

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

REVIEW PETITION NO.5 OF 2024

Dated: 28.04.2025

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

In the matter of:

WAANEEP SOLAR PRIVATE LIMITED

Through its G.M. Legal

201 & 202, Third Floor,

Okhla Industrial Estate Phase 3 Rd,

Okhla Phase III, Okhla Industrial Area,

New Delhi, Delhi – 110020

secretarial@herofutureenergies.com

abhijeet.swaroop@theguild.co.in

... Review Petitioner

Versus

1. ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

(Through its Chairman)

4th Floor, Singareni Bhavan,

Red Hills Hyderabad – 500004

Andhra Pradesh

Email: chmn@aperc.in

2. GOVERNMENT OF ANDHRA PRADESH

(Through its Principal Secretary - Energy)

Department of Energy,

Secretariat, Velagudi,

Amaravati-522503

Andhra Pradesh

Email: secyenergyap@gmail.com

3. **SOUTHERN POWER DISTRIBUTION COMPANY OF ANDHRA PRADESH**
(Through its Chairman & Managing Director)
Tirupathi, Andhra Pradesh
Chittoor District-517503
Andhra Pradesh
Email: *cmd@southernpower.co.in*
4. **THE CHIEF GENERAL MANAGER (PMM & IPC)**
Southern Power Distribution Company of Andhra Pradesh
Tirupathi, Andhra Pradesh
Chittoor District-517503
Andhra Pradesh
Email: *cgm pmm@southernpowerap.co.in*
5. **THE CHIEF ENGINEER**
Transmission Company of Andhra Pradesh
A.P.P.C.C,
Vidyut Soudha
Vijayawada – 520004
Andhra Pradesh
Email: *ce.trans@aptransco.gov.in*
6. **THE GENERAL MANAGER**
Transmission Company of Andhra Pradesh
A.P.P.C.C,
Vidyut Soudha
Vijayawada – 520004
Andhra Pradesh
Email: *ce.ipc@aptransco.gov.in*
7. **NEW & RENEWABLE ENERGY DEVELOPMENT CORPORATION OF ANDHRA PRADESH LIMITED (NREDCAP)**
(Through its Vice Chairman & Managing Director)
12-464/5/1, River Oaks Apartment,
CSR Kalyana Mandapam Road,
Tadepalli, Guntur District - 522501
Andhra Pradesh
Email: *vc@nredcap.in*

... Respondent (s)

Counsel for the Appellant(s) : Basava Prabhu Patil, Sr. Adv.
Abhijeet Swaroop
Tabrez Malawat
Syed Hamza
Sourajit Sarkar
Rupali Jain

Counsel for the Respondent(s) : Sidhant Kumar
Anushka Shah
Manyaa Chandok
Akshit Mago
Ekssha Kashyap
Om Batra
Anshika Saxena
Rakshit Dhingra
Rachit Somani for Res. 3 to 6

ORDER

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The appellant, by way of the instant petition, has sought review of our judgment dated 19.02.2024 passed in appeal No.279/2022.
2. We may note at the outset that the petitioner had assailed the said judgment dated 19.02.2024 before the Hon'ble Supreme Court byway of a Civil Appeal which was disposed off vide order dated 09.07.2024 directing the petitioner / appellants to approach this Tribunal by invoking its review jurisdiction to rectify the errors which, according to the petitioner, have occurred in the said judgment. The relevant portion of the said order of the Hon'ble Supreme Court is reproduced hereinbelow: -

“2. Acceding to the request of the appellant, we permit the appeal to be withdrawn so as to enable the appellant to pursue remedies as available in law before the tribunal. The appellant would be at liberty to move this Court afresh if it is aggrieved by any further order of the tribunal including on the grounds raised in this appeal.

3. In the event that the appellant filed an application for review within a period of two weeks from the date of this order, the tribunal may consider the review on merits.”

3. Accordingly, the appellant has filed the instant petition before us seeking rectification of the errors in the judgment dated 19.02.2024, which according to the petitioner, are apparent on the face of record.

4. The review of judgment dated 19.02.2024 is sought on following two grounds: -

(a) the judgment suffers from patent inadvertent arithmetic error in Paragraph Nos.33 and 39; and

(b) the judgment inadvertently does not address the issue relating to payment of interest on the total amount of liquidated damages recoverable by the petitioner from respondent Nos.4 & 6.

5. We have heard the learned counsel for the petitioner / appellant as well as learned counsel for the respondent Nos.3 to 6. We have also perused the

judgment dated 19.02.2024, which is sought to be reviewed, as well as the written submissions filed by the learned counsels.

(a) The judgment suffers from patent inadvertent arithmetic error in Paragraph Nos.33 and 39.

6. Perusal of the judgment dated 19.02.2024 clearly reveals that in Paragraph Nos.7, 11 & 24 it has been recorded that the liquidated damages levied upon the petitioner were in the sum of Rs.18,95,53,000/-. We find it pertinent to extract these Paragraphs of our judgment hereunder:-

“7. Pursuant to the change of capacities of the power projects of WSPL as noted herein above, it furnished revised performance bank guarantees dated 28th April, 2015 and 29th April, 2015 for a sum of Rs.12.50 crores for Gurrnkonda and Nagiri locations. First amendment to the PPA was made on 4th June, 2015 with regard to these revised capacities only while there being no change in the other terms and conditions. Vide letter dated 7th December, 2015, WSPL requested the officials to extend the timeline of the commissioning of the project by two months on the ground of torrential rainfall that was witnessed at the project site in the month of November, 2015. Since the WSPL did not complete and commission the project on the date fixed in the PPA as amended from time to time, the SPDC invoked its performance bank guarantees @20% upto

one month delay, 40% upto two months delay and the balance 40% upto three months delay. As according to SPDC, the total delay in commissioning of the project was 181 days, it also levied liquidated damage for the remaining 91 days @ Rs.1 lakh per MW per day in respect of 20.83 MW, **which amounted to Rs.18,95,53,000/-**. WSPL felt aggrieved by this action of SPDC in invoking the performance bank guarantees and levying of liquidated damage which it assailed before the Commission by way of its petition bearing O.P. No. 62 of 2019.

11. It was submitted by Learned Counsels for WSPL that despite noting in the impugned order that WSPL had completed the set up of entire 25MW power project at Gurrumkonda by 28th July, 2016 and the entire power injected by it into the grid was utilized by the Discoms, the Commission erred in not passing consequential necessary relevant orders for **refund of penalty amount of Rs.18,95,53,000/- to the company. (...)**

24. It thus appears that not only did SPDC and AP Transco chose not to object to the injection of power into the grid by WSPL w.e.f. 28th July, 2016 without formal synchronization/commissioning but also went ahead to sell the power to the consumers thereby achieving financial advantage from the same but on the other hand they have taken the COD of the project as 29/09/2016 and have, accordingly, invoked the performance bank

*guarantee furnished by WSPL as well as **levied liquidated damages to the tune of Rs.18,95,53,000/- upon the company.***

(Emphasis supplied)

7. Having held so, the amount of liquidated damages imposed upon the petitioner and recoverable from the respondents has been, due to inadvertent typographical error noted as Rs.18,74,70,000/- in Paragraph Nos.33 and 39. The said two Paragraphs of the judgment are extracted hereinbelow: -

*“33. Hence, we are unable to agree to the findings of the Commission on this aspect of imposition of liquidated damages upon WSPL. WE hold the imposition of liquidated damages **to the tune of Rs.18,74,70,00/-** upon WSPL excessive, unjust and untenable in the fact of circumstances of the case. The Company WSPL is entitled to refund of the said amount which has already been adjusted in its bills.*

(...)

*39. In view of the above discussion, the Appeal No. 279 of 2022 stands partly allowed. The respondents in the said appeal are hereby directed to refund the amount adjusted **liquidated damages of Rs.18,74,70,000/-** to WSPL forthwith.”*

(Emphasis supplied)

8. Manifestly, an inadvertent typographical error has occurred in these two Paragraphs of the judgment in noting the total amount of liquidated damages imposed upon the petitioner and recoverable by it from the respondents. This is also evident from the fact that the amount of liquidated damages imposed upon and levied from the petition has nowhere been disputed by the respondents either in the pleadings before this Tribunal or during the arguments on the appeal. Therefore, we find ourselves dutybound to rectify said error in the judgment under review.

(b) The judgment inadvertently does not address the issue relating to payment of interest on the total amount of liquidated damages recoverable by the petitioner from respondent Nos.4 & 6.

9. It is submitted on behalf of the petitioner / appellant that once this Tribunal held the petitioner entitled to recover back the liquidated damages levied from it by the respondents, consequential relief in the form of interest on the recoverable amount must follow in view of article 5.2 of the PPA executed between the parties which provides for payment of interest in the event of delayed payment. It is argued that as per the settled position of law, interest is in the nature of an equitable relief to be granted to the aggrieved party whose dues have been illegally withheld for a considerable period of time. Learned senior counsel for the petitioner further argued that as per the settled principles of restitution, as

reiterated by the Hon'ble Supreme Court in a catena of judgments, the interest component is vital and indispensable tool for adequately restoring the economic position of the aggrieved party. It is submitted that in the instant case, the entire amount of liquidated damages has been adjusted against the invoices of the petitioner pertaining to September, 2018, thereby unjustly depriving the petitioner of its rightful dues and hence the refundable amount ought to be necessarily accompanied by the appropriate interest. In support of his submissions learned senior counsel cited the judgment of Supreme Court in Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Co. Ltd. Civil Appeal No.10394 of 2018, M/s Laureate Buildwell Pvt. Ltd. v. Charanjeet Singh, Civil Appeal No.7042 of 2019, Alok Shanker Pandey v. Union of India & Ors. (2007) 3 SCC 545, and Jaipur Vidyut Vitran Nigam Ltd. v. Adani Power Rajasthan Limited & Anr. Civil Appeal Nos.8625-8636 of 2019.

10. Learned counsel for the contesting respondents would argue that the petitioner had sought recovery of only the liquidated damages before the Commission as well as before this Tribunal without claiming interest upon the same and for this reason neither the Commission nor this Tribunal considered the grant of interest. It is argued that the petitioner has failed to set out any pleadings or ground in the appeal towards such claim of interest and consequently, interest cannot be claimed by way of this review petition. To buttress his submissions, the learned counsel referred to the judgment of the

Supreme Court in Syed and Co. v. State of J&K, 1995 Supp (4) SCC 422, Small Industries Development Bank of India v. SIBCO Investment Private Limited (2022) 3 SCC 56 and New Delhi Municipal Council v. State of Punjab & Ors. (1997) 7 SCC 339.

11. In rebuttal, the learned senior counsel for the petitioner pointed out that even though interest was not specifically claimed in the petition before the Commission yet it would get covered and included in prayer (c) of the petition which reads as under: -

“grant such order, further relief(s) in the facts and circumstances of the case as this Ld. Commission may deem just and equitable in favour of the Petitioner”.

12. It is his submission that further reliefs sought in the petition before the Commission would necessarily include the relief of interest and therefore, it is not correct to contend that prayer for grant of interest was not made before the Commission. He also pointed out that a specific prayer for grant of interest @ 18% per annum on the entire refundable amount of liquidated damages has been made in the appeal, and therefore, it cannot be said that the petitioner had foregone or relinquished its claim of interest. He cited the judgment of Supreme Court in Bangalore Electricity Supply Company Limited v. Hirehalli Solar Power Project LLP & Ors. Civil Appeal nos.7608 of 2021 and 6386 of 2021 decided on 27.08.2024 and judgment of this Tribunal in Uttar Haryana Vijli Vitran Nigam

Limited and Ors. V. Central Electricity Regulatory Commission and Ors. Appeal No.383 of 2022 in support of his submissions.

13. We may note that payment of “interest” cannot be equated to payment of penalty or fine. “Interest” is normal accretion to money when invested lawfully by the person in whose hands it is. When a person is deprived of the use his money to which he is lawfully entitled, he would have a legitimate claim for interest upon such amount of money for the period during which he was deprived of its use. In other words, any person who has enriched himself by use of the money belonging to some other person, is legally duty bound to compensate the latter by payment of interest on the said money, from the use of which he had been deprived. Payment of interest is a necessary corollary to the return on money retained by a person unjustly or unlawfully. This has been explained by the Supreme Court succinctly in Alok Shanker Pandey v. Union of India & Ors. (2007) 3 SCC 545 by way of the following illustrations:-

“For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence

equity demands that A should not only pay back the principal amount but also the interest thereon to B. With these observations the impugned judgment is modified and the appeal is disposed of accordingly.”

14. In the instant case, we are of the opinion that since we have held in the judgment dated 19.02.2024 that imposition of liquidated damages upon the petitioner was excessive, unjust and untenable in the facts and circumstances of the case, it is evident that the petitioner was deprived of the use of the sum of Rs.18,95,53,000/- which he had to pay to the respondents as liquidated damages. The respondents, on their part, got unjustly enriched by the said amount to which they were not entitled at all and also must have earned further on the said amount by investing it wisely as per financial advice so received. Therefore, the respondents cannot escape the liability of payment of interest upon the said sum of Rs.18,95,53,000/- which is recoverable from them by the petitioner as per the judgment dated 19.02.2024.

15. It is true that the petitioner had not made any specific prayer for grant of interest before the Commission. However, we feel that the grant of interest would definitely come in the ambit of “further reliefs” mentioned in prayer (c) of the petition. Further, we note that a specific prayer for grant of interest has been made by the petitioner in the appeal before this Tribunal.

16. The Supreme Court, in latest judgment dated 27.08.2024 in Bangalore Electricity Supply Company Limited v. Hirehalli Solar Power Project LLP & Ors. Civil Appeal nos.7608 of 2021 and 6386 of 2021 has directed payment of Late Payment Surcharge (which is analogous to interest) even though the same had not been pleaded by the claimants in that case. The relevant portion of the judgment is quoted hereinbelow:-

“14. Lastly, we also reject the appellant’s contention that the APTEL’s direction to pay late payment surcharge to the respondents is unjustified since the same was not pleaded. As we have already held, the APTEL rightly restored the tariff of Rs. 8.4 per unit and directed the appellant to pay the difference amount. The direction to pay the late payment surcharge on this amount is explicitly rooted in the PPA, and hence, is in furtherance of the intention of the parties. There is no reason to set aside the same.”

(Emphasis supplied)

17. In the case at hand also the payment of interest is rooted in the PPA i.e. Article 5.2 of the PPA which provides for payment of interest in the event of delayed payment. Therefore, in the facts and circumstances of this case also,

interest should be awarded to the petitioner in terms of Article 5.2 of PPA, even if the same was not claimed or pleaded specifically.

18. In this context, we also find the following observations of the Hon'ble Supreme Court in a recent judgment dated 18.02.2025 in Dr. Purnima Advani and Anr. v. Government of NCT and Anr. Civil Appeal No.2643 of 2025, very material:-

“25. If on facts of a case, the doctrine of restitution is attracted, interest should follow. Restitution in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order what has been lost to him in execution of decree or order of the Court or in direct consequence of a decree or order. The term “restitution” is used in three senses, firstly, return or restoration of some specific thing to its rightful owner or status, secondly, the compensation for benefits derived from wrong done to another and, thirdly, compensation or reparation for the loss caused to another.

26. In Hari Chand v. State of U.P., 2012 (1) AWC 316, the Allahabad High Court dealing with similar controversy in a stamp matter held that the payment of interest is a necessary corollary to the retention of the money to be returned under order of the appellate or revisional authority. The High Court directed the State to pay interest @ 8% for the period, the money was so

retained i.e. from the date of deposit till the date of actual repayment/refund.

27. In the case of O.N.G.C. Ltd. v. Commissioner of Customs Mumbai, JT 2007 (10) SC 76, (para 6), the facts were that the assessment orders passed in the Customs Act creating huge demands were ultimately set aside by this Court. However, during pendency of appeals, a sum of Rs.54,72,87,536/- was realized by way of custom duties and interest thereon. In such circumstances, an application was filed before this Court to direct the respondent to pay interest on the aforesaid amount w.e.f. the date of recovery till the date of payment. The appellants relied upon the judgment in the case of South Eastern Coal Field Ltd. v. State of M.P., (2003) 8 SCC 648.

This Court explained the principles of restitution in the case of O.N.G.C. Ltd. (supra) as under:-

“Appellant is a public sector undertaking. Respondent is the Central Government. We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution. In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has already been refunded, we direct that the amount deposited by the appellant shall carry interest at the rate of 6% per annum. Reference in

this connection may be made to Pure Helium Indian (P) Ltd. v. Oil & Natural Gas Commission, JT 2003 (Suppl. 2) SC 596 and McDermott International Inc. v. Burn Standard Co. Ltd. JT 2006 (11) SC 376.”

19. Thus, where there is an order for restitution by way of return or restoration of some specific money or thing to its rightful owner, the direction to pay interest must follow. It is noteworthy that in the case of O.N.G.C. Ltd. v. Commissioner of Customs Mumbai, JT 2007 (10) SC 76 (referred by the Supreme Court in the above noted judgment), the application for payment of interest was filed for the first time before the Supreme Court during the pendency of the appeal, which was entertained and allowed by the Supreme Court.

20. In view of the facts and circumstances of the case elucidated hereinabove and considering the legal position on the aspect under consideration enunciated by the above noted judgments of the Supreme Court, we feel of the opinion that the judgment under review dated 19.02.2024 suffers from a patent error in so far as the issue relating to payment of interest has remained to be addressed in the same.

21. Accordingly, we hold that the petitioner is entitled to the amount of Rs.18,95,53,000/- along with interest at the rate given in the Article 5.2 of the PPA.

Conclusion: -

22. The instant review petition is, therefore, allowed. Accordingly, Paragraphs 33 and 39 of the judgment dated 19.02.2024 shall read as under: -

*“33. Hence, we are unable to agree to the findings of the Commission on this aspect of imposition of liquidated damages upon WSPL. We hold the imposition of liquidated damages **to the tune of Rs.18,95,53,000/-** upon WSPL excessive, unjust and untenable in the fact of circumstances of the case. The Company WSPL is entitled to refund of the said amount which has already been adjusted in its bills.”*

*“39. In view of the above discussion, the Appeal No. 279 of 2022 stands partly allowed. The respondents in the said appeal are hereby directed to refund the amount adjusted **liquidated damages of Rs.18,95,53,000/-** to WSPL forthwith along with interest at the rate as provided in Article 5.2 of the PPA”*

Pronounced in the open court on this the 28th day of April, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

√
REPORTABLE / ~~NON-REPORTABLE~~

TP