IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 124 OF 2021

Dated: 20.03.2025

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

IN THE MATTER OF:

Siddhayu Ayurvedic Research Foundation Pvt. Ltd.
Baidyanath Bhawan, Great Nag Road,
Nagpur – 440024 (Corporate Office) **...APPELLANT**

Vs.

1. Maharashtra State Electricity Distribution Company Ltd.
Through Chief Engineer (Renewable),
5th Floor, Prakashgadh, Plot No. G-9
Anant Kanekar Marg, Bandra (East)
Mumbai-700051

2. Maharashtra Electricity Regulatory Commission
Through its Secretary,
World Trade Centre, Centre No. 1
13th Floor, Cuffe Parade
Mumbai- 400005

3. M/s Peethambra Granites Pvt. Ltd.
Through its Director(s),
80, Civil Lines,
Jhansi, Uttar Pradesh- 284001 **...RESPONDENTS**

Counsel for the Appellant(s) : Mr. Matrugupta Mishra
Ms. Shikha Ohri
Ms. Swagitika Sahoo
Ms. Ritika Singhal
Ms. Pratiksha Chaturvedi
Mr. Vignesh Srinivasan
Md. Aman Sheikh
Mr. Nipun Dave
Mr. Sanjeev Singh Thakur

Counsel for the Respondent(s) : Mr. Udit Gupta
Mr. Anup Jain
Mr. Vyom Chaturvedi
Ms. Prachi Gupta for R-1

JUDGEMENT

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

1. M/s. Siddhayu Ayurvedic Research Foundation Pvt. Ltd. has filed the instant Appeal assailing the legality and validity of the Order dated 23.12.2020 (in short "Impugned Order") passed by Maharashtra Electricity Regulatory Commission (in short "MERC" or "Commission") in Case No. 161/2020.

Description of the Parties

2. M/s. Siddhayu Ayurvedic Research Foundation Pvt. Ltd (in short "Appellant" or "SARFPL") is a Wind Generator who owns and operates several wind generating facilities in the State of Maharashtra including nine wind generating facilities for which the present petition is being filed. The nine wind generating facility has a cumulative installed capacity of 12.85 MW at District-Nandurbar, Maharashtra. The individual details of the nine wind farms are as under:

Location Number	Capacity	Location	Date of Commissioning
C- 8	1.5 MW	Nandurbar	30.09.2010
C- 14	2.1 MW	Nandurbar	04.06.2011
C- 33	1.25 MW	Nandurbar	04.06.2011
C-34	1.25 MW	Nandurbar	31.03.2011
C-35	1.25 MW	Nandurbar	30.04.2011
C-62	1.25 MW	Nandurbar	22.07.2011
C-21	1.50 MW	Nandurbar	30.09.2010
C-22	1.25 MW	Nandurbar	30.03.2011
C-25	1.50 MW	Nandurbar	30.09.2010

3. The Maharashtra State Electricity Distribution Company Limited (in short "MSEDCL"), Respondent No. 1 is a company incorporated under the Companies Act, 1956 and is engaged in the business of Distribution of Electricity in the State of Maharashtra inter-alia is a Distribution Licensee under the Electricity Act, 2003.

4. Respondent No. 2 is the Maharashtra Electricity Regulatory Commission which is the appropriate Commission for the State of Maharashtra.

Factual Matrix of the Case

5. On 10.03.2020, the Appellant applied for open access to supply power to Mahindra CIE Automotive Ltd., an industrial unit manufacturing automotive parts.

6. MSEDCL granted the request on 31.03.2020, for April 2020. However, a nationwide lockdown due to COVID-19 was declared on 24.03.2020, initially set to last until 14.04.2020.

7. Anticipating the lockdown's end, the Appellant remained under open access. On 14.04.2020, the lockdown was extended until 03.05.2020, rendering the consumer unable to utilize the contracted power. Consequently, most of the energy injected by the Appellant was banked with MSEDCL during April 2020.

8. Being aware that its present set of open access consumers would not be able to consume power under open access for the month of May and June 2020, as the open access consumer expressed its inability to consume open access power on account of nationwide lockdown, the Appellant applied for open access for the month of May and June 2020 by changing its open access consumers who were in a position to consume power even during the period of lockdown.

9. On or about 03.05.2020, after the end of the second lockdown i.e., 03.05.2020, the Government of India and the State of Maharashtra started relaxing/easing various restrictions imposed during the said phase of lockdown and permitted the operation of certain industrial and commercial activities.

10. After 03.05.2020, given phase-wise relaxations/easing of restrictions, coming into effect post 03.05.2020, the original open access consumer of the Appellant to whom the Appellant supplied power in the month of April 2020, once again expressed its desire to gradually and in a phased manner starting consuming power under open access from the month of July 2020.

11. On 10.06.2020, the Appellant applied for open access for the month of July 2020 with the same open-access consumer to whom the Appellant had supplied power in the month of April 2020. The said open access was granted by MSEDCL.

12. The Appellant had no dispute regarding the adjustment of open access power for May and June 2020. However, it sought the adjustment of the entire banked power from April 2020 to July 2020, as the same generator supplied power to the same consumer during that period. On 21.07.2020, the Appellant filed Petition No. 161/2020 before MERC.

13. On 23.12.2020, Respondent No. 2, MERC rejected the Petition being Case No. 161/2020 filed by the Appellant and aggrieved by the said Order dated 23.12.2020, the Appellant has preferred the present Appeal.

Submissions of the Appellant

14. The Appellant submitted that the Respondent Commission dismissed the Appellant's claim, reasoning that COVID-19 equally impacted the Respondent Discom's revenue, denying the Appellant any relief.

15. Argued that this denial is baseless, lacking evidence, and relies on conjecture. The impact of COVID-19 on a small-scale wind generator like itself cannot be equated with its effect on the distribution licensee. Denying relief under such force majeure conditions contradicts the intent of Section 86(1)(e) of the Electricity Act, 2003, which aims to promote renewable energy sources.

16. Submitted that Respondent Nos. 1 and 2 contended that by continuing with Open Access (OA) permission after COVID-19 was declared on 24.03.2020, the Appellant assumed commercial risk and is not entitled to relaxation. However, this reasoning is flawed as the OA was granted only on 31.03.2020, after the pandemic's declaration, negating the claim that the Appellant voluntarily assumed any commercial risk. This undermines the basis of the Impugned Order, which incorrectly attributes the acceptance of commercial risks to the Appellant, as evident upon reviewing the facts.

17. Respondent Nos. 1 and 2 asserted that the power to relax regulations was not applicable due to an absence of hardship. However, this contention is legally and factually flawed. The Respondent Discoms have failed to demonstrate the absence of hardship; on the contrary, the Appellant, a wind energy generator, faced significant challenges and was left remediless due to MSEDCL's failure to grant Open Access (OA) following the COVID-19 outbreak.

18. The Respondent Commission's decision unjustly places the blame on the Appellant, depriving it of any effective remedy. The Commission, as a sectoral regulator, neglected its obligation to exercise regulatory flexibility to mitigate undue hardship, particularly during exceptional circumstances like the pandemic.

19. The Respondent Discom has argued that the power to relax cannot override the 10% cap on banking set by the Maharashtra Electricity Regulatory Commission (Distribution Open Access) (First Amendment) Regulations, 2019.

20. However, this contention lacks merit as the case is not governed by these Regulations. The Appellant, affected by force majeure due to COVID-19, was left without any remedy. The Regulations do not restrict banking to 10% in force majeure cases. Furthermore, the wind tariff order dated 24.11.2022 explicitly allows banking for more than 10% of the net energy delivered in such scenarios.

21. The Respondent Discom has also not demonstrated that it refrained from offsetting its Renewable Purchase Obligations (RPO) against the surplus energy injected by the Appellant. Claiming RPO benefits while denying the Appellant its rightful benefits violates principles of fairness. Additionally, the Respondent Commission previously chose not to impose penalties on MSEDCL for shortfalls in meeting RPO targets due to COVID-19. It is inconsistent to deny the Appellant relief on similar grounds, as highlighted in the Commission's Order dated 31.03.2023, in Case No. 226 of 2022, relevant paragraph of the same is as follows:

> *"4.5.90 <u>The Commission notes that upon excluding consumption from hydro sources from the total gross consumption approved by the Commission in this Order, MSEDCL has not complied with the RPO target during FY 2020-21 and FY 2021-22, However, the Commission also recognizes the difficulties in complying RPO target especially in COVID period. The Commission also notes that, MSEDCL has taken efforts for power procurement from RE sources.</u> It has also entered into PPAs with RE sources however, RE projects mainly Solar projects have been delayed due to*

> *COVID-19 Pandemic conditions. <u>Hence, the Commission is not inclined to levy penalty for noncompliance of RPO targets for FY 2020-21 and 2021-22 as stipulated in in RPO Regulations 2019.</u> The Commission is of the view that, if MSEDCL is allowed to carry forward the targets upto the end of 4th control period, the upcoming PPAs of the RF projects which have been delayed due to COVID-19 situation would provide required RE power to MSEDCL to cumulatively meet its RPO targets including standalone targets of FY 2022-23 to FY 2024-25."*

Submissions of the Respondent No. 1, MSEDCL

22. Respondent No. 1 argued that the Appellant filed this appeal challenging the MERC's detailed order dated 23.12.2020, in Case No. 161 of 2020. The Appellant had sought the invocation of MERC's discretionary power under Regulation 39 of the MERC (Distribution Open Access) (First Amendment) Regulations, 2019. This provision allows the relaxation of regulatory provisions, including those governing "Banking" under Regulations 20.3 and 20.5. The Appellant sought a temporary relaxation to adjust or purchase all units injected as "banked units" in April 2020 for use in July 2020, citing COVID-19 as an unforeseen force majeure event.

23. Respondent No. 1 submitted that MERC having dealt in a number of matters of that time about the related situations arising out of COVID-19 and its consequential impact had rightly observed this aspect in Paragraph 12 on Page 34 which is quoted herein below and so being relied upon:

> *"12……..the Commission notes that the situation had adverse impact on MSEDCL and other Distribution Licensees as well, with*

their revenue going down significantly due to reduction in consumption, continued liability of Fixed cost of contracted power and also due to reduction in collection of billed energy.”

24. The Appellant's decision to continue Open Access (OA) during April 2020, amid the COVID-19 pandemic, was a unilateral and commercial choice based on the presumption that normalcy would return after 14.04.2020. However, when this assumption did not materialize, the Appellant sought regulatory relaxation to offset resulting commercial losses.

25. The MERC correctly denied the relief, as the Appellant had knowingly assumed the commercial risk. Allowing post-facto adjustments for such losses would unjustly burden distribution companies and consumers while setting a precedent for shielding generators from the consequences of their commercial decisions.

26. Furthermore, it is also pertinent to mention at this juncture that the Appellant herein, despite being aware of the lockdown situation, continued under OA for the entire of April 2020 and injected energy into the grid knowingly without corresponding consumption at the consumer’s end. Therefore, it was rightly observed by MERC in Paragraph 14 on Page 35 that:

“….the Petitioner inspite of being aware of the lockdown situation, continued under OA for April, 2020 and injected energy into the grid without corresponding consumption at the consumer’s end. In absence of any consumption/drawal from the OA consumer, this RE generation is unwanted from grid point of view and as held by this Hon’ble Tribunal in its Judgment dated 16 May 2011 in M/s Indo Rama Synthetics Vs MERC, that an unwanted generation can

jeopardize the security of the grid and hence should not be allowed".

27. The Appellant's decision to continue Open Access (OA) in April 2020 was a commercial choice based on the expectation that power consumption by its consumer would resume after COVID-19 restrictions were lifted post-14.04.2020. This decision aimed to benefit from its independent contractual agreement. Notably, on 31.03.2020, when the OA application was approved, the Appellant had the alternative of selling electricity on MSEDCL's online portal, which had been available since 27.03.2020, for all wind generators due to their "must-run" status. However, the Appellant opted not to use this option without justification.

28. The power to relax regulations is a discretionary authority exercised only in exceptional cases where failure to do so would result in hardship or injustice. Importantly, such relaxation is not considered solely based on the hardship of an individual party but is evaluated in the context of its applicability to the entire class governed by the statute or regulation. A fundamental principle is that regulations for the same period must be applied uniformly across all entities within the same class to ensure fairness and consistency. The Appellant's request for relaxation of the DOA Regulation 2019 was appropriately denied by MERC in its impugned order. The Commission in Paragraph 16 noted that:

"…...the power to relax Regulations cannot be exercised arbitrarily in favour of some party while disfavoring some other party".

29. The Commission has rightly noted in paragraph 16 that the Appellant, fully aware of the prevailing circumstances and the requirements under the DOA Regulations, made a deliberate decision to continue under Open Access (OA)

for April 2020. Therefore, any alleged hardship faced by the Appellant arises solely from its own actions and cannot be attributed to the provisions of the Regulations. Consequently, the Appellant's request for relaxation of the Regulations lacks merit.

30. The Wind Tariff Order dated 24.11.2003 categorically provided that under force majeure conditions, surplus energy over 10% may be purchased by the Distribution Licensee. However, it does not provide that the entire generated power can be banked in the force majeure conditions or otherwise to be purchased by the Distribution Licensee. The relevant provision of the said Tariff Order is as follows ***(Clause 1.6.10)***:

> *"In the event of unforeseen and force majeure conditions, surplus energy at the end of the year in excess of the 10% limit specified above shall be purchased by the Utility at a rate equivalent to the weighted average fuel cost for the year as determined by the Commission in the Tariff Order."*

31. Under Regulation 20.5 of the MERC DOA Amendment Regulations, 2019, unutilized banked energy at the end of the month, up to 10% of the total actual generation by a Renewable Energy (RE) generator in that month, is treated as deemed purchase by the Distribution Licensee. The purchase is made at a rate specified in the yearly Generic Renewable Energy Tariff Order applicable to the specific technology used by the generator. The relevant Regulations qua "banking" under the MERC DOA Amendment Regulations, 2019 is as follows:

> *"**20.2.** The **surplus energy** from a 'non-firm' Renewable Energy Generating Station **after set-off** shall be banked with the*

Distribution Licensee subject to conditions stipulated under subsequent paragraphs.

20.3. *Banking of energy shall be permitted only on monthly basis. Provided that the* ***credit for banked energy shall not be permitted to be carried forward to subsequent months*** *and the credit for energy banked during the month shall be adjusted during the same month as per the energy injected in the respective Time of Day ('TOD') slots determined by the Commission in its Orders determining the Tariffs of the Distribution Licensees*

20.5. *The unutilised banked energy at the end of the month,* ***limited to 10%*** *of the actual total generation by such Renewable Energy generator in such month, shall be considered as deemed purchase by the Distribution Licensee at a rate equivalent to that stipulated under yearly Generic RE Tariff Order applicable for respective technology."*

32. Further, argued that the DOA Regulations do not mandate the purchase of energy exceeding 10% of the unutilized banked energy remaining after consumption set-off. DISCOMs are neither obligated to bank nor purchase energy exceeding this 10% threshold. This legal position, applicable to April 2020, was well known to the Appellant.

33. Regulation 33.2 of the MERC DOA Regulations, 2016, explicitly states that Distribution Licensees bear no liability for losses or obligations arising from force majeure events. Consequently, the Appellant's request for MSEDCL to purchase the entire banked energy for April 2020, including the excess beyond the 10% limit, citing COVID-19 as a force majeure event, is legally untenable.

MSEDCL is shielded from bearing the resulting financial losses. Regulation 33.2 of the MERC DOA Regulation, 2016 is as follows:

> *"33.2 Notwithstanding anything to the contrary in these Regulations, the Distribution Licensee shall not be liable for any loss or obligations due to the occurrence of Force Majeure events."*

34. The Appellant's request for the purchase of the entire banked energy at the Average Power Purchase Cost (APPC) rate contradicts Regulation 2(4) of the DOA Amendment Regulation, 2019. This Regulation defines "banking" as surplus energy calculated only after setting off energy consumed. In the present case, the absence of consumption prevents the classification of any unutilized energy as "banked" or "surplus." Thus, the Appellant's prayer is in direct contravention of the Regulation, as unconsumed energy cannot qualify as banked or surplus under the stated mandate. The relevant definition of "banking" under Regulation 2(4) of the DOA Amendment Regulation 2019 is as follows:

> *"**2(4)** "Banking" means the **surplus** Renewable Energy injected in the grid and credited with the Distribution Licensee **after set off** with consumption in the same Time of Day slot as specified in Regulation 20;"*

35. The Regulation does not classify all energy injected into the grid as either banked or surplus unless a certain level of consumption occurs first. In the absence of any consumption, no adjustment of banked units is permissible under the Regulation. Consequently, the Appellant cannot invoke the power of relaxation to claim benefits not contemplated by the Regulation. The Regulation

imposes no obligation on DISCOMs to purchase more than 10% of unutilized energy as deemed purchase, reinforcing the lack of legal basis for the Appellant's request.

36. Something that has been barred under the governing law cannot be permitted even indirectly and not by misinterpreting the discretionary and ancillary powers given under the said statute/regulation, which in the present case being Regulation 39, being quoted herein below:

> *"39. Power to Relax.*
> *The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected by grant of relaxation, may relax any of the provisions of these Regulations on its own motion or on an application made before it by an interested person."*

37. The Hon'ble Supreme Court in ***Bhupendra Nath Hazarika and Anr. v. State of Assam and Ors. [(2012) 12 SCR 587]*** held that the power to relax must not be exercised arbitrarily, as it would contravene Article 14 of the Constitution. Such power cannot be used capriciously or to grant undue advantage to an individual.

38. Granting the Appellant's relief through discretionary relaxation would violate the regulatory framework's provisions, intent, and spirit. The Hon'ble Supreme Court in ***State of Orissa and Ors. v. Sukanti Mohapatra and Ors. [1993 SCC (2) 486]*** emphasized that the power to relax must not override the letter and spirit of the Regulations or undermine the regulatory framework.

39. The power to relax cannot serve as a means to amend or substitute existing regulations. Thus, the present Appeal lacks merit and warrants dismissal.

Analysis and Conclusion

40. Having heard all parties in detail, the core question for determination in this appeal is as follows:

> *Whether the provisions of 'Banking' under the DOA Regulations be temporarily relaxed to allow the adjustment of the Appellant's banked units from April 2020 in the consumer bills of July 2020?*

41. The Appellant herein has prayed for the following:

> *"(a) Allow the present appeal and set aside the impugned order dated 23.12.2020 passed by Ld. MERC in Case No. 161/2020; and or*
>
> *(b) Pass such other Order(s) as this Hon'ble Tribunal may deem just and proper."*

42. The Appellant herein has argued that the two phases of the nationwide lockdown due to COVID-19 constituted 'unforeseen conditions' in support that the situation necessitated a relaxation of the provisions of 'Banking' under the MERC DOA Regulations. The Appellant has sought adjustments of the energy banked in April 2020 in consumer bills for July 2020. Alternatively, the Appellant requested Respondent No.2, MERC in Petition No. 161/2020 that MSEDCL purchase surplus banked energy exceeding the 10% limit at the Average Power Purchase Cost (APPC) or another appropriate rate.

43. The Appellant criticized the MERC's rejection of its plea, arguing that the decision disregarded the specific hardships faced by small-scale renewable energy generators during the pandemic, placing reliance on section 86(1)(e) of the Electricity Act, 2003. It highlighted MERC's prior recognition of COVID-19's impact on Renewable Purchase Obligations (RPOs) for distribution companies but alleged inconsistency in not extending similar relief to renewable generators like itself.

44. Further, the Appellant argued that MERC, as a sectoral regulator, failed to exercise its discretionary powers to provide necessary regulatory flexibility and prevent undue hardship.

45. Per Contra, MSEDCL, Respondent No. 1 contended that COVID-19 equally impacted its operations, with a significant reduction in revenue and difficulties in managing fixed costs. It argued that such circumstances did not justify singling out the Appellant for relief.

46. MSEDCL highlighted that the Appellant consciously chose to continue under Open Access (OA) during April 2020 despite being aware of the lockdown and its potential implications. It argued that this decision was a commercial risk taken by the Appellant and should not translate into an obligation for relaxation of regulations.

47. The Wind Tariff Order dated 24.11.2003 acknowledges that under force majeure conditions, any surplus energy exceeding the 10% limit can be purchased by the distribution licensee (DISCOM) at a rate equivalent to the weighted average fuel cost for that year. However, this provision does not

extend to allowing the entire energy generated to be banked or mandating its purchase in force majeure scenarios. The limit remains capped at 10%.

48. The Banking Provisions in MERC DOA Amendment Regulations, 2019, Regulation 20.2 provides that the Surplus energy from a non-firm renewable energy generating station can be banked subject to conditions outlined in subsequent clauses, further, Regulation 20.3 mandates that Banking is allowed on a monthly basis only. Energy banked in a given month cannot be carried over to subsequent months. Adjustments must occur within the same Time of Day (TOD) slots. Regulation 20.5 provides Unutilized banked energy at the end of a month is limited to 10% of the actual total generation for that month. This energy is treated as deemed purchase by the distribution licensee at a rate specified in the Generic RE Tariff Order.

49. The regulations do not support banking or the purchase of energy exceeding the 10% cap under normal or force majeure conditions. The Appellant's request to adjust or purchase energy exceeding this limit for April 2020 contradicts these provisions.

50. Regulation 33.2 specifies that the Distribution licensees are not liable for any loss or obligations arising from force majeure events. The regulation clearly exempts MSEDCL from financial responsibility for the entire energy generated by the Appellant during April 2020 under force majeure conditions.

51. Also, Regulation 2(4), DOA Amendment Regulation, 2019 defines banking as the surplus renewable energy injected into the grid and credited to the distribution licensee after set-off with consumption in the same TOD slot.

52. In terms of the Regulations, without initial consumption, there can be no surplus energy to qualify as 'banked.' In the Appellant's case, the absence of corresponding consumption renders the entire energy generated ineligible for adjustment as 'banked units.'

53. Further, as per Regulation 39 (Power to Relax), the MERC may relax provisions under exceptional circumstances with a written justification and opportunity for affected parties to be heard. However, such relaxation cannot contravene the core intent and spirit of the regulations.

54. It is a settled principle of law that discretionary powers of relaxation cannot be exercised to override regulatory limits, favor specific entities arbitrarily, or introduce conditions contrary to the governing law.

55. As already noted, the Hon'ble Supreme Court in ***Bhupendra Nath Hazarika and Anr Versus State of Assam and Ors. (2012) 12 SCR 587***, ruled that the power to relax cannot be exercised arbitrarily or capriciously, as it would violate Article 14 of the Constitution by creating undue advantages or favoritism, the relevant extract is quoted as under:

> *"46. As has been observed by the learned single Judge which has been accepted by the Division Bench, there was no decision to relax the rules in favour of the special batch recruits. That apart, whenever there has to be relaxation about the operation of any of the rules, regard has to be given to the test of causation of undue hardship in any particular case. That apart, the authority is required to record satisfaction while dispensing or relaxing the requirements of any rule to such an extent and subject to such conditions as he may consider necessary for dealing with the case in a just and*

equitable manner. The language of the Rule really casts a number of conditions. It provides guidance. It cannot be exercised in an arbitrary manner so as to dispense with the procedure of selection in entirety in respect of a particular class, for it has to be strictly construed and there has to be apposite foundation for exercise of such power. It is to be borne in mind that if a particular rule empowers the authority to throw all the rules overboard in all possibility, it may not withstand close scrutiny of Article 14 of the Constitution. Be that it may, no decision was taken to relax the rules and, the concept of deemed relaxation is not attracted and, therefore, the relief claimed by the special batch recruits has no legs to stand upon."

56. Similarly, reliance was placed by the Respondent on ***State of Orissa v Sukanti Mohapatra and Ors. 1993 SCC (2) 486***, stating that the Court held that relaxation powers must not override the letter, spirit, and intent of regulations or undermine the statutory framework. These principles establish that discretionary powers cannot be used to amend or substitute regulations.

57. Therefore, in our view, the DOA Regulations do not obligate MSEDCL to adjust or purchase energy exceeding the 10% limit. Force majeure conditions, as acknowledged by the Wind Tariff Order and DOA Regulations, do not expand banking or purchasing limits beyond those prescribed.

58. The Appellant's request for adjusting excess energy or having it purchased at APPC rates violates established regulatory provisions. Its claim of entitlement based on COVID-19's force majeure status is inconsistent with the explicit limits defined in the regulations.

59. The exercise of relaxation powers under Regulation 39 cannot create exceptions that undermine the regulatory framework. Allowing such relaxation would contradict principles of fairness, equity, and the uniform application of regulations.

60. Therefore, the provisions of ‘Banking’ under the DOA Regulations cannot be temporarily relaxed to allow the adjustment of the Appellant's banked units from April 2020 in the consumer bills of July 2020. The MERC DOA Regulations explicitly limit banking to 10% of actual generation per month. Any relaxation beyond this cap would contradict the regulations' intent and legal provisions.

61. Granting relaxation to the Appellant would create inequity and set a precedent undermining the uniform application of regulations. Other generators under similar circumstances could also seek relief, leading to regulatory uncertainty.

62. The power to relax regulations must be exercised judiciously and cannot override statutory provisions. The Appellant's request exceeds the permissible scope of relaxation under the regulatory framework. The Appellant could have utilized options like selling excess energy on MSEDCL’s online portal for wind generators. This alternative was available but not availed.

63. Further, the reliance on section 86(1)(e) by the Appellant that the Commission has failed to promote renewable power stating that it is a small generator as compared to the distribution licensee, MSEDCL, we reject such contention as any relaxation of Regulation will adversely impact the tariff to be paid by the consumers of MSEDCL as any impact will be pass through in tariff.

64. We agree with the argument of the Respondents that the Appellant's decision to continue Open Access (OA) in April 2020 was a commercial choice/ risk, this decision aimed to benefit from its independent contractual agreement. Notably, on 31.03.2020, when the OA application was approved, despite having an alternative solution of selling electricity on MSEDCL's online portal, which had been available since 27.03.2020, for all wind generators due to their "must-run" status, the Appellant opted not to use this option without justification.

65. It is the commercial risk taken by the Appellant and therefore, the Regulations cannot be relaxed to help its wrong decisions.

ORDER

For the foregoing reasons as stated above, we are of the considered view that Appeal No. 124 of 2021 does not have merit and is dismissed. The Impugned Order of the MERC dated 23.12.2020 is upheld.

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

PRONOUNCED IN THE OPEN COURT ON THIS 20th DAY OF MARCH, 2025.

(Virender Bhat)	**(Sandesh Kumar Sharma)**
Judicial Member	**Technical Member**

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj/kk