and 13.3.4 address persistent or material discrepancies between dispatch instructions and actual generation output, as well as breaches of connection conditions. These provisions focus on monitoring and improving future performance, ensuring realistic declarations, or taking corrective action for connectivity breaches. They do not pertain to the demonstration of declared capacity under Regulation 11.3.13.

210. Regulations 13.3.3/13.3.4 fall under Section 13 of the Grid Code, which deals with monitoring generation and drawal as per contracted capacity. In contrast, Regulation 11.3.13, under Section 11 on scheduling and dispatch, specifically addresses gaming and the demonstration of declared capacity, with its own penalties. Thus, Regulation 11.3.13 operates independently from monitoring provisions.

Re: Miscellaneous

211. The Appellant's claims of mala fide actions by PSLDC and PSPCL are baseless and misconceived. The Punjab State Grid Code imposes an absolute obligation on the generator to demonstrate the declared capacity within the

stipulated time, failing which a fixed penalty applies. The Appellant's inability to demonstrate capacity is not attributable to PSLDC or PSPCL, which merely enforced the Grid Code. There is no requirement for PSLDC or PSPCL to establish mens rea, conduct further investigation, or provide additional justification for imposing the penalty.

212. Allegations that PSLDC acted to benefit PSPCL financially or targeted the Appellant with bias are unfounded. Similarly, claims of legal malice or abuse of process lack merit, as the Appellant's violation of the Grid Code is evident.

213. The Appellant's objections regarding scheduling and dispatch are also without basis, as these operations are managed by the control room, formerly under PSEB, and continue to function in the same manner.

214. The Appellant introduced an email dated 24.01.2017 at a late stage (on 10.10.2024) without a formal application, making it inadmissible as evidence.

215. Given the Appellant's failure to comply with the Grid Code and the lack of substantiated claims, the appeal is devoid of merit and should be dismissed.

Analysis and Conclusion

216. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Answering Respondent at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issue arises for determination in this Appeal:

Whether the Appellant had bona fide reasons for deviations from the DC on 15.01.2017, 17.01.2017, 24.01.2017, and 31.01.2017; and whether such deviations were justified under the PPA, Punjab Grid Code, and applicable regulations?

217. It is, therefore, important to note the relevant provisions of the PPA and the applicable Regulations, the Appellant and the Respondent PSLDC has placed reliance on the PSGC Regulations, 2013 notified by 1st Respondent Commission on 14th February, 2013.

A) Power Purchase Agreement

“Declared Capacity” In relation to a Unit or the Power Station at any time means the net capacity of the Unit or the Power Station at the relevant time (expressed in MW at the interconnection Point) as declared by the Seller in accordance with the Grid Code and dispatching procedures as per the Availability Based Tariff;”

.....

Schedule 6: AVAILABILITY FACTORS

The following matters shall be determined as per the provisions of the Grid Code and ABT:

- a. Availability declaration and calculation of Availability or Availability Factor;
- b. Requirement for Spinning Reserves;
- c. Procedure for revision of Availability;

- d. Consequences of failure to demonstrate capacity or mis-declarations of capacity; and
- e. Other matters which may be related to Availability or Availability Factor.”

B) Punjab State Grid Code (PSGC)

“11.3.10 The SGS shall make an advance declaration of ex-power plant MW and MWh capabilities foreseen for the next day, i.e., from 0000 hrs to 2400 hrs. During fuel shortage condition, in case of thermal stations, they may specify minimum MW, maximum MW, MWh capability and declaration of fuel shortage. The generating stations shall also declare the possible ramping up / ramping down in a block. In case of a gas turbine generating station or a combined cycle generating station, the generating station shall declare the capacity for units and modules on APM (Administered Pricing Mechanism) gas, RLNG (Regasified Liquefied Natural Gas) and liquid fuel separately, and these shall be scheduled separately.

11.3.12 It shall be incumbent upon the SGS to declare the plant capabilities faithfully, i.e., according to their best assessment. In case, it is suspected that they have deliberately over/under declared the plant capability contemplating to deviate from the schedules given on the basis of their capability declarations (and thus make money either as undue capacity charge or as the charge for deviations from schedule), the SLDC

may serve the notice of gaming and ask the SGS to explain the situation with necessary backup data.

11.3.13 The SGS shall be required to demonstrate the declared capabilities of its generating station as and when asked by the SLDC. In the event of the SGS failing to demonstrate the declared capability, the capacity charges due to the generator shall be reduced as a measure of penalty. The quantum of penalty for the first mis-declaration for any duration/block in a day shall be the charges corresponding to two days fixed charges. For the second mis-declaration the penalty shall be equivalent to fixed charges for four days and for subsequent mis-declarations, the penalty shall be multiplied in the geometrical progression over a period of a month.”

218. From the above, it can be seen that Regulation 11.3.10 mandates the Generating Station to declare its capability to generate power in advance for the following day based on its best assessment and fuel shortage, if any. Regulation 11.3.12 empowers the PSLDC to issue a "gaming" notice seeking an explanation in case it suspects deliberate over-declaration to claim undue capacity charges. Regulation 11.3.13 mandates the Generating Station to demonstrate its DC upon PSLDC's demand and failure to do so attracts a penalty in the form of reduced Capacity Charges.

219. However, no time limit has been specified for demonstrating the DC by the generating station.

220. As follows, the misdeclaration of DC arises when a generating station

declares DC without adequate coal stock or technical capability to generate up to its declared DC.

221. The contesting parties referred to the identical provisions in the IEGC notified by CERC as such placed their reliance on IEGC, in fact, CERC in **TPDDL Order (dated 29.11.2023 in Petition No. 199/MP/2019)**, held that misdeclaration can only be established if a Thermal Power Plant (TPP) declares DC without having sufficient coal, or while being under shutdown/repair due to faulty machinery.

222. On being asked no such circumstances were reported or proven in TSPL's case. The Appellant has successfully demonstrated its DC on all days except on 17.01.2017 where technical issues in the Coal Handling Plant (CHP) necessitated a downward revision and shutdown, which was duly communicated to PSLDC in advance as submitted by the Appellant.

223. Undisputedly, neither the coal stock nor the technical capability of the generating station can be met within a day, as such demonstration of DC within the day in dispute confirms the availability of coal stock as well the technical capability of the generating station.

224. Let us examine the status of the generating station on the disputed dates:

Date	Timeblock in which DC Notice was received	Timeblock in which TSPL demonstrated its DC
15.01.2017	39 th	4 th TB (D: 0.44%). 5 th TB: Over-injection by 1.27 MW.

Date	Timeblock in which DC Notice was received	Timeblock in which TSPL demonstrated its DC
		6 th TB (D: 0.12%)
17.01.2017	Issued in 33 rd . Received in 34 th .	TSPL had downward revised its DC on multiple occasion due to issues in CHP and consequently the Plant was shut down.
24.01.2017	Issued in 59 th . Received in 60 th .	7 th TB (D: 1.02%). 8 th TB (D: 0.34%).
31.01.2017 (1 st Notice)	Issued in 33 rd . Received in 34 th .	6 th TB (D: 1.78%). 7 th TB (Over-injected by 4.77 MW).
31.01.2017 (2 nd Notice)	39 th	3 rd TB (Over-injection by 4.77 MW). PSLDC in an email dated 16.02.2017 @Pg. 728 has admitted that TSPL demonstrated its DC.
<i>D: Deviation, TB: Timeblock</i>		

225. From the above table, the generating station has successfully demonstrated the DC on 15.01.2017 by over-injecting in the 5th time block and achieving DC with a variation of less than 1% in the 4th (deviation of 0.44%) and 6th (deviation of 0.12%) time block, as such the generating station has successfully complied with the PSGC.

226. However, on 17.01.2017, the generating station revised its DC on multiple occasions due to issues in CHP and consequently, the Plant was placed under shutdown.

227. On 24.01.2017, the generating station achieved the DC in the 7th and 8th time block with a deviation of 1.02% and 0.34% respectively, i.e. with a deviation of less than 1% in the 8th time block.

228. The Generating Station received two notices on 31.01.2017, against the first notice it achieved the DC in the 6th time block (Deviation of 1.78%), 7th time block (Over-injected by 4.77 MW), and 8th time block (Over-injection by 4.77 MW) and against the 2nd notice PSLDC vide email dated 16.02.2017 has admitted that TSPL demonstrated its DC, as submitted by the Appellant.

229. Reliance is placed on this Tribunal's Judgment dated 11.12.2007 in Appeal No. 79 of 2007 titled '**Punjab State Electricity Board v. CERC [Para 26, 31]**' wherein it was held that deviation of less than 1% of DC is within practical limits and shall not be considered as gaming by the Generating Company since such deviation could be attributable to varying auxiliary consumption or Gross Calorific Value ("GCV") of fuel. Relevant extracts are as follows:

"26.....The Commission in para 22 of its Impugned order had observed as under:-

"22 As per Northern Regional Power Committee (NRPC), there appears to be no fool-proof mechanism to bifurcate the actual generation into gas and liquid generation separately. C&AG report is not offering any assistance to us in resolving the issue in regard to gaming by under declaring capacity based on gas firing and thus making undue financial gains. Further net generation may vary based on actual auxiliary consumption. On the electrical side, only the total generation of the generating units/stations can be

authentically metered, and it is not possible to actually meter what energy has come from gas firing and what from liquid firing, particularly in case of mixed firing. This practical aspect has to be kept in view.”....

Analysis and decision.

[..]

*31. We observe that though the declared capacity by the second respondent for Auraiya Gas based power station was 3250 MUs, there remained an unrequisioned capacity on gas to the extent of 143 MUs. It was well open to the beneficiaries to exhaust the available generation capacity on gas before opting for the liquid fuel generation capacity. The records produced by the respondent show that low frequency conditions prevailed varying from 7% to 62% of the time during the year 2003-04 as per NRLDC report. It is during the low frequency conditions that the generators are expected to generate to their maximum capacity in order to help the system approach 50 Hz. Frequency. The total excess generation by the respondent has been 174.5 MUs on gas beyond the scheduled generation of 3107 MU which means that the estimated excess generation beyond the declared capacity of 3250 MU on gas was only **31.5 MUs which is less than 1% of the total 3250 MUs declared capacity on gas. We are satisfied that this extent of deviation is well within the practical limits as this difference could be ascribed to the varying Gross Calorific Value (GCV) of gas received on day to day basis. The consumption of gas is also dependent upon the loading of the gas turbine and the prevailing system frequency which varies the output of the gas turbine per se.”***

230. Therefore, except for 17.01.2017, the generating station has demonstrated the DC either by injecting more than the DC or by achieving the generation with less than 1% deviation from the DC.

231. On 17.01.2017, as already noted, the TSPL completely shut down the plant due to technical reasons, it is important to note the submission again as follows:

- TSPL promptly informed PSLDC and PSPCL about the issue through multiple emails throughout the day: 2:30 AM, 8:58 AM, 10:26 AM, 11:44 AM, 12:48 PM, and 7:20 PM.
- **Timeline of DC Revisions:**
 - 2:30 AM (11th Timeblock): DC reduced from 1229.8 MW to 922.80 MW.
 - 8:58 AM (36th Timeblock): DC further reduced to 250 MW.
 - 10:26 AM (42nd Timeblock): DC reduced to 150 MW
 - 12:48 PM (52nd Timeblock): DC revised to 0 MW, as the plant was forced to shut down at 13:00 hrs to resolve technical issues.

232. It is also noted that on 17.01.2017, Unit 1 was operational, Unit 2 was under RSD (Reserve Shutdown), and Unit 3 was non-operational due to a technical fault.

TSPL declared DC only for the operational Unit and the RSD Unit in line with grid regulations.

233. Therefore, the plant was facing technical issues as conveyed to PSLDC at 2.30 AM by the TSPL, as such there is no reason for issuance of notice or compliance thereon due to the technical problem.

234. Respondent No. 2 submitted that Regulation 11.3.13 of the Punjab State Grid Code mandates that the Appellant must demonstrate its declared capacity per the directions of PSLD, failure to do so results in a penalty in the form of reduced capacity charges payable by PSPCL.

235. However, PSLDC can issue directions within the provisions of this Regulation as such the demonstration of DC by the generating station within the reasonable time and range shall be considered as compliance with this Regulation.

236. It is the submission of the PSLDC that the Regulation is binding law for all and vires to the Regulation cannot be challenged before this Tribunal, reliance was placed on the judgment of Hon'ble Supreme Court in PTC India Ltd. v. CERC, (2010) 4 SCC 603.

237. We find no reason to delve into this submission as there is no challenge to the Regulation before us, reference to the order of the Punjab and Haryana High Court by the PSLDC is unnecessary.

238. The PSLDC argued that the regulation is strict and leaves no discretion to the State Commission or any authority regarding the imposition, extent, or waiver of the penalty. The penalty is fixed, non-negotiable, and strictly enforceable as a binding obligation on the generator for any misdeclaration or failure to demonstrate capacity. Since the procurer cannot preemptively assess the generator's actual capability, the regulation mandates a demonstration of declared capacity when required by PSLDC. Failure to do so leads to strict financial penalties, serving as a deterrent against misdeclaration.

239. The PSLDC also added that Regulation 11.3.13 is thus an absolute liability provision, leaving no room for leniency or discretionary enforcement. The only relevant factor for its application is the generator's failure to demonstrate its declared capacity upon request.

240. We agree with the submission of the PSLDC, the State Commission cannot act contrary to the Regulation or waive the penalty as specified in the Regulations, however, the State Commission while imposing the penalty has to act in strict compliance with the relevant Regulation, it cannot expand the scope of the Regulation or add/ modify the Regulation through its orders.

241. We find that the State Commission has erroneously relied upon other Regulations by specifying the condition of the ramp rate that are not applicable in the instant case of the demonstration of DC.

242. The PSLDC submitted that the decision of the PSERC is justified deciding that in case the PSLDC does not specify a Time block in the DC Demonstration Notice, the generator is bound to demonstrate DC immediately based on its declared ramp-up rate under Regulation 11.3.10 of the PSGC.

243. The PSLDC argues that the Appellant is required not only to declare its declared capacity (DC) but also to specify the ramping rate, which indicates how quickly the generation capacity can be increased from a lower scheduled level to the declared capacity and the generator must demonstrate the DC as and when required do so by PSLDC as per the ramping rate. Failure to meet the DC within the specified ramping rate is considered a breach of the Punjab State Grid Code, subjecting the generator to penalties.

244. We decline to accept such a contention as no such provision exists in the relevant Regulations as quoted herein above. The reliance on Regulation 11.5(xi) by the PSERC and PSLDC is completely out of context as the same pertains to revision in the schedule for system operation and does not govern DC demonstration.

245. Accordingly, the PSLDC and PSERC have erroneously declared that the generator is required to demonstrate DC within the 4th Time block after receiving notice, as the Punjab Grid Code and IEGC do not prescribe a specific Time block for DC demonstration.

246. We also agree with the submission of the Appellant that PSLDC has not specified any time block limitation through its notices, as also noted by the PSERC, and adding such a requirement post facto is legally impermissible.

247. We restate that the Punjab Grid Code does not mandate demonstration as per a generating station's ramp-up rate or strictly within the 4th time block.

248. It is a settled principle of law that Courts must not add or interpolate words into statutes that the legislature has not expressly included, reliance is placed on ***Union of India v. Sankalchand Himatlal Sheth, (1977) 4 SCC 193; Sonia Bhatia v. State of U.P., (1981) 2 SCC 585***. As the phrase "as per ramp-up rate" is not explicitly stated in Regulation 13.3.3, it cannot be inferred, that no statutory authority can introduce procedures contrary to express statutory provisions, reliance on ***Chief Information Commr. v. State of Manipur, (2011) 15 SCC 1***, PSERC, as a statutory authority, should adhere to the regulations.

249. The Appellant also invited our attention to the Hon'ble Supreme Court's

judgment in ***Excel Crop Care Limited v. Competition Commission of India: (2017) 8 SCC 47 (Excel Crop Judgment)*** wherein the Apex Court has held that if two possible and reasonable interpretations can be put upon a penal provision, the court must lean towards the interpretation which exempts the party from penalty rather than the one which imposes a penalty. Hence, Regulation 13.3.3 must be interpreted to the advantage of the Appellant i.e., the Appellant can demonstrate the DC in any Time block on the same day when the DC Demonstration Notice is issued by PSLDC, especially when the Notice does not mention any specific Time block for demonstration of DC. The relevant extract of Excel Crop Judgment is as follows:

“89. The principle of strict interpretation of a penal statute would support and supplement the aforesaid conclusion arrived at by us. In a recent Constitution Bench judgment in Abhiram Singh v. C.D. Commachen [Abhiram Singh v. C.D. Commachen, (2017) 2 SCC 629 : (2017) 2 SCC (Civ) 68 : AIR 2017 SC 401] , this Court scanned through the relevant case law on the subject and applied this principle even while construing “corrupt practice” in elections which is of a quasi-criminal nature. We would like to reproduce the following discussion from the said judgment: (SCC p. 694, para 100)

“100. Election petitions alleging corrupt practices have a quasi-criminal character. Where a statutory provision implicates penal consequences or consequences of a quasi-criminal character, a strict construction of the words used by the legislature must be adopted. The rule of strict interpretation in regard to penal statutes was enunciated in a judgment of a Constitution Bench of this Court in Tolaram Relumal v. State of Bombay [Tolaram Relumal v. State

of Bombay, (1955) 1 SCR 158 : AIR 1954 SC 496 : 1954 Cri LJ 1333] wherein it was held as follows: (AIR pp. 498-99, para 8 : SCR p. 164)

'8. ... It may be here observed that the provisions of Section 18(1) are penal in nature and it is a well-settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature. As pointed out by Lord Macmillan in London and North Eastern Railway Co. v. Berriman [London and North Eastern Railway Co. v. Berriman, 1946 AC 278 (HL)] : (AC p. 295)

"... Where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language."

This principle has been consistently applied by this Court while construing the ambit of the expression "corrupt practices". The rule of strict interpretation has been adopted in Amolakchand Chhazed v. Bhagwandas Arya [Amolakchand Chhazed v. Bhagwandas Arya, (1977) 3 SCC 566] ...

90. In such a situation even if two interpretations are possible, one that leans in favour of infringer has to be adopted, on the principle of strict interpretation that needs to be given to such statutes."

250. Undisputedly, in the present case, the Appellant had demonstrated its DC between the 4th Time block and to 8th Time block. In terms of Regulation 11.3.13, the penalty cannot be levied if the generating station has been able to demonstrate its DC.

251. The PSLDC placed before us certain information regarding December 2016, however, the dispute in hand is for January 2017 which cannot be linked to December 2016 as each misdeclaration has to be treated on a day-to-day basis as such find it appropriate not to consider the information argued before us for December 2016.

252. We also reject the submission of the PSLDC that after every warning notice, instead of increasing its generation to match the capacity declared by the Appellant earlier, the Appellant started revising/reducing the declared capacity itself, and the fact that the Appellant was not able to come up to the capacity declared and the correction being done by revising/ reducing the declared capacity itself establishes the gaming undertaken by the Appellant and therefore, it is a clear case of misdeclaration as stipulated in 11.3.13 of the Punjab State Grid Code quoted above.

253. We could not find any such downward revision by the Appellant as against the four notices under dispute except on 17.01.2017 where the plant was placed under shutdown i.e., zero generation due to technical reasons as also intimated to the PSLDC by the Appellant.

254. On the contrary, the Appellant contended that the Central Electricity Regulatory Commission (Deviation Settlement Mechanism and Related

Matters) Regulations, 2014 (DSM Regulations) provides a margin of 12% in the generation schedule.

255. As already pointed out no Regulation can be relied upon if not applicable to the dispute in hand, the DSM Regulations do not govern the demonstration of Declared Capacity, which pertains to a generator's obligation to achieve its declared availability. Therefore, agreeing with the submission of the PSLDC, we decline to accept the contention of the Appellant on this count.

256. The Appellant also argued that the PSLDC unilaterally revised the State Energy Account (SEA), adding that the PSLDC initially issued the Final SEA for January 2017 on 14.02.2017, explicitly stating that 15.01.2017 was not a case of mis-declaration, as the deviation was only 4 MW (0.325% of the schedule), however, thereafter, the PSLDC unilaterally revised the SEA on 01.03.2017, now treating 15.01.2017 as a mis-declaration based on a deviation of 5.3 MW (0.44% of the schedule). The Appellant claimed that it is contrary to Regulation 14.1.6 of the PSGC.

257. We find no reason to delve into this issue vis-à-vis the counterarguments by the PSLDC as the Appellant has successfully demonstrated the DC, as already noted.

258. It is also brought to our notice that neither PSLDC, PSERC nor the State Grid Code Review Committee (SGCRC) conducted any investigation or analysis to establish TSPL's alleged commercial gain, therefore, without proving intent or undue financial benefit, no case for misdeclaration or gaming can be made.

259. On being asked no such report was placed before us.

260. In light of the above, we observe that the Appellant demonstrated its DC within the reasonable timeframe (4th–8th Time block of the same day) consistent with the applicable Regulation 11.3.10, 11.3. 2 and 11.3.13 and as such no penalty can be levied if DC is under 11.3.13.

ORDER

For the reasons stated above, the Appeal No. 50 of 2018 has merit and is allowed.

The Impugned Order dated 26.02.2018 passed by PSERC is set aside to the limited extent as concluded above.

PSLDC is directed to revise its energy account for January 2017 by excluding the findings on misdeclaration on 15.01.2017, 17.01.2017, 24.01.2017, and 31.01.2017.

PSPCL is directed to refund the penalty amount of Rs. 77,86,41,825 to the Appellant along with applicable interest as per Article 11.3.4 of the PPA.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 18th DAY OF MARCH, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj/kk