IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

CP No. 2 OF 2025 & IA No. 341 OF 2025

Dated: 15th May, 2025

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

In the matter of:

Laxmi Organics Industries Ltd,
Through its Managing Director,
Chandramukhi, 3rd Floor, Nariman Point,
Mumbai 400021

… Petitioner(s)

Versus

1. **Maharashtra State Electricity Distribution Company Ltd.**
Through its Chief Engineer, Commercial
5th Floor, Plot No. G-9, Station Road,
Prakashgad,
Bandra (East), Mumbai 400 051. … Respondent No.1

2. **Maharashtra Electricity Regulatory Commission**
Through its secretary,
World Trade Centre, Centre No-1,13th Floor,
Cuffe Parade, Colaba, Mumbai- 400 005. … Respondent No.2

3. **Prayas (Energy Group)**
Through its Managing Director
Amrita Clinic, Athvale Corner, Lakdipool-Karve
Road Junction, Deccan Gymkhana, Karve Road,
Pune-411 004 … Respondent No.3

4. **Thane Belapur Industries Association**
The General Secretary,

Through its Managing Director.
Rabale Village, Post Ghansoli, Plot P-14,
MIDC, Navi Mumbai-400 701 … Respondent No.4

5. Mumbai Grahak Panchayat,
Through its Managing Director,
Grahak Bhavan, Sant Dynaneshwar Marg,
Behind Cooper Hospital, Vile Parle (West),
Mumbai-400 056. … Respondent No.1

6. Maharashtra Chambers of Commerce
Industry & Agriculture,
Through its Managing Director,
Oricon House, 6th Floor, 12-K, Dubash Marg,
Fort, Mumbai- 400 001, (Nashik Branch). … Respondent No.1

7. Vidarbha Industries Association
Through its Managing Director
1st Floor, Udyog Bhavan, Civil Line,
Nagpur- 400 001. … Respondent No.1

Counsel on record for the Petitioner(s) : Subir Kumar for App. 1

Counsel on record for the Respondent(s) : Udit Gupta
Anup Jain
Vyom Chaturvedi
Pragya Gupta
Sneha Singh
Nishtha Goel
Deepshikha Kumar for Res. 1

ORDER

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

I. INTRODUCTION:

This Petition has been filed, by the Appellant in Appeal No. 376 of 2018, under Section 142 read with Section 146 of the Electricity Act (a) for deliberate disobedience and willful non-compliance of the judgment of this

Tribunal in Appeal Nos. 245 and 376 of 2018 dated 23.10.2014; (b) to direct the 1st Respondent to immediately cease levying and to reverse the wheeling charges and wheeling losses, and transmission charges and transmission losses illegally imposed in all bills issued post judgment, and comply as per the directions in the impugned judgement passed by this Tribunal, and (c) to direct the 1st Respondent to (i) provide a detailed working of the arrears of Rs.43,66,33,323/- (Rupees Forty Three Crores Sixty Six Lakhs Thirty Three Thousand Three Hundred Twenty Three only) shown in the bills issued post the judgment; and (ii) immediately (within two working days) reverse the arrears by issuing a written confirmation of the reversal, and to comply as per the directions of the impugned judgment passed by this Tribunal.

Section 142 of the Electricity Act relates to punishment, for non-compliance of directions, by the Appropriate Commission and thereunder, in case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of the Electricity Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may, after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

The power under Section 142 of the Electricity Act, to punish a person when he contravenes any provisions of the Act or the directions of the Commission, is conferred exclusively on the Appropriate Commission. The power conferred under Section 142 is not available to be exercised

by this Tribunal. During the course of hearing of the present Contempt Petition on 13.02.2025, on a query from the bench as to whether a petition filed before this Tribunal, under Section 142 of the Electricity Act, was maintainable, Shri Subir Kumar, Learned Counsel for the Petitioner, submitted that an IA would be filed seeking deletion, of the prayer in the Petition, to the extent they had sought action to be taken against the respondent-MSEDCL under Section 142 of the Electricity Act, in as much as the power under Section 142 is conferred only on the Appropriate Commission, and not on this Tribunal. Thereafter, I.A No. 340 of 2025 was filed by the Petitioner, seeking deletion of the prayer for action being instituted under Section 142 of the Electricity, and to confine the relief sought for in the Petition only to action being taken under Section 146 of the Electricity Act. I.A No. 340 of 2025 was closed by order dated 24.02.2025, confining the prayer in CP No. 2 of 2025 filed by the Petitioner only for action to be taken against the Respondents under Section 146 of the Electricity Act.

The Petitioner also filed I.A. No. 341 of 2025 seeking the following directions: ie to allow the present application and, pending the hearing and final disposal of the Contempt Petition, to direct the Respondent-MSEDCL to approve the MTOA application dated 12.12.2024 seeking reduction in Contract Demand from 500KVA to 2500KVA and comply with the Judgment dated 23.10.2024 passed by this Tribunal.

Before taking note of the rival submissions urged on behalf of the Petitioner and the Respondent-MSEDCL, it is useful to note the pleadings and the contents of the order of this Tribunal in Appeal Nos. 245 and 376 of 2018 dated 23.10.2024.

II. CONTEMPT PETITION: ITS CONTENTS:

C.P.No.2 of 2025 is preferred by M/s Laxmi Organics Industries Ltd. (“Petitioner” for short) under Section 146 of the Electricity Act, 2003 to take

cognizance of the act of wilful disobedience, non-compliance and blatant violation of the Judgement passed by this Tribunal in Appeal Nos. 245 and 376 of 2018 dated 23.10.2024.

The Petitioner states that Appeal No. 245 of 2018 was filed by MSEDCL challenging the Order of MERC in Case No. 97 of 2016 dated 02.04.2018 in relation to their power to levy wheeling charges and wheeling losses on the Petitioner; since MSEDCL did not comply with the order date 02.04.2018, they filed Case No. 168 of 2018 against MSEDCL under Section 142 of the Electricity Act; MERC, while allowing Case No. 168 of 2018 by its order dated 03.11.2018, made certain observations on the aspect of the transmission charges and transmission losses which led MSEDCL to raise an invoice for alleged transmission charges and applicable transmission losses; and these observations of MERC were challenged by the Petitioner before this Tribunal in Appeal No. 376 of 2018.

It is further stated that this Tribunal, by its Judgement dated 23.10.2024, dismissed Appeal No. 245 of 2018 (preferred by MSEDCL in relation to levy of wheeling charges and applicable losses*),* and allowed Appeal No. 376 of 2018 (preferred by the Petitioner in relation to MERC's observations regarding transmission charges and applicable losses). In its judgement dated 23.10.2024, this Tribunal, in Para 83, agreed with the findings of the State Commission that the relevant premises of the Contempt Petitioner was not connected to any distribution system of Respondent No.1, and the electric lines in dispute was commissioned operated, maintained and owned by the Contempt Petitioner; this Tribunal, therefore, upheld the directions of the State Commission that Respondent-MSEDCL shall not levy wheeling charges and wheeling losses on the Contempt Petitioner; and, on the aspect of transmission charges, this Tribunal, in Para 100, set aside the observations contained in Para 11

regarding levy of transmission charges and applicable losses, and quashed the letters dated 02.11.2018 and 15.11.2018 issued by the Respondent-MSEDCL seeking to recover transmission charges and applicable losses from the Contempt Petitioner.

The Petitioner further submitted that, in complete wilful disobedience to the Judgement dated 23.10.2024, the Respondent-MSEDCL continued to charge and include tariffs towards wheeling charges and transmission charges in the electricity bills of October, 2024; the Contempt Petitioner, in order to avoid further proceedings, conveyed its displeasure on the issue of illegal levy of wheeling charges and transmission charges, and apprised the Respondent-MSEDCL, vide its letters date 06.11.2024 and 14.11.2024, to rectify the bills issued for the month of the September, 2024 and October, 2024; the Respondent -MSEDCL not only included the tariff for wheeling charges and transmission charges but also included arrears to the tune of Rs. 43,66,33,323/- (Rupees Forty-Three Crore Sixty-Six Lakhs Thirty-Three Thousand Three Hundred and Twenty Three); this action of the Respondent-MSEDCL is patently, illegal and arbitrary in nature, and warrants urgent interference of this Tribunal to issue appropriate orders against the Respondent-MSEDCL to forthwith comply with the directions of the Impugned Judgement date 23.10.2024; and the Respondent-MSEDCL had, vide its email dated 21.01.2025, again sought to precipitate the issue by bringing the illegal issue of MERC (DOA) (First Amendment) Regulations 2019, and has stated that the Petitioner is liable to pay wheeling charges and transmission charges.

The Petitioner also submits that momentous urgency has arisen in the prevailing situation due to the patently, illegal and arbitrary action initiated by the Respondent-MSEDCL by continuing to raise monthly electricity bills without including the directions of the Impugned Judgement; the Electricity bills from the month of October, 2024 for the

present Petitioner; (*Consumer No. 041019022990)* explicitly includes incorrect levy of the wheeling charges and transmission charges in view of the order of this Tribunal.

The Petitioner states that they had installed a 4.8 MW Captive Power Plant ("*CPP*") in 2012 for supply of electricity in its Unit – I. In order to use the power in its Unit – II; they installed the Dedicated line and the Respondent-MSEDCL granted approval for open access, and specifically held that no wheeling charges and the applicable losses would be levied on the Petitioner; however, from FY 2014-2015 the Respondent-MSEDCL unilaterally levied wheeling charges and wheeling losses on the Petitioner which, therefore, challenged the said action before the MERC in Case No. 59 of 2015; on 03.06.2016, MERC disposed of Case No. 59 of 2015 and held that the Petitioner was liable to pay wheeling charges and wheeling loses to MSEDC; the Petitioner filed Petition bearing Case No. 97 of 2016 to review the order dated 03.06.2016 on the ground that MERC inadvertently, at the time of passing the order dated 03.06.2016, did not consider DOR, 2016; on 02.04.2018, MERC allowed the Review Petition filed by the Petitioner, and held that the Petitioner was not connected to the distribution system of the Respondent-MSEDCL, and therefore the levy of wheeling charges and losses were illegal; aggrieved by the order of MERC dated 02.04.2018, the Respondent-MSEDCL filed Appeal No. 245 of 2018. before this Tribunal; the Petitioner filed *Case No. 59 of 2015* as the Respondent-MSEDCL failed to comply with the order of the MERC date 02.04.2018; while allowing Case No. 168 of 2018, MERC made certain observations regarding the right of MSEDCL to levy transmission charges and transmission losses; aggrieved thereby, the Petitioner filed Appeal No. 376 of 2018 before this Tribunal; by its judgement dated 23.10.2024, this Tribunal dismissed Appeal No.245 of 2018 filed by the Respondent-MSEDCL, and allowed Appeal No. 376 of 2018 filled by the

present Contempt Petitioner; on 06.11.2024, the Contempt Petitioner requested the Respondent MSEDCL to issue the rectified bill for September, 2024 as it included tariff towards wheeling charges and transmission losses, and also requested that any future bills not include tariff towards wheeling charges and transmission losses; inspite of the Petitioner's letter dated 06.11.2024, and despite being aware of the judgement of this Tribunal dated 23.10.24, the Respondent-MSEDCL proceeded to issue bill on 12.11.2024 for the month of October, 2024 that included levy of wheeling charges and wheeling losses; transmission charges and transmission losses for the Petitioner's Consumer No. 041019022990; this was protested by the Petitioner and, vide its letter date 14.11.2024, the Petitioner again requested the Respondent-MSEDCL to remove the said charges and issue corrected bills to the Petitioner; the Respondent-MSEDCL did not accede to the request of the Petitioner, regarding issuance of the rectified bills for the month of October 2024; failure of MSEDCL to do so amounts to breach of the judgement of this Tribunal dated 23.10.2024, and is in wilful disobedience to the Impugned judgement; the said conduct and action of the Respondent-MSEDCL undermines the judicial authority, and is an attempt to interfere with the administration of justice; the Respondent -MSEDCL, vide its email dated 21.01.2025, has again precipitated the issue by bringing up the illegal issue of MERC (DOA)(First Amendment) Regulations 2019, and has stated that the Petitioner is liable to pay the wheeling charges and transmission charges; and this Tribunal may take stern note of the contumacious and disobedient conduct of the Respondent-MSEDCL, and pass necessary orders in terms of Section 146 of the Electricity Act, 2003.

III. REPLY FILED ON BEHALF OF RESPONDENT-MSEDCL:

In the reply filed by them to the Contempt Petition, it is stated on behalf of MSEDCL that captioned Contempt Petition is filed under Section 146 of the Electricity Act, 2003 seeking direction to restrain MSEDCL from levying wheeling and transmission charges post the common Judgment dated 23.10.2024 passed in Appeal No. 245 of 2018 and Appeal No. 376 of 2018, and consequently for reversal of the arrears shown in the bills issued by MSEDCL from the month of October 2024 to December 2024; subsequently, the Contempt Petitioner has also filed I.A. No. 341 of 2025 before this Tribunal seeking directions against MSEDCL to approve their Medium Term Open Access (**MTOA**) application dated 12.12.2024 seeking a reduction in the contract demand from 5000 KVA to 2500 KVA.

After referring to the proceedings instituted by the Petitioner, before the MERC in Case No. 59 of 2015, against levy of wheeling charges on Open Access by MSEDCL for FY 2014-15. and levy of temporary tariff by MSEDCL for over-drawal for the period May, 2013 to October, 2013, it is stated that the prayers sought in Case No. 59 of 2015 by the Petitioner were: (a) to direct MSEDCL to refund a sum of Rs.375 Lacs with interest paid under protest by the Petitioner for the period May 2014 to February 2015; (b) to declare that levy of temporary tariff by the MSEDCL for the period May 2013 to October 2013 for the over-drawal of energy is bad in law; (c) to direct MSEDCL to refund a sum of Rs.128 Lacs with interest paid under protest by the Petitioner for the period May 2013 to October 2013; to stay implementation and levy of wheeling charges and applicable losses as per the sanction of open access vide letter dated 29.03.2014 for the Year 2014-2015; and (e) allow the Petitioner to submit any additional information, document and explanation that the Commission may require; by its order dated 03.06.2016, MERC dismissed Case No. 59 of 2015 holding that, irrespective of the network arrangement, units of the Petitioner were an integral part of the grid and, hence, were liable for levy

of wheeling charges; the levy of temporary tariff for over-drawal was also upheld; however, MERC granted liberty to the Petitioner to approach the Consumer Grievance Redressal Forum with respect to delay in enhancing the contract demand by seeking compensation; on 15.07.2016, the Petitioner filed Review Case No. 97 of 2016, against the original order dated 03.06.2016, limited to the issue with respect to levy of wheeling charges; by its Order dated 02.04.2018, MERC allowed Review Case No. 97 of 2016 directing MSEDCL not to levy wheeling charges and wheeling loss, after holding that Unit 1 of the Petitioner was directly connected to the transmission system and not to the distribution system; further, Unit 2 was internally connected by a 22 KV Dedicated Distribution Facility (**DDF**), and maintained by the Petitioner; the Petitioner filed Execution Case No. 168 of 2018, under Section 142 of Electricity Act, 2003, seeking compliance of the Review order dated 02.04.2018, by seeking a direction against MSEDCL to refund the wheeling charges paid by them for the period April, 2014 till July, 2015; and MERC, by its Order dated 03.11.2018, directed MSEDCL to comply with the Review Order dated 02.04.2018. While dealing with the objection raised by MSEDCL that it had erred in not making the Petitioner liable to pay transmission charges, MERC held the said objection to be incorrect, since that was not even the issue in Review Case No. 97 of 2016 before the MERC; however, MERC observed that MSEDCL may levy transmission charges and losses in accordance with the provisions of DOA Regulations. On 13.07.2018, MSEDCL being aggrieved by Review Order dated 02.04.2018 passed by the MERC in Review Case No. 97 of 2016 filed Appeal No. 245 of 2018 before this Tribunal.

It is further submitted, on behalf of MSEDCL, that, on 04.12.2018, the Petitioner, aggrieved by the observation qua transmission charges and losses *vide* the Execution Order dated 03.11.2018 passed by the MERC

in Execution Case No. 168 of 2018, filed Appeal No. 376 of 2018 before this Tribunal, and also sought quashing of the demand letters dated 02.11.2018 and 15.11.2018 issued by MSEDCL qua transmission charges; on 26.11.2018, the Petitioner submitted before this Tribunal that they would make payment towards the bill dated 15.11.2018 raised by MSEDCL; in view of the said submission, this Tribunal, passed an interim order in Appeal No. 245 of 2018 directing MSEDCL not to take any coercive action against the Petitioner; on 17.12.2018, this Tribunal passed an interim order in Appeal No. 376 of 2018, directing MSEDCL not to precipitate the matter; and the said interim order was extended during subsequent hearings, and was ultimately directed to continue until further orders.

It is also submitted that, by its common Judgment dated 23.10.2024, this Tribunal– (a) dismissed MSEDCL's Appeal No. 245 of 2018 holding that the Petitioner's premises was directly connected to the transmission system and not to the distribution system; as Unit 2 was internally connected with DDF and maintained by the Petitioner, and there could be no levy of wheeling charges under DOA Regulation, 2014 and DOA Regulation, 2016 which exempted dedicated lines owned by generating stations; the Petitioner's Appeal No. 376 of 2018 was allowed observing that the MERC, while exercising jurisdiction as an Executing Court, had made unjustified observations on levy of transmission charges; the observation at Para 11 in the Execution Order dated 03.11.2018 was set aside, and MSEDCL's demand letter dated 02.11.2018 and 15.11.2018, qua demand of transmission charges, were also set aside. This Tribunal also noted that MSEDCL had also acknowledged that the observation with respect to transmission charges may be expunged, considering the proceeding was limited to exercising executory jurisdiction. Aggrieved by the common Final Judgment and Order dated 23.10.2024 passed in

Appeal No. 245 of 2018 and Appeal No. 376 of 2018, MSEDCL filed Civil Appeal before the Supreme Court on 30.12.2024 *vide* Diary No. 61237 of 2024 qua the non-grant of relief towards entitlement to levy wheeling charges and losses and also towards incorrectly setting aside the demand of transmission charges and losses, which was an independent right of MSEDCL *de hors* the issues involved in the litigation; and the same is due for its listing.

It is further submitted that, on 12.11.2020, MSEDCL granted MTOA (No. 19235) to the Petitioner for the period from 01.12.2020 to 30.11.2025, categorically mentioning therein that the said MTOA is issued as per the MERC (DOA) Regulations 2016 and MERC (DOA) (First Amendment) Regulation 2019; the said MTOA which is valid till date was granted to the Petitioner during the pendency of the Appeals before this Tribunal; the Petitioner, being well aware of the said grant under the 2019 Regulations which would consequently have its own independent applicability of the then prevailing entitlement of MSEDCL to levy wheeling and transmission charges, yet never agitated against such levy before this Tribunal in the pending appeals; it is only post passing of the common Judgment dated 23.10.2024 that the Petitioner herein starting agitating levy of wheeling and transmission charges being made by MSEDCL under the MERC (DOA) (First Amendment) Regulation 2019; on 06.11.2024 as well as on 14.11.2024, the Petitioner issued a letter to MSEDCL seeking rectification of the bill for the month of September, 2024 and October, 2024 respectively, as the same included levy towards wheeling and transmission charges; they further requested MSEDCL to refrain from including such charges in the future bills; levy of wheeling and transmission charges by MSEDCL, and the outstandings in this regard, had been shown in all the regular monthly bills of the Petitioner from June 2019 onwards owing to the applicability of the MERC (DOA) (First

Amendment) Regulation 2019, and as such the bill for September, 2024 was not an isolated bill wherein the levy towards wheeling and transmission charges, and the past outstandings thereof, had been reflected for the first time; MSEDCL issued regular monthly bills dated 12.11.2024, 16.12.2024, and 16.01.2025 for the month of October 2024, November 2024 and December 2024 respectively; in all the said bills the arrears, with respect to past recovery of wheeling and transmission charges in terms of the applicable DOA Regulations have always been reflected as being kept aside; on 10.12.2024, MSEDCL issued an email to the Petitioner requesting for clearance of outstanding arrears in order to process their fresh MTOA applied on 30.09.2024 for the period from 01.01.2025 to 31.12.2029; on 12.12.2024, the Petitioner intimated MSEDCL that, though their existing MTOA (No. 19235) is valid upto 31.11.2025, since CPP generation has reduced, they had applied for a fresh MTOA (No. 26360) for the period from 01.01.2025 to 31.12.2029 and, consequently, sought cancellation of existing MTOA w.e.f. from 01.02.2025 while informing to retain the contract demand of 15700 KVA; on 12.12.2024, the Petitioner, vide its letter responded to MSEDCL's email dated 10.12.2024 and relied upon this Tribunal's common judgment dated 23.10.2024, to state that levy of wheeling and transmission charges have already been held to be invalid; they requested to approve their MTOA application without any reference of arrears, and not to refuse the same on the ground of disputed arrears; on 21.01.2025, MSEDCL emailed, in response to the Petitioner's letter dated 12.12.2024, stating that levy of wheeling and transmission charges is in accordance with MERC (DOA) (First Amendment) Regulation 2019, which is being levied from the month of June 2019 and, as such, was not part of the disputed arrears in the litigation pending before this Tribunal, and requested to clear the same to process their MTOA application; on 03.02.2025, the Petitioner filed the

present Contempt Petition under Section 142 read with Section 146 of the Electricity Act, 2003 seeking direction to restrain MSEDCL from levying wheeling and transmission charges post common Final Judgment and Order dated 23.10.2024 and, consequently, sought reversal of the arrears shown in the bills issued from the month of October 2024 to December 2024; on 19.02.2025, the Petitioner also filed I.A. No. 341 of 2025 before this Tribunal seeking interim relief in the nature of a direction to MSEDCL for approving MTOA application seeking reduction in contract demand from 5000 KVA to 2500 KVA, and to comply with the common Judgment and Order dated 23.10.2024; in the application, they averred that the reduction in contract demand is not being allowed by MSEDCL on account of arrears against wheeling charges and transmission charges levied in the bills from June, 2019 which were payable as per MERC DOA (1st Amendment) Regulation, 2019.

It is also submitted that this Tribunal has not been conferred with the jurisdiction and powers to exercise contempt jurisdiction, in particular; this is evident from the specific powers conferred upon this Tribunal under Section 120 of the Electricity Act, 2003; and such powers have also not been conferred under the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules 2007.

Regarding the issue of applicability of Contempt Jurisdiction pending before the Larger Bench, it is submitted on behalf of MSEDCL that this Tribunal, *vide* its order dated 03.02.2025 in Contempt Petition No. 1 of 2025, observed that the question of whether this Tribunal has been conferred the power of contempt by Parliament is the subject matter of examination before the Full Bench in Appeal No. 310 of 2022; consequently, this Tribunal tagged Contempt Petition No. 1 of 2025 with the said appeal and directed it to be listed before the Full Bench for consideration; even assuming though not admitting of being conferred with

contempt Jurisdiction, yet in the facts of the present case no case is made out for exercising such jurisdiction, as a fresh dispute / cause of action is being agitated under the guise of contempt jurisdiction; this Tribunal, *vide* its order dated 09.04.2021 in Contempt Petition No. 1 of 2021, while analysing a series of judgments on the proposition regarding the initiation and scope of contempt proceedings, observed that every negligence or carelessness in implementing Court Order may not amount to contempt, particularly when the attention of the person concerned is drawn to implement the directions; however, casual, accidental, bona fide or unintentional acts or genuine inability to comply with the order/direction do not amount to wilful disobedience; since notice for contempt and power of contempt have far reaching consequences, they should be resorted to only where a clear case of wilful disobedience is made out; therefore, a petitioner, who complains against the contemnor for breach of the court order, must allege deliberate or contumacious disobedience; initiation of contempt proceedings is not a substitute for execution proceedings, though at times that purpose may be achieved; power to punish for contempt is for maintenance of an effective legal system; wilful disobedience has to be decided having regard to the facts and circumstances of a particular case; if disobedience is found to be under compelling circumstances, there cannot be punishment for contempt; as held by the Supreme Court, in **Niaz Mohammad vs. State of Haryana,** if there are genuine differences of opinion between the rival parties pertaining to the direction issued, it will not amount to contempt; the Supreme Court, time and again, has held on several occasions, that, while considering the issue of commission of contempt, no order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of contempt law; Courts must not travel beyond the four corners of the Order which is

alleged to have been flouted or enter into questions that have not been dealt with or decided in the Judgment or the order, violation of which is alleged; only such directions which are explicit in the judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same; the Court must ensure that, in contempt proceedings, the Court cannot exercise other corrective jurisdiction like review or appeal; contempt proceedings are meant only to enforce a pre-existing judicial order, whether such order is right or wrong; and, fresh issues including balancing of equities which should have been considered in the main case, cannot be agitated in contempt proceedings.

It is submitted, on behalf of MSEDCL, that, as borne out from the facts of the present case, the aspect of applicability of MERC DOA (First Amendment) Regulation 2019 was never an issue in any of the proceedings, which led to the passing of the common Judgment dated 23.10.2024; moreover, the aspect of contempt if any can only be confined to the original dispute between the parties, which was raised in Case No. 59 of 2015 i.e., much before the promulgation of the 2019 Regulations; hence, both the I.A. and the Contempt Petition, agitating against the levy of wheeling and transmission charges by MSEDCL, pursuant to introduction of the 2019 Regulations, cannot be made the subject matter firstly arising out of the original dispute, and secondly within the four corners of the common Judgment dated 23.10.2024, so as to assert any non-compliance thereof in the present Contempt Petition by MSEDCL.

On merits, it is submitted on behalf of MSEDCL, that the Petitioner is availing Medium Term Open Access from its captive generator for the period from 01.12.2020 to 30.11.2025; the existing Open Access arrangement remains valid until 30.11.2025; this Tribunal, *vide* common

Judgment dated 23.10.2024 in Appeal No. 245 of 2018, held that, as per MERC (Distribution Open Access) Regulations, 2014 and 2016, wheeling charges are not applicable for the period in dispute ie in the original proceedings (i.e., from April, 2014 to June, 2015); neither the periods subsequent to the disputed timeframe nor the applicability of the subsequent DOA Regulations was in issue in the said proceedings; with respect to applicability of DOA Regulations 2014 and 2016, this Tribunal declined to accept the submissions of the MSEDCL as contrary to the existing law; this Tribunal held that the term used in the Regulations is dedicated line as seen from the DOA Regulations 2014 and DOA Regulations 2016 which reads as: "Provided that wheeling charges would not be applicable in case the dedicated lines are owned by the generating stations…"; the MERC notified the MERC (Distribution Open Access) (First Amendment) Regulation 2019 on 08.06.2019; as per Regulation 14.6 (b), wheeling charges are not applicable if a consumer or generating station is directly connected to the transmission system or uses dedicated lines for point-to-point transmission with the distribution system without any inter-connection system; in the present case, the line network of the Contempt Petitioner is connected with the 220/22 KV sub-station and therefore, forms part of the distribution system; prior to the notification of the DOA Regulations 2019, the MERC DOA Regulations, 2014 and 2016 provided an exemption from wheeling charges irrespective of the consumer's interconnection with the distribution system, which had been specifically taken away by the DOA Regulation, 2019; consequently, owing to change of position of law, the levy of Wheeling Charges is made applicable by MSEDCL from June, 2019 onwards; under Regulation 14.1(v) of the DOA Regulation, 2019, in addition to wheeling charges, transmission charges are also applicable to all open access transactions that utilize transmission lines for wheeling purpose; undisputedly, the

premises of the Petitioner are directly connected to the transmission system and is availing Medium Term Open Access for wheeling of electricity; therefore, transmission charges are independently leviable; the issue concerning levy of transmission charges was not raised by the Petitioner in the Original proceedings, and was subsequently agitated in Appeal No. 376 of 2018 only on account of the passing observation in the form of an opinion rendered by the MERC during the execution proceedings; as such, the applicability of such levy has not been adjudicated as a substantive dispute in the backdrop of applicable DOA Regulations; it is in view of the interim order that no coercive order had been passed by this Tribunal in Appeal No. 245 of 2018 and Appeal No. 376 of 2018; MSEDCL though had continuously raised such levy in the monthly bills; however, on account of the continuous non-payment by the Petitioner, they have not realised it; and are now seeking recovery of the outstanding amounts; MSEDCL has been levying wheeling and transmission charges in accordance with the aforementioned 2019 Regulations from June, 2019 onwards, and the same was duly reflected in all the monthly bills; and, as such, the aspect of issuance of any separate demand notice does not arise.

It is further submitted that this Tribunal, *vide* its common Judgment in Appeal No. 376 of 2018, has merely set aside the letters dated 02.11.2018 and 15.11.2018 issued by MSEDCL concerning the transmission charges, on account of the passing observations made by MERC in the Execution proceedings; there has been no adjudication on the applicability of transmission charges in the said common Judgment; any grievance qua the levy of wheeling and transmission charges arising from the applicability of the DOA Regulation, 2019 constitutes a fresh issue / dispute and a fresh cause of action, which is distinct from the pre-existing dispute that led to the pronouncement of this Tribunal's common

Judgment; accordingly, redressal of this fresh dispute / issue cannot be adjudicated through contempt proceedings rather be pursued by filing an appropriate Petition under Section 86(1) (f) of the Electricity Act, 2003 before the MERC; and, hence, the present Contempt Petition in its present form and manner clearly is devoid of merits and thus, requires to be dismissed.

IV. REJOINDER FILED ON BEHALF OF THE PETITIONER:

In the rejoinder, filed to the reply filed on behalf of MSEDCL, it is stated, on behalf of the appellant, that this Tribunal possesses all the necessary and incidental powers under Section 146 of the Electricity Act 2003 to pass orders to meet and secure the ends of justice; the power to punish always include the powers to pass necessary orders/directions before passing the final judgment under Section 146 of the Electricity Act; the MERC Open Access Regulations (whether 2014, 2016 or the alleged 2019 Regulations) can only apply, when the present Petitioner is using the distribution system or transmission system of MSEDCL; there is a technical finding of the State Commission, and confirmed by this Tribunal, that the Petitioner is not using any network of MSEDCL; this Tribunal, vide its judgement dated 23.10.2024, has upheld the technical findings of the State Commission's order dated 02.04.2018, which, inter alia, held that wheeling charges are payable to distribution licensee only when its distribution system is used; in the present case of the Petitioner, it is clear from the factual matrix set out above that the relevant premises is directly connected to the transmission system, and not to the distribution system; further, Unit II is internally connected by a 22 KV dedicated line and cable (DDF), and is maintained by the Petitioner; in a proceeding initiated under Section 146 of the Electricity Act, MSEDCL cannot be allowed to act in an arbitrary manner, and be allowed to file pleadings, which are prima facie

an act of dishonesty; MSEDCL has also, during the pendency of Appeal No. 245 of 2018, sought to deny short term open access permission to the Petitioner, and this Tribunal, in IA No. 901 of 2020, held that there was a finding of fact returned by the State Commission, in the impugned order, that the applicant was not connected to the distribution system; the communication, which had given the trigger for the present applications to be moved, proceeded on the assumption that the applicant's system was inter-connected with the distribution network of the licensee; learned counsel for the non-Applicant/Appellant submitted that the communication, impugned by these applications, is being withdrawn and STOA application of the applicant would be processed without insistence on wheeling charges/losses to be borne, and that open access is being accordingly granted in continuity from 01.08.2020; Section 146 of the Electricity Act uses the phrase non-compliance of the order or directions given under the act; as against the definition of Contempt under the Contempt of Court Act, 1971, the legislative intent, under the Electricity Act is focused on non-compliance as against wilful disobedience for Civil Contempt under the Contempt of Courts Act; MSEDCL has raised frivolous grounds to not obey the judgment dated 23.10.2024 contending that it was dealing with Open Access Regulation 2014 and 2016; such a ground is misconceived in law; the Open Access Regulations only apply when any network or system of the distribution licensee is used; in the present case, this Tribunal has made a categoric technical finding to the effect that no distribution system or transmission system is used by the Petitioner for supply of electricity from Unit - I to Unit – II; though they filed the appeal in 2018, MSEDCL has, at no point of time, argued or pleaded that, under the 2019 Regulations, the Petitioner is liable to pay wheeling charges or transmission charges; in order to avoid orders from this Tribunal, and after the Petitioner sought approval for reduction in contract demand, such

ground has been taken in the reply which amounts to judicial misconduct and purposefully made to not follow/ comply with the judgement of this Tribunal.

It is further submitted that the sample bills for the period 2019 to 2020 reflects that MSEDCL continued to reflect wheeling charges, transmission charges on the ground that the Appeal was pending; even such actions was deprecated by this Tribunal, and this Tribunal on numerous occasions had directed MSEDCL to not precipitate the matter; filing of Civil Appeal against the judgement of this Tribunal cannot be a bar for this Tribunal to exercise its power to pass necessary directions to remove the wheeling charges and wheeling losses from the electricity bills and grant approval to the application seeking reduction in contract demand; pendency of reference does not bar this Tribunal from passing appropriate orders; there is purposeful non – compliance of the judgement in so far as MSEDCL has purposefully now taken shelter under the 2019 Regulations which, in any event, cannot dislodge the fundamental fact finding that the Petitioner is not connected to any network of MSEDCL; to allow such grounds is not to obey the judgement of this Tribunal; this would lead to judicial uncertainty, and effectively render the judgement of this Tribunal an exercise in futility; the Petitioner has not raised any new dispute in the present proceedings but rather was shocked to see the response of the State utility which states that, in order to approve the contract demand application, charges under the 2019 regulations are required to be paid; no such demand or applicability of the 2019 Regulations were ever communicated to the present Petitioner during the pendency of the Appeal before this Tribunal; there is no new cause of action as sought to be agitated by MSEDCL; and, in view of the above, the present Petition be allowed and MSEDCL be directed to forthwith approve the application seeking contract demand, and be further directed

to remove the wheeling charges and transmission charges from the monthly bills issued to the Petitioner.

V. ORDER IN APPEAL NO. 245 OF 2018 & APPEAL NO. 376 OF 2018 DATED 23.10.2024:

Appeal No. 245 of 2018 was filed by the Maharashtra State Electricity Distribution Company Ltd ("MSEDCL" for short), challenging the Order passed by the Maharashtra Electricity Regulatory Commission (in short "Commission" or "MERC") in Case No.97 of 2016 dated 02.04.2018 directing MSEDCL to release the retained amount to the concerned Generators, with applicable interest till it is paid. Appeal No. 376 of 2018 was filed by the Petitioner-Laxmi Organic Industries Limited challenging the Order passed by MERC in Case No. 168 of 2018 dated 03.11.2018 whereby MERC had made observations on the aspect of transmission charges and transmission losses which had led MSEDCL to raise invoices for alleged transmission charges, and to claim adjustment of transmission losses.

The Petitioner submitted an application, on 19.05.2012, for grant of Open Access for FY 2012-2013 for wheeling 2.9 MW power from its CPP; subsequently, the respondent-MSEDCL granted Open Access Permission on 04.10.2012 duly signed and sanctioned by the authority; thereafter, on 01.03.2013, the Petitioner submitted an application for grant of open access for 4 MW of power for the FY 2013-2014, however, on 28.03.2013, MSEDCL approved the application for Open Access only to the tune of 2.95 MW, the same being equivalent to the Contract demand of the Petitioner for one year as against the 4 MW. The Petitioner and MSEDCL entered into an Energy Purchase Agreement on 30.03.2013 for the supply of 2.95 MW of power. The Petitioner, vide application dated 03.04.2013, sought enhancement of the contract demand from 2950 KVA to 4000 KVA,

i.e., within 5 days of the grant of the Open Access permission, for a quantum of 2.95 MW; however, the said application being incomplete, MSEDCL asked the Petitioner to furnish necessary documents in complete form; on 06.05.2013, the Petitioner filed a revised application for enhancement of contract demand from 2950 KVA to 4800 KVA; after receiving the complete application along with documents, MSEDCL vide letter dated 10.10.2013, enhanced Open Access from 2.9 MW to 4.8 MW; again, vide letter dated 29.03.2014 along with terms and conditions, MSEDCL approved open access for 01.04.2014 to 31.03.2015 i.e., for FY 2014- 15; the terms and conditions also embodied the clause about applicability of wheeling charges and wheeling losses about open access which was to be levied upon the Petitioner.

Aggrieved by the action of MSEDCL, in levying wheeling charges and wheeling losses, the Petitioner approached the Commission and filed Case No. 59 of 2015 challenging imposition of the said wheeling charges, and the applicable losses for FY 2014-2015, in contradiction to the previous open access permissions granted for FY 2012-2013 and 2013-2014, including temporary tariff charges applied for FY 2013-2014 by MSEDCL.

The Commission, vide order dated 03.06.2016, disposed of Case No. 59 of 2015 holding that, irrespective of the network arrangement of the CPP and Unit 1 & II of the Petitioner, the same becomes an integral part of the grid instead of the ownership of the network; and, therefore, the Petitioner was liable to pay for wheeling charges and wheeling losses to MSEDCL.

Subsequently, DOA Regulations of 2016 were notified which superseded the previous regulations of 2005 and 2014. The 2016 Regulations stipulated that wheeling charges shall not be applicable in the case of a consumer or generating station was connected to the

transmission system directly or using dedicated lines owned by the consumer or generating station. The Petitioner, given the DOA Regulations of 2016, filed a Review Petition in Case No. 97 of 2016 to review the order dated 03.06.2016.

On. 02.04.2018, the Commission, given the prevailing Regulations, reversed the Order dated 03.06.2016, and directed MSEDCL not to levy wheeling charges and wheeling losses on the Petitioner, and further to refund the amounts paid with applicable interest directly to the Petitioner within a month or by adjustment in its energy bills for the forthcoming billing cycles.

Subsequently, on 11.06.2018, the Petitioner filed the Contempt Petition in Case No.168 of 2018 for non-compliance by MSEDCL of the Order dated 02.04.2018 passed by the State Commission in Case No.97 of 2016 contending that MSEDCL wilfully did not refund the amounts paid by the Petitioner with applicable interest, and they did not make any adjustments in future bills in compliance with Order dated 02.04.2018. On 14.07.2018, MSEDCL preferred Appeal No.245 of 2018 challenging the Order passed by the State Commission in Case No.97 of 2016 dated 02.04.2018 only on the issue of wheeling charges and wheeling losses applicable to the Petitioner.

On 01.10.2018, the Petitioner and MSEDCL appeared before the State Commission in Case No.168 of 2018, and the State Commission reserved the matter for judgment. At the said hearing MSEDCL, though being served with a copy of the Petition on 02.07.2018, did not file any reply on or before 01.10.2018. On 22.10.2018, MSEDCL, in violation of the procedure of the State Commission and after the judgment was reserved, filed its Reply to Case No.168 of 2018 and a copy was served

to the Appellant's Advocate. In the said Reply, MSEDCL raised the issue of transmission charges.

On 03.11.2018, the State Commission allowed Case No.168 of 2018 and, despite accepting the submissions of the Petitioner, gave no direction to MSEDCL regarding in what manner the Order dated 02.04.2018 ought to be complied with They also made observation on transmission charges and transmission losses. On 15.11.2018, MSEDCL served a copy of the letter dated 15.11.20 wherein MSEDCL sought to recover transmission charges of Rs.6,98,78,400, and MSEDCL raised a bill for October for Rs.1,92,91,453.17 on the Petitioner without any claim of any transmission charges. On 17.11.2018, MSEDCL served letter dated 02.11.2018, which was received by the Petitioner on 17.11.2018, seeking payment of Rs.6,98,78,400 under the head of transmission charges; vide the said letter, MSEDCL purported to disconnect the supply of electricity on account of non-payment of alleged non-payment of transmission charges.

On 26.11.2018, this Tribunal passed an interim Order in Appeal No.245 of 2018 and, while directing that the matter be re-listed on 17.12.2018 to enable learned counsel appearing for respondent-MSEDCL to file the reply and noting the submission that the Respondent-MSEDCL would pay the October bill dated 15.11.2018 on the due date, directed the appellant not to take any coercive action till the next date of hearing i.e. 17.12.2018"

In its judgement, in Appeal Nos. 245 and 376 of 2018 dated 23.10.2024, this Tribunal, after extracting the single-line diagram, observed that it was clear that the line connecting the CPP at Unit 1 to Unit 2 was a dedicated line evacuating the captive power; MSEDCL had not disputed the fact that the transmission line was set up by the Petitioner after obtaining MSEDCL's approval; and it is also established that the DDF of

the Petitioner was directly connected to the intra-state transmission system of MSETCL at the MIDC Mahad substation.

After extracting the State Commission's analysis and ruling in its Order in Case No. 97 of 2016, this Tribunal observed that the State Commission had ruled in favor of the Petitioner on the issue of wheeling charges and wheeling losses; after noting the relevant legal principles, and regulations, the State Commission had decided that the wheeling charges were payable to the distribution licensee only when its distribution system was used; however, in the present case of the Petitioner, it was clear from the factual matrix that the relevant premises were directly connected to the transmission system and not to the distribution system and, further, Unit 2 was internally connected by a 22 kV dedicated line and Cable (DDF) and maintained by the Petitioner.

This Tribunal declined to accept the submission of MSEDCL as it was contrary to the existing law; the term used in the Regulations was dedicated line as seen from the DOA Regulations 2014 and DOA Regulations 2016 which reads as: *"Provided that wheeling charges would not be applicable in case the dedicated lines are owned by the Generating stations…";* it could not be disputed that the electric lines in dispute had been commissioned, operated, maintained and owned by the Petitioner, inter-alia, dedicated electric lines for the use of the Petitioner only; the impugned Order passed by the State Commission conformed with the relevant legal provisions and was in strict compliance with its regulations; they found no infirmity in the Impugned Order; and Appeal 245 of 2018 thus failed.

With respect to Appeal No. 376 of 2018, this Tribunal observed that it was important to note the issue behind filing of this Appeal; the Petitioner had filed the Appeal challenging the Order in Case No. 168 of 2018 dated 03.11.2018 passed by the MERC whereby MERC had made unjustified

observations on the aspect of the transmission charges and transmission losses which had led MSEDCL to raise the invoices for alleged transmission charges and claim for adjustment of transmission losses; Case No. 168 of 2018 was filed by the Petitioner against MSEDCL seeking execution of the State Commission's Order dated 02.04.2018 in Case No. 97 of 2016 under Section 142 of Electricity Act, 2003; it is settled principle of law that an executing court's jurisdiction is limited to questions relating to the execution, discharge, or satisfaction of a decree; it cannot go behind the decree to adjudicate upon matters that were determined in the original suit, for instance, the executing court cannot re-evaluate the merits of the case or modify the terms of the decree; and the final executable order dated 02.04.2018 passed in Case No. 97 of 2016 was as under:

> *"Thus, Wheeling Charges are payable to the Distribution Licensee only when its Distribution System is used. In the present case of LOIL, however, it is clear from the factual matrix set out above that the relevant premises is directly connected to the Transmission System and not to the Distribution System and, further, Unit 2 is internally connected by a 22 kV Dedicated Line and Cable (DDF) and maintained by LOIL. Hence, the Commission concludes that there is a clearly an error on the face of the impugned Order in the Commission holding that LOIL was liable to pay Wheeling Charges and Losses to MSEDCL.*
>
> *In view of the foregoing, the Commission directs MSEDCL not to levy Wheeling Charges and Wheeling Losses on LOIL. The amounts paid in the meantime shall be refunded with applicable interest directly to LOIL within a month or by adjustment in its energy bill for the ensuing billing cycle.*"

This Tribunal observed that the State Commission had travelled behind the decree and passed a modified order in Case No. 168 of 2018, which read as under:

> *"…….. Therefore, the Commission in above Order noted that if the Open Access consumer receives supply from a Generating Company whose injection point is connected to the Intra-state transmission system, such Open Access consumers would be liable to pay only the applicable transmission charges to the transmission Licensee whose network has been accessed under the Transmission Open Access Regulation. The Commission also notes that as the dispute before the Commission raised by LOIL in Case No. 97 of 2016 was relating to the exemption of Wheeling Charges and Wheeling losses, the Commission did not pass any direction in respect of levy of Transmission Charges.* ***Hence MSEDCL's argument that the Commission has erred by not making LOIL liable to pay Transmission Charges and applicable losses is incorrect. However, MSEDCL may levy applicable Transmission Charges and Transmission losses in accordance with provisions of the DOA Regulations and the terms and conditions of the Open Access between MSEDCL and LOIL. Hence the following Order****:"*

This Tribunal opined that the State Commission had clearly modified the decree which needed to be set aside as it was against the settled principle of law; even MSEDCL accepted the error committed by the State Commission by submitting that this Tribunal may expunge the Order limited to the last part of the para 11 of the Impugned Order, which reads as under:

> ***"11----------Hence MSEDCL's argument that the***

Commission

has erred by not making LOIL liable to pay Transmission Charges and applicable losses is incorrect. However, MSEDCL may levy applicable Transmission Charges and Transmission losses in accordance with provisions of the DOA Regulations and the terms and conditions of the Open Access between MSEDCL and LOIL. Hence the following Order:"

This Tribunal found the Impugned Order of the State Commission to be erroneous to the limited extent as mentioned in the previous para. and set it aside to the limited extent by deleting a part of the para 11 as quoted in the previous para. This Tribunal also allowed the prayer of the Petitioner quashing MSEDCL's letters dated 02.11.2018 and 15.11.2018, inter-alia, setting aside any liability placed on the Petitioner to pay any Transmission Charges and Transmission Losses in accordance with the Impugned Order.

By its judgement dated 23.10.2024, this Tribunal ordered that, for the reasons afore-stated, Appeal Nos. 245 of 2018 was dismissed as it was devoid of merit; the Impugned Order dated 02.04.2018 in Case No.97 of 2016 passed by the Maharashtra Electricity Regulatory Commission was upheld; Appeal No. 376 of 2018 was allowed, and the Impugned Order dated 03.11.2018 passed by the Maharashtra Electricity Regulatory Commission in Case No. 168 of 2018 was set aside to the extent as concluded above.

VI.RIVAL CONTENTIONS:

Elaborate submissions, both oral and written, were put forth by Sri. Subir Kumar, Learned Counsel for the Appellant, and Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the Respondent-MSEDCL. It is convenient to examine the rival contentions, urged by

Learned Counsel and Learned Senior Counsel on either side, under different heads.

VII. HAS CONTEMPT JURISDICTION BEEN CONFERRED ON THIS TRIBUNAL?

A. SUBMISSIONS URGED ON BEHALF OF THE RESPONDENT MSEDCL:

Sri B.P. Patil, Learned Senior Counsel appearing on behalf of the respondent-MSEDC, would submit that this Tribunal has not been specifically conferred contempt jurisdiction or the power to punish for contempt; this is evident from the specific powers conferred upon it under Section 120 of the Electricity Act, 2003; no such powers has been conferred under the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules 2007 also.

Sri B.P. Patil, Learned Senior Counsel, would further submit that alternatively, even assuming though not admitting that this Tribunal has the inherent power to punish for contempt, yet, in the facts of the present case, no case is made out for exercising such jurisdiction, as a fresh dispute / cause of action is being agitated under the guise of invoking the contempt jurisdiction; this Tribunal, *vide* its order in Contempt Petition No. 1 of 2021 dated 09.04.2021, while analyzing a series of judgments on the proposition regarding initiation and scope of contempt proceedings, categorically observed that contempt proceedings are meant only to enforce pre-existing judicial orders, whether right or wrong and, thus, fresh issues, including balancing of equities which should have been considered in the main case, cannot be agitated in contempt proceedings; it was also held therein that, if there are genuine differences of opinion between the rival parties pertaining to the direction issued, it will not amount to contempt; as borne out from the facts of the present case, the aspect of

applicability of the MERC DOA (First Amendment) Regulation 2019 was not in issue in any of the proceedings, which led to the passing of the common Judgment dated 23.10.2024; moreover, the aspect of contempt, if any, can only be confined to the original dispute between the parties, which was raised in Case No. 59 of 2015 i.e., much before the promulgation of the 2019 Regulations; hence, both the I.A. and the Contempt Petition, agitating against levy of wheeling and transmission charges by MSEDCL, pursuant to introduction of the 2019 Regulations, cannot be made the subject matter of contempt proceedings as it does not arise out of the original dispute, and does not fall within the four corners of the common Judgment dated 23.10.2024, so as to assert any non-compliance thereof, in the present Contempt Petition, by MSEDCL;

B. SUBMISSIONS URGED ON BEHALF OF THE PETITIONER:

Sri. Subir Kumar, Learned Counsel for the Petitioner, would submit that, according to the Respondent- MSEDCL, no contempt jurisdiction is available with this Tribunal; this Tribunal restricted the scope under *Section 146 of* the Electricity Act with regard to the Petitioner making out a case for violation of the Impugned Judgement; and the issue relating to Contempt Jurisdiction was not argued by the Petitioner.

C.JUDGEMENT RELIED ON BEHALF OF RESPONDENT-MSEDCL:

In **Chennamangathihalli Solar Power Project LL.P & Anr. Versus Bangalore Electricity Supply Company Ltd. & Anr. (Judgement in Contempt Petition No. 01 of 2021 dated 09.04.2021),** (on which reliance is placed on behalf of the Respondent-MSEDCL), this Tribunal held that, in order to initiate action for contempt, there should be wilful disobedience on the part of the Contemnor, and not just disobedience or remote disobedience; the Supreme Court, in various Judgments, had time and

again opined when contempt proceedings can be initiated and its scope; the gist of the judgments in (a) ***Kapil Deo Prasad vs. State of Bihar:*** (1999) 7 SCC 569; (b) ***Niaz Mohammad vs. State of Haryana:*** (1994) 6 SCC 332; (c) **Indian Airport Employees Union Vs. Ranjan Chatterjee:** (1999) 2 SCC 537; (d) **Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and Others Vs. M. George Ravishekaran and Others** [(2014) 3 SCC 374; (e) **Bihar Finance Service Construction Vs. Gautam Goswami,** (2008) 5 SCC 339; (f) ***State of Punjab Vs. Krishna Dayal Sharma*** [(2011) 11 SCC 212; and (g) ***Bai Shankri Ben Vs. Special Land Acquisition Office*** [(1996) 4 SCC 533, is that every negligence or carelessness in implementing Court Order may not amount to contempt, particularly when attention of the person concerned is not drawn to implement the directions; casual, accidental, bona fide or unintentional acts or genuine inability to comply with the order/direction does not amount to wilful disobedience; since notice for contempt and power of contempt have far reaching consequences, they should be resorted to only where a clear case of wilful disobedience is made out; therefore, a petitioner, who complains against the Contemnor for breach of the court order, must allege deliberate or contumacious disobedience; initiation of contempt proceedings is not a substitute for execution proceedings, though at times that purpose may be achieved; power to punish for contempt is for maintenance of an effective legal system; a wilful disobedience has to be decided having regard to the facts and circumstances of a particular case; if disobedience is found to be under compelling circumstances, there cannot be punishment for contempt; in order to constitute civil contempt, there has to be a disobedience which is of a wilful nature; if there are genuine differences of opinion between the rival parties pertaining to the direction issued, it will not amount to contempt; while considering the issue of commission of

contempt, no order or direction, supplemental to what has been already expressed, should be issued by the Court while exercising jurisdiction in the domain of contempt law; the power to punish for contempt is a special and rare power; the consequences are so drastic which, if misdirected, could even curb the liberty of the individual charged with commission of contempt; Courts must not travel beyond the four corners of the Order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the Judgment or the order, violation of which is alleged; only such directions, which are explicit in the judgment or order or are plainly self-evident, ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same; in other words, decided issues cannot be reopened, nor can the plea of equities be considered; the Court must ensure that, in contempt proceedings, the Court does not exercise other corrective jurisdictions like review or appeal; contempt proceedings are meant only to enforce pre-existing judicial orders, whether such order is right or wrong; and, therefore, fresh issues including balancing of equities which should have been considered in the main case cannot be agitated in contempt proceedings.

D. ANALYSIS:

As noted hereinabove, the Appellant has given up its claim under Section 142 of the Electricity Act, and has confined their claim in this Petition only to action being taken against MSEDCL under Section 146 of the said Act. Before examining the scope and ambit of Section 146, it is useful to note that the present Petition has been filed as a Contempt Petition. The power of civil contempt, conferred under Sections 2(b) and 12 of the Contempt of Courts Act, 1971, is to punish the party which has willfully and deliberately violated the orders of Court. The power of

contempt is constitutionally conferred on Superior Courts i.e. the Supreme Court under Article 129 of the Constitution, and on the High Courts under Article 215 of the Constitution of India as they are Courts of Record. Further, such a power has also been conferred on them by Parliament under the Contempt of Court Act, 1971. Unlike Constitutional Courts, the power of Tribunals with limited jurisdiction is confined strictly to the provisions of the Act in terms of which they are created, and are required to function. Certain Plenary legislation made by Parliament, such as the Administrative Tribunals Act, 1985, specifically confer on the Administrative Tribunals, in terms of Section 17 thereof, the same jurisdiction and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect. Unlike other Parliamentary legislations, where power of contempt has been explicitly conferred on certain Tribunals, no such power has been expressly conferred on this Tribunal under the provisions of the Electricity Act, 2003. It is highly debatable whether the power to punish a person for contempt, for violation of its orders, can be said to inhere in Tribunals with limited jurisdiction. We refrain from saying anything more, as this question has been referred to, and is the subject matter of examination by a Three-Member bench of this Tribunal. In its order, in **Court of its own Motion vs Southern Power Distribution Co. of Andhra Pradesh Ltd and another (Order in Contempt Petition No.3 of 2021 dated 05.01.2023),** this Tribunal referred the question, "*whether even in the absence of specific conferment of contempt jurisdiction by Parliament on APTEL, akin to those conferred on other Tribunals, the jurisdiction to punish for contempt can be exercised by APTEL"*, for the consideration of a three-member bench of this Tribunal.

In as much as the Petitioner has fairly stated, in its submissions, that it is not basing its contentions on this score, we refrain from delving further into whether or not this Tribunal can be said to have the inherent power to punish for contempt of court.

VIII. SECTION 146 OF ELECTRICITY ACT: ITS SCOPE:

A. SUBMISSIONS URGED ON BEHALF OF THE PETITIONER:

Sri. Subir Kumar, Learned Counsel for the Petitioner, would submit that the present Petition is filed under Section 146 of Electricity Act, 2003 seeking necessary order/directions for non-compliance of this Tribunal's Judgement dated 23.10.2024, confirming the technical findings of the State Commission's order dated 02.04.2018; the Impugned Judgement records the finding that the dedicated lines installed by the Petitioner are not connected to any system of MSEDCL and, thereafter, examined whether, under the Maharashtra Electricity Regulatory Commission (DOA) 2014 or 2016 Regulations, which presupposes the use of the distribution system of the licensee, the petitioner was liable to pay wheeling charges; this Tribunal decided that these Distribution of Open Access Regulations do not apply due to the technical finding arrived at by the State Commission in its order date 02.04.2018; MSEDCL, during the pendency of the Appeal and even after the Impugned Judgement in Appeal 245 of 2018 was passed, continued to include wheeling charges and transmission charges in the monthly bills; but the same were/are categorically stated to be 'kept aside till further order/final outcome of the case stated by MSEDCL itself; during the pendency of the appeal, deposit of the disputed amount of wheeling and transmission charges, as a pre-condition for consideration of the open access application, was injuncted on 31.07.2020 vide the interim order of this Tribunal; despite dismissal of

its Appeal, MSEDCL has pushed the Petitioner to a position worse off than the one prevailing when the Appeal was pending; and the Petitioner, inter-alia, is being asked to clear the wheeling and transmission charges, (subject matter of Appeal No. 245 of 2018 as per MSEDCL's own bills) as a pre-condition for consideration of open access application(s) and reduction in contract demand.

On the incidental and ancillary power available with this Tribunal, Sri. Subir Kumar, Learned Counsel for the Petitioner, would submit that the power to punish for non-compliance would always include the power to issue necessary directions as held in ***Delhi Development Authority vs Skipper Construction Co. (P) Ltd. (1996) 4 SCC 622.*** Learned Counsel would rely on the judgement ot the Supreme Court, in ***Union of India & Anr vs Paras Laminates (P) Ltd. (1990) 4 SCC 453,*** to contend that a judicial body has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers; where an Act confers jurisdiction, it impliedly also grants the power of doing all such acts or employing such means as are essentially necessary to its execution; and the powers to be exercised under Section 146 of the Electricity Act, 2003, for non-compliance, is itself a method of seeking compliance by passing an order under Section 146 of the Electricity Act.

B. JUDGEMENT RELIED ON BEHALF OF MSEDCL:

In **Bihar State Electricity Board versus Central Electricity Regulatory Commission (Judgement in Appeal No 53 of 2009 dated 31.07.2009)**, (on which reliance is placed on behalf of the Respondent MSEDCL), this Tribunal held that Part XIV of the Electricity Act deals with the offences and penalty; it contains Section 135 to Section 152; under this Part there are some Sections which deal with offences punishable by the criminal court with fine or imprisonment, and there are some other

Sections which deal with mere penalty; Section 146 relates to the punishment for non-compliance of orders or directions; according to this Section, whoever fails to comply with any order or direction given under this Act shall be punishable with imprisonment which may extend to three months or find which may extend to one lakh rupees or with both, and, in the case of a continuing failure, the additional fine of five thousand rupees may be imposed for every day during which the failure continues after conviction of the first such offence; there are some Sections which provide for the penalty that can be imposed by the Commission for non-compliance of the directions or contravention of the rules and regulations; Section 142 confers power on the Commission to impose penalty on the person who committed violation or contravention of the directions or the regulations; there are two sets of provisions i.e. one set deals with offences and another set deals with penalties; under Section 151 of the Act, cognizance of the offences can be taken only by the criminal court, provided that the complaint must be made before that court by the Appropriate Commission or the Appropriate Authority; if such a complaint has not been made by the appropriate authority, the court is not empowered to take cognizance of the offences and conduct trial for prosecution of those offences; Section 151-B prescribes that only Sections 135 to 140 and Section 150 are treated to be cognizable and non-bailable offences; wherever offences are mentioned, the criminal court alone is competent to try those offences; the Legislature thought it fit to provide for the constitution of special courts to deal with the offences as provided under Section 153 in Part XV of the Act; under this Section, the State Government shall constitute Special Court and appoint a Judge of the Special Court to conduct trial in respect of the offences under Sections 135 to 140 and Section 150 of the Act; Section 154 prescribes a special procedure conferring the power to the Special Court in accordance

with the procedure prescribed under the Code of Criminal Procedure for conducting trial for the offences referred to in Sections 135 to 140 and Section 150; a joint reading of Sections 151 and 151B of the Act would clearly envisage that the offences, referred to in the various Sections of Part XIV, can be taken cognizance only by the criminal court and, out of these offences, the offences under Section 135 to 140 and Section 150, which are serious in nature, can be tried only by the Special Court which has the powers of the Session's Court to convict the offenders.

This Tribunal further held that Section 142 of the Act does not deal with offences; on the other hand, various Sections deal with the offences like Sections 135 to 141, 146 and 150; the exercise of finding out which offence under this Act was committed by the person could be made only by the criminal court through trial and not by the Commission; Section 142 which deals with the violation of direction is not an offence and it cannot be linked with Section 149 which relates to offences mentioned in the above sections in Part XIV.

C. JUDGEMENTS RELIED BY THE PETITIONER UNDER THIS HEAD:

The appeal by the Union of India, in **Union of India v. Paras Laminates (P) Ltd., (1990) 4 SCC 453**, was against the judgment of the Delhi High Court setting aside two orders, the former made by a bench of two members of the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter called the 'Tribunal'), and the latter order by the President of the Tribunal. By the former order, the bench of two members of the Tribunal stated that they doubted the correctness of an earlier decision of a bench of three members of the Tribunal in *Bakelite Hylam Ltd., Bombay* v. *Collector of Customs, Bombay* [(1986) 25 ELT 240], and directed that the case of Paras Laminates (P) Ltd., be placed before the President of the Tribunal for referring it to a larger bench of the Tribunal.

The President, by the latter order, referred the case to a larger bench of five members. These two orders were struck down by the Delhi High Court stating that the bench of two members ought to have followed the earlier decision of the larger bench of three Judges, and a reference of the case to a still larger bench was contrary to judicial precedent and judicial discipline.

Before the Supreme Court, it was contended, on behalf of the appellant — Union of India, that Section 129-C of the Customs Act, 1962 contains express provisions enabling the President of the Tribunal to constitute larger benches to resolve conflicts in opinion arising between members of a bench or between benches of the Tribunal; the Tribunal has ample powers to regulate its own procedure, apart from the express provisions of the statute in that behalf; the Tribunal has inherent or incidental or ancillary powers to effectuate the statutory powers expressly granted to it; and the statute must be so construed as to make the conferment of power efficacious and meaningful.

It was contended, on behalf of the respondent (the importer), that the Tribunal is a creature of the statute; its jurisdiction is limited to the specific powers conferred by the statute; it has no inherent jurisdiction and its powers are not plenary and are limited to the express provisions contained in the statute; while the powers of a civil court are plenary and unlimited unless expressly curtailed by statute, the powers of a Tribunal are the result of an express grant and cannot exceed the bounds limited by the constituting statute; in the present case the powers of the Tribunal are expressly specified in the Customs Act, 1962; and those powers do not contain any provision enabling the President to refer a case to a larger bench whenever a doubt about an earlier decision is expressed by another bench of the same Tribunal.

Sub-section (6) of Section 129-C of the Customs Act provided that, subject to the provisions of the said Act, the Appellate Tribunal under the said Act shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or the discharge of its functions. Sub-sections (7) and (8) of Section 129-C provided that the Tribunal shall, for certain specific purposes, be deemed to be a Civil Court. It is in the context of these provisions, that the Supreme Court, in **Union of India v. Paras Laminates (P) Ltd., (1990) 4 SCC 453,** held that the Tribunal functions as a court within the limits of its jurisdiction; it has all the powers conferred expressly by the statute; furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers; certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power, which is expressly granted in the assigned field of jurisdiction, is efficaciously and meaningfully exercised; the powers of the Tribunal are no doubt limited; its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted; the implied grant is, of course, limited by the express grant; and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective.

Applying the law declared by the Supreme Court, in **Paras Laminates (P) Ltd,** to the present case, would require this Tribunal to be said to have such incidental and ancillary powers as are necessary to make fully effective the express grant of the statutory powers under Section 146 of the Electricity Act. As the jurisdiction to punish, under Section 146, is confined to non-compliance of orders or directions given under the Electricity Act, or for contravention of such orders or directions,

the enquiry under Section 146 must be confined only to these aspects. It is impermissible, in such proceedings, to undertake adjudication of disputes which have arisen after the judgement of this Tribunal, in Appeal Nos. 245 and 376 of 2018 dated 23.10.2024, more so those which would necessitate consideration of the rival contentions on the validity or otherwise of the action so taken, and whether the Regulations which are relied upon are applicable. As shall be elaborated, a little later in this order, Section 146 read with Section 149 and 151 of the Electricity Act confer power only on the competent court to punish the person who has committed the offence, that too after trial. No such power is available to be exercised either by the Regulatory Commission or by this Appellate Tribunal.

In **Delhi Development Authority v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622,** the Supreme Court, while examining the nature and ambit of its powers under Article 142 of the Constitution, referred to its earlier decision in **Vinay Chandra Mishra, Re (1995) 2 SCC 584,** and observed that the question was not what *can* be done, but what *should* be done?; even while acting under Article 142 of the Constitution of India, the Supreme Court ought not to reopen orders and decisions of Courts which have become final; for doing complete justice between the parties before them, it was not necessary to resort to this extra-ordinary step; the DDA had taken over not only the plot but also the construction raised by Skipper thereon (free from all encumbrances) in addition to the sum of Rs 15.89 crores (said to have been paid by Skipper towards the sale consideration of the said plot); the monies required for paying the persons defrauded should come out of the kitty of the DDA; the plot, the construction raised thereon and the monies already paid towards the sale consideration of the said plot were all vested absolutely in the DDA free from all encumbrances under and by virtue of the decision of the Delhi High Court, which decision

had been affirmed by the Supreme Court by dismissing the special leave petition preferred against it; It may not be open to them to ignore the said decisions and orders, including the orders of the Supreme Court, and/or to go behind those decisions/orders and say that the amount received by DDA towards sale consideration from Skipper or the value of the construction raised by Skipper on the said plot should be made available for paying out the persons defrauded by Skipper; and they must treat those decisions and orders as final, and yet devise ways and means of doing complete justice between the parties before them.

While holding that the contemnor should not be allowed to retain the fruits of his contempt, the Supreme Court, in **Delhi Development Authority v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622**, observed that the principle that a contemner ought not to be permitted to enjoy and/or keep the fruits of his contempt was well settled; in **Mohd. Idris v. Rustam Jehangir Babuji [(1984) 4 SCC 216,** it was held that, undergoing the punishment for contempt, did not mean that the court is not entitled to give appropriate directions for remedying and rectifying the things done in violation of its orders; and this principle has been applied even in the case of violation of orders of injunction issued by civil courts (Refer: ***Clarke* v. *Chadburn*: (1985) 1 All ER 211).**

It must be borne in mind that a judgment is only an authority for what it actually decides. What is of the essence in a decision is its ratio, and not every observation found therein nor what logically follows from the various observations made in the judgment. (***State of Orissa* v. *Sudhansu Sekhar Misra: AIR 1968 SC 647*; *Quinn* v. *Leathem*, [1901] A.C. 495).**
As a case is only an authority for what it actually decides, it cannot be quoted for a proposition that may seem to follow logically from it. (***Quinn* v. *Leathem* [1901] A.C. 495; *State of Orissa* v. *Sudhansu***

Sekhar Misra*, (1968) 2 SCR 154)**. Judgments ought not to be read as statutes. (Sri Konaseema Cooperative Central Bank Ltd.* v. *N. Seetharama Raju*, AIR 1990 AP 171; *Kanwar Amninder Singh* v. *High Court of Uttarakhand*, 2018 SCC OnLine UTT 1026).** A stray sentence in a judgment cannot be read out of context. (***GUVNL* v. (*GERC* (Order of APTEL in Appeal No. 371 of 2023 dated 09.11.2023)**.

It is also not a profitable task to extract a sentence here and there from a judgment and to build upon it. (***Quinn* v. *Leathern*, [1901] A.C. 495; *State of Orissa* v. *Sudhansu Sekhar Misra*, AIR 1968 SC 647; *Delhi Administration (NCT of Delhi)* v. *Manohar Lal*, (2002) 7 SCC 222; *Dr. Nalini Mahajan* v. *Director of Income-tax (Investigation)*, (2002) 257 ITR 123 Delhi) and *Bhavnagar University* v. *Palitana Sugar Mill P. Ltd.*, (2003) 2 SCC 111; *B.F. Ditia* v. *Appropriate Authority, Income-Tax Department*, 2008 SCC OnLine AP 904; *Sri. Konaseema Cooperative Central Bank Ltd.* v. *N. Seetharama Raju*, AIR 1990 AP 171; *Kanwar Amninder Singh* v. *High Court of Uttarakhand*, 2018 SCC OnLine UTT 1026**) A word here or a word there should not be made the basis for inferring inconsistency or conflict of opinion. Law does not develop in a casual manner. It develops by conscious, considered steps. (***Sri. Konaseema Cooperative Central Bank Ltd.* v. *N. Seetharama Raju*, AIR 1990 AP 171).**

In this context, it is also useful to note that, broadly speaking, every judgment has three segments, namely, (*i*) the facts and the point at issue; (*ii*) the reasons for the decision; and (*iii*) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment, the ratio decidendi may differ from the decision (final order relating to relief). **(Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720; Suneja**

Towers (P) Ltd. v. Anita Merchant, (2023) 9 SCC 194). It is only for violation of the decision of this Tribunal, ie final portion of the Judgement dated 23.10.2024 relating to the relief, can Section 146 of the Electricity Act be invoked.

The pre-requisite, for holding that the contemnor should not be allowed to retain the fruits of his contempt, is for this Tribunal to first hold that MSEDCL has either committed contempt or has failed to comply with or has acted in contravention of the judgement of this Tribunal in Appeal Nos.245 and 376 of 2018 dated 23.10.2024, or the directions issued therein. The Petitioner claims that the action of MSEDCL, in raising invoices from November, 2024 levying wheeling charges and losses, imposing transmission charges and losses on them for this period, and denying them MTOA on the ground that arrears have not been paid, is in violation of the afore-said judgement of this Tribunal. The submission, urged on behalf of the Respondent-MSEDCL, is that the wheeling charges and wheeling losses sought to be recovered from the Petitioner in the invoices from November, 2024 is in terms of the 2019 amended DOA Regulations, the scope and ambit of which did not arise for consideration before this Tribunal in the afore-said judgement dated 23.10.2024, and imposition of transmission charges and losses, and seeking payment of arrears for grant of MTOA, pursuant to an application made by the Petitioner in December 2024, more than a month after the afore-said judgement was passed on 23.10.2024, is in terms of the statutory regulations, the scope of which did not arise for consideration in the afore-said judgement of this Tribunal.

It would be difficult for us, therefore, to hold that the judgement of this Tribunal dated 23.10.2024 has either not been complied with, or the directions issued therein have been violated, when the complaint in the Contempt Petition relates to matters which arose subsequent to the

judgement of this Tribunal dated 23.10.2024, and which are said to based on Statutory Regulations which were not under examination in the said judgement.

D. ANALYSIS:

Section 146 of the Electricity Act, on which reliance is placed on behalf of the Appellant, reads thus:

> ***"Section 146. (Punishment for non-compliance of orders or directions):***
>
> *Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made there-under, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to One Lakh Rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:*
>
> *Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121".*

Section 146 of the Electricity Act is attracted firstly where a person fails to comply with any order or direction given under the Electricity Act within such time as may be specified in the said order or direction. According to the **Oxford Dictionary**, the word *"comply"* means to obey a rule, an order, etc. This definition emphasizes the act of adhering to established rules, commands, or instructions. Section 146 of the Electricity would apply in case of failure of MSEDCL to obey or adhere to the

judgement of this Tribunal in Appeal Nos.245 and 376 of 2018 dated 23.10.2024.

Secondly, Section 146 is attracted where a person contravenes or attempts or abets the contravention of any of the provisions of the Electricity Act or any rules or regulations made there-under. **P. Ramanatha Aiyar : The Major Law Lexicon 4th Edition 2010** defines *"Contravene"* to mean to violate or infringe; to defy; 2. to come into conflict with; to be contrary to (Black, 7th Edn., 1999); and *"Contravention"* to means 'otherwise than in accordance with; the action of contravening; a transgression or violation; an act violating a legal condition or obligation; a criminal breach of a law, treaty, or agreement; a minor violation of the law; an act committed in violation of a legal condition of or obligation. Consequently, Section 146 would apply if MSEDCL is held to have violated, infringed or defied or to have acted contrary to the directions issued by this Tribunal in its judgement in Appeal Nos. 245 and 376 of 2018 dated 23.10.2024.

In either of the aforesaid two eventualities, the person referred to in Section 146 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to One Lakh Rupees, or with both in respect of each offence. Further in case of a continuing failure, such a person is punishable with an additional fine which may extend to Five Thousand Rupees for every day during which the failure continues after conviction of the first such offence. This limb of Section 146 has no application in the present case, since it is not even contended before us that the Respondent-MSEDCL has been convicted earlier for the offence referred to in Section 146 of the Electricity Act.

Section 149 of the Electricity Act relates to offences by Companies which, under explanation (a) thereunder, means a body corporate and includes a firm or other association of individuals. The Respondent-

MSEDCL is a body corporate and a company within the meaning of Section 149 of the Electricity Act. Section 149(1) stipulates that, where an offence under the Electricity Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of having committed the offence, and shall be liable to be proceeded against, and be punished accordingly. Under the proviso thereto, nothing contained in Section 149(1) shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. Section 149(2) stipulates that notwithstanding anything contained in Section 149(1), where an offence under the Electricity Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any Director, Manager, Secretary or other Officer of the company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of having committed such offence, and shall be liable to be proceeded against and punished accordingly.

In **Bihar State Electricity Board versus Central Electricity Regulatory Commission (Judgement in Appeal No 53 of 2009 dated 31.07.2009)**, this Tribunal held that Section 149 is a deeming provision by which the persons in charge of the company as well as the company are deemed to be guilty of having committed an offence punishable under the Electricity Act; the main requirement, for invoking Section 149 of the Act, is to find out the nature of the offence which has been committed under this Act by the company to hold it liable under Section 149 of the Act; the person cannot be punished under Section 149 of the Act alone, as it is not a substantive offence; in other words, no person or a company can be

punished under Section 149 of the Act unless he is found guilty of any other substantive offence under the Electricity Act; the first duty cast upon the competent authority is to find out as to what is a substantive offence which has been committed by the company; only when it is established that some substantive offence under the Electricity Act has been committed by the company, can Section 149 of the Act be added along with the said substantive offence under the Electricity Act; there must be material available before the competent authority to be evaluated for finding out as to what was the offence committed by the company under the Electricity Act, and only after finding out that particular substantive offence, can the company which has committed the said offence, as well as others who are in charge of the company, be deemed to have committed the said offence under Section 149 of the Act; the said competent authority should find out three things as contemplated under Section 149 of the Act; (i) which offence under the Electricity Act has been committed by the person?; (ii) whether such person, who commits the said offence, is a company?; (iii) if it is so, who are all the persons who are in charge of the said company so as to punish them along with the company for the said offence?.

Section 151 of the Electricity Act relates to cognizance of offences, and stipulates that no court shall take cognizance of an offence punishable under the Electricity Act, except upon a complaint in writing made by the Appropriate Government or the Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be. Under the first proviso thereto, the Court may also take cognizance of an offence punishable under the Electricity Act upon a report of a police officer filed under Section 173 of the Code of Criminal Procedure, 1973. Under the 2nd proviso, a Special Court constituted under Section 153 shall

be competent to take cognizance of an offence without the accused being committed to it for trial.

The Court referred to in Section 151 would be the court competent to take cognizance of and try offences, including under Section 146 of the Electricity Act. In the light of the proviso to Section 149(1), and Section 149(2), it is only if it is proved that the offence under Section 146 of the Electricity Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of the officers and persons mentioned therein, would they also be deemed to be guilty of having committed such an offence. It is clear therefrom that the person, alleged to have committed the offence under Section 146 of the Electricity Act, must be tried in accordance with law, and only after it is proved that he has committed the offence can he then be punished. It is not as if the person, against whom any such offence is alleged, can be punished for the mere asking, for it is only after trial and, on the evidence on record proving that he had committed such an offence, can he then be punished for the offence under Section 146.

Yet another restriction on the power of the criminal court, to try the person for the offence under Section 146, is that cognizance of any such offence can only be taken on a complaint in writing (1) by the Appropriate Government, or (2) by the Appropriate Commission or any of the officers authorized by them, or (3) by the Chief Electrical Inspector or an Electrical Inspector, or (4) a Licensee, (5) a Generating Company. It is only on a complaint received from the aforesaid persons/ entities, regarding an offence under Section 146 of the Electricity Act having been committed, can the competent criminal court take cognizance of, and then try the person for the said offence. The fact, however, remains that this Tribunal (APTEL) is not among the entities referred to in Section 151.

It is only if, after trial, the competent criminal court is satisfied that the guilt, of the person alleged to have committed the offence, is established, can the said person be punished by the competent criminal court for the offence under Section 146 of the Electricity Act, and imposed the sentence stipulated therein. As held by this Tribunal, in **Bihar State Electricity Board versus Central Electricity Regulatory Commission (Judgement in Appeal No 53 of 2009 dated 31.07.2009)**, the exercise of finding out which offence under the Electricity Act was committed by the person can be made only by the criminal court through trial and not by the Commission.

The second proviso, to Section 151 of the Electricity Act, refers to a Special Court constituted under Section 153. Section 153 enables the State Government, for the purposes of providing speedy trial of offences referred to in Sections 135 to 140 and 150, by notification in the official Gazette, to constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification. Section 146 is not among the offences referred to in Section 153. Consequently, the remedy available to a generator, for action to be taken under Section 146, appears only to be by way of filing a complaint before the criminal court competent to take cognizance of such offences, and not before the Special Court.

Even otherwise, the punishment which can be imposed under Section 146 is for failure to comply with any order or direction given under the Electricity Act within the time specified in the said order. It is only if the petitioner is able to establish that the 2nd Respondent-MSEDCL has failed to comply with the order or direction given by this Tribunal, in its judgment in Appeal Nos. 245 and 376 of 2018 dated 23.10.2024 within the time specified, can they seek to have the Respondent-MSEDCL punished for such non-compliance, that too by filing a complaint before the criminal

court competent to take cognizance of the offence under Section 146 of the Electricity Act,

The other requirement of contravention or an attempt at contravention of the provisions of the Electricity Act, Rules or Regulations, has no application to the facts of the present case, since what the Petitioner claims is that the Respondent-MSEDCL, by calling upon them to pay transmission charges for the period subsequent to the period referred to in its letters dated 02.11.2018 and 15.11.2018, has failed to comply with the order and direction given by this Tribunal in its judgment in Appeal Nos. 245 and 376 of 2018 dated 23.10.2024.

This submission, urged on behalf of the Petitioner, that this Tribunal should exercise jurisdiction under Section 146 of the Electricity Act to punish the Respondent-MSEDCL, for violation of the judgement of this Tribunal, in Appeal Nos. 245 and 376 of 2018 dated 23.10.2024, does not merit acceptance for the following reasons. Firstly, Section 146 is a penal provision and must be strictly construed. It is settled law that Penal statutes must be construed strictly (**Tolaram Relumal v. State of Bombay, (1954) 1 SCC 961 : (1955) 1 SCR 158; Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd., (2004) 1 SCC 391; Govind Impex Pvt. Ltd. v. Appropriate Authority, Income Tax Dept., (2011) 1 SCC 529; Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Company, (2018) 9 SCC 1;** and **Mohd. Rahim Ali v. State of Assam, 2024 SCC OnLine SC 1695).** A penal statute which makes an act a penal offence or imposes penalty is to be strictly construed and, if two views are possible, one favourable to the citizen is to be ordinarily preferred. ***(Govind Impex (P) Ltd. v. Income Tax Deptt.*, (2011) 1 SCC 529).** It is only if it is established that the Respondent-MSEDCL has failed to comply with the order or direction given by this Tribunal, in its judgment, in Appeal

Nos. 245 and 376 of 2018 dated 23.10.2024, can the Petitioner seek to have Respondent-MSEDCL punished under the said provision.

As noted hereinabove this Tribunal, in its judgment in Appeal Nos.245 and 376 of 2018 dated 23.10.2024, considered the scope and ambit of the 2005 and the 2014 DOA Regulations, as also the 2016 DOA Regulations. It also quashed the bills raised by the 2nd Respondent on 2nd and 15th November 2018. It does appear that these bills raised in 2018 were in terms of the 2016 Regulations, since the 2019 Regulations came into force only on its notification on 02.06.2019. According to the Respondent-MSEDCL, the bills raised by them on the Petitioner in November, 2024 were in terms of the 2019 amended DOA Regulations which came into force on 08.06.2019, and which was neither the subject matter of the dispute before, nor was it considered by, this Tribunal in its judgment in Appeal Nos.245 and 376 of 2018 dated 23.10.2024. On a reading of the judgment of this Tribunal, in Appeal Nos.245 and 376 of 2018 dated 23.10.2024, it is clear that the applicability of the 2019 Regulations did not arise for consideration therein.

While submissions were put-forth by Counsel on either side, on whether or not the 2019 amended DOA Regulations make a departure from the 2016 DOA Regulations, we are only required to consider whether the Petitioner is justified in invoking Section 146 of the Electricity Act, by way of the present Petition filed before this Tribunal, for the alleged failure of the respondent-MSEDCL to comply with the Judgment of this Tribunal in Appeal Nos.245 and 376 of 2018 dated 23.10.2024 and the directions issued therein, and not whether the 2019 amended DOA Regulations are similar to or distinct from the earlier 2016 DOA Regulations.

In the light of the rival contentions, and as it appears that the Respondent-MSEDCL has raised a bonafide dispute regarding the invoices raised by them not being covered by the judgement of this

Tribunal dated 23.10.2024, the remedy available to the petitioner is to question the validity of the bills, raised on them by the respondent-MSEDCL in 2024, in appropriate legal proceedings, and not by way of a Petition before this Tribunal under Section 146 of the Electricity Act. If, as is contended on behalf of the Petitioner, the 2019 Regulations do not make any departure from the 2016 Regulations, then the law declared by this Tribunal, in its judgment dated 23.10.2024, may be applicable. If, on the other hand, the 2019 Regulations make a departure from the 2016 Regulations, then the question whether the judgment of this Tribunal, in Appeal Nos.245 and 376 of 2018 dated 23.10.2024, would still apply even in such changed circumstances, is again a matter for examination in the proceedings which the Petitioner is entitled to institute questioning the validity of the bills raised on them by the Respondent-MSEDCL. In any view of the matter, the petitioner is not justified in instituting the present proceedings under Section 146 of the Electricity Act.

IX. HAS MSEDCL VIOLATED THE JUDGMENT DATED 23.10.2024:

A. SUBMISSIONS URGED ON BEHALF OF THE PETITIONER:

Sri. Subir Kumar, Learned Counsel for the Petitioner, would submit that the mischief and disobedience is writ large from a reading of Para 9 of written the submission of MSEDCL, viz: *'It is in view of the interim that no coercive order had been passed by this Hon'ble Tribunal in Appeal No. 245 of 2018 and Appeal No. 376 of 2018, MSEDCL though had continuously raised such levy in the monthly bills however, on account of continuous non-payment by the Contempt Petitioner have never realized it and consequently following the issuance of this Hon'ble Tribunal's common Judgment, MSEDCL is now seeking recovery of the outstanding amounts.';* and this stand amounts to judicial indiscipline.

Learned Counsel would further submit that the single line diagram containing the technical details prepared before the MERC had been relied upon by this Tribunal to render and concur with the technical finding of the State Commission in its Impugned Judgement; the attempt of MSEDCL to deny these technical details amounts to violation; *MSEDCL's* assertion that the Petitioner must pay wheeling charges and transmission charges is contradictory and is in violation of this Tribunal's technical finding rendered in the Impugned Judgement; MSEDCL has continued to violate the directions of this Tribunal by not removing the wheeling charges and wheeling losses from the monthly bills issued post Judgment; MSEDCL has continued to levy wheeling charges in the monthly bills issued from November 2024 onwards, more specifically these bills categorically record that the arrears amounting to approximately Rs. 43 Crores will be recovered only after the final outcome of Appeal No. 245 of 2018; the bills issued from the month of November 2024 onwards do not make any reference to MERC Open Access Regulations 2019, as sought to be contended in the reply of MSEDCL; MSEDCL has sought to violate the technical finding mentioned in Para 83 and 85 of the Impugned Judgement, which states that the Petitioner's premises are directly connected to the transmission system, and not to the distribution system and further Unit - II is internally connected by a *22 KV* dedicated line and cable DDF and maintained by the petitioner; and MSEDCL has also breached the directions and the technical finding in *Para 85* of the Impugned Judgement.

Learned Counsel would state that this Tribunal had also quashed and set aside the MSEDCL's demand seeking to levy transmission charges vide its letter dated 02.11.2018 and 15.11.2018; therefore, the stand of MSEDCL to deny reduction in the Contract Demand Application dated 30.09.2024 and 12.12.2024, by now linking it with the MERC DOA

(First Amendment) Regulations 2019, which only partially amended the 2016 regulations, is to circumvent the Impugned Judgement; admittedly, MSEDCL has never informed this Tribunal about the applicability of the MERC Regulations, 2019 before; the present stand of MSEDCL is nothing but an act of playing fraud on this Tribunal after losing the matter on the technical findings; this violation is evident from the email dated 21.01.2025 sent by MSEDCL to the Petitioner; the said email categorically denies the reduction in Contract Demand by the Petitioner; the issue of inter-connection was also raised by *MSEDCL* in the year 2020, and this Tribunal in its order dated 31.07.2020 categorically prohibited the demand of MSEDCL to pay wheeling charges and transmission charges as a pre-condition to its application for Short Term Open Access to be considered; even at that point of time, MSEDCL simpliciter granted approval without informing the Tribunal that such demand is in view of any new Regulations; even wheeling charges and transmission charges were levied in the bills starting from June 2019 to January 2020 only on the ground that the matter is sub judice before this Tribunal in Appeal No. 245 of 2018***;*** therefore, it is a clear act of non-compliance with the directions contained in the Impugned Judgement dated 23.10.2024; to invoke the provisions of Open Access, there is a presumption that a consumer is using the system of a licensee; in the present case, that presumption is not available due to the finding of the State Commission in its order dated 02.04.2018, which was further confirmed by this Tribunal. (Refer: linkage of non-approval of the Contract Demand Application with the Open Access Regulations); having submitted before this Tribunal, in relation to violations committed by MSEDCL, reliance on the Open Access Regulations to deny the sanction is also misconceived as MSEDCL refers to Regulation 4.5 of the MERC DOA Regulation 2016; the MERC DOA Regulations are still in existence, and what has been amended are a few regulations by virtue of MERC

DOA Regulations 2019; reliance on Regulation 4.5 is for using the distribution system; there is a categorical finding of this Tribunal that the Petitioner is not using the distribution system of MSEDCL*;* and, therefore, reliance on said regulation, to deny the reduction in the Contract Demand, is to circumvent the Impugned Judgment.

Learned Counsel would further state that the real issue, raised before the State Commission to seek refund, was on the ground that the Petitioner's CPP, supplying electricity for its own use, from Unit – I to Unit – II, was not using the distribution system of MSEDCL; this issue was decided in favour of the Petitioner and if, according to MSEDCL, the MERC Regulation 2016, was partially amended in June 2019, MSEDCL had the opportunity to bring these aspects to the notice of this Tribunal in Appeal No. 245 of 2018; the Henderson Principle is a core component of the broader doctrine of abuse of process aimed at enthusing in the parties a sense of sanctity towards judicial adjudication and determination; and the mere assertion by MSEDCL with respect to the *2019* Regulations should not deprive the present Petitioner of the fruits of the Impugned Judgment which they secured after 6 years from this Tribunal.

In support of his submission that all the issues incidental to the case must be communicated to the Court dealing with the issue raised by the parties, Sri. Subir Kumar, Learned Counsel for the Petitioner, would rely on the judgement of the Supreme Court, in ***CELIR LLP vs Mr. Sumati Prasad Bafna, 2024 INSC 978***, wherein the Henderson Principle was applied as a corollary to constructive res judicata.

B. SUBMISSIONS URGED ON BEHALF OF RESPONDENT-MSEDCL:

Sri B. P. Patil, Learned Senior Counsel appearing on behalf of the respondent-MSEDC, would submit that the Petitioner is availing Medium Term Open Access from its captive generator for the period from

01.12.2020 to 30.11.2025 with contract demand of 5000 KVA; accordingly, the existing Open Access arrangement remains valid until 30.11.2025; reduction in contract demand has not been sought in the existing MTOA application by the Petitioner; the Petitioner had submitted a fresh MTOA application dated 12.12.2024, for the period from 01.01.2025 to 31.12.2029, seeking 2500 KVA contract demand, and it is this fresh MTOA application which is required to be processed in terms of Regulation 4.5 with the clearance of past dues; as such, any dispute with respect to fresh consideration of a fresh MTOA application would entail a fresh cause of action, and cannot be made part of the original dispute to be assailed in contempt proceedings; further more this Tribunal, vide its common Judgment in Appeal No. 245 of 2018 dated 23.10.2024, held that, as per MERC (Distribution Open Access) Regulations, 2014 and 2016, wheeling charges are not applicable for the period in dispute as in the original proceedings (i.e., from April, 2014 to June, 2015); neither the periods subsequent to the disputed timeframe nor the applicability of the subsequent DOA Regulations was in issue in the said proceedings; the MERC notified the MERC (Distribution Open Access) (First Amendment) Regulation 2019 on 08.06.2019; as per Regulation 14.6 (b), wheeling charges are not applicable if a consumer or generating station is directly connected to the transmission system or uses dedicated lines for point-to-point transmission with the distribution system without any inter-connection system; and, in the present case, the line network of the contempt Petitioner is connected with the 220/22 KV sub-station and, therefore, forms part of the distribution system. (a detailed chart indicating the line network of the Contempt Petitioner being connected with 220/22 KV sub-station is referred @ Annexure R/7 of MSEDCL's Reply)

Sri B. P. Patil, Learned Senior Counsel, would further submit, without prejudice to the contention raised by MSEDCL in the pending Civil Appeal

(Diary No. 61237 of 2024) before the Supreme Court, that, prior to the notification of the DOA Regulations 2019, the MERC DOA Regulations, 2014 and 2016 provided an exemption from wheeling charges irrespective of the consumer's inter-connection with the distribution system, which had been specifically taken away by DOA Regulation, 2019; consequently, owing to change in position of law, levy of wheeling charges is made applicable by MSEDCL from June, 2019 onwards; under Regulation 14.1(v) of the DOA Regulation, 2019, in addition to wheeling charges, transmission charges are also applicable to all open access transactions that utilize transmission lines for wheeling purposes; undisputedly, the premises of the Petitioner are directly connected to the transmission system, and they are availing Medium Term Open Access for wheeling of electricity; therefore, transmission charges are independently leviable, outstandings of which are required to be cleared, and cannot be inter-mixed with the present litigation as levy of transmission charges was never an issue raised in the original proceedings by the Petitioner; the issue concerning levy of Transmission Charges was not raised by the Petitioner in the Original proceedings, and instead it was subsequently agitated in Appeal No. 376 of 2018 only on account of the passing observations in the form of an opinion rendered by MERC during the Execution proceedings; as such, applicability of such levy has never been adjudicated as a substantive dispute in the backdrop of the applicable DOA Regulations; it is in view of the interim order passed by this Tribunal that no coercive action was taken by MSEDCL during the pendency of Appeal No. 245 of 2018 and Appeal No. 376 of 2018; MSEDCL, though, had continuously raised such levy in the monthly bills; however, on account of continuous non-payment by the Petitioner, they have never realized it; and, consequently, following issuance of this Tribunal's common Judgment, MSEDCL is now seeking recovery of the outstanding amounts; MSEDCL

has been levying wheeling and transmission charges, in accordance with the aforementioned Regulations, from June, 2019 onwards, and the same was duly reflected in all the monthly bills; as such the aspect of issuance of any separate demand notice does not arise; this Tribunal, *vide* its common Judgment in Appeal No. 376 of 2018 dated 23.10.2024, has merely set aside the letters dated 02.11.2018 and 15.11.2018 issued by MSEDCL concerning the transmission Charges, on account of the passing observations made by MERC in the Execution proceedings; there has been no adjudication on the applicability of transmission charges in the said common Judgment; consequently, no relief, beyond the original dispute, can be sought through I.A. No. 341 of 2025, as the same relates to consideration of the fresh MTOA application dated 12.12.2024, without any insistence on clearance of payment due pursuant to the applicability of the MERC DOA Regulations 2019, which is the mandate for consideration of a fresh MTOA application in terms of Regulation 4.5 of the MERC DOA Regulations 2016; and the Contempt Petition, in its present form and manner, is devoid of merits and is requires to be dismissed.

C. REGULATIONS RELIED UPON UNDER THIS HEAD:

The relevant provisions qua levy of wheeling charges in the 2014, 2016 and 2019 Regulations are quoted herein below:

i. MERC (DOA) Regulation 2014 –

35.5 *The Generating station shall pay the wheeling charge to the Distribution Licensee as determined by the Commission. Provided that wheeling charges would not be applicable in case the dedicated lines are owned by the Generating stations…*

36.2 *Provided that Wheeling charges would not be applicable in case of all such Open Access consumers whose drawal points are*

connected to the Intra-state transmission system and if the Open Access consumer receives supply from a Generating Company whose injection point is connected to the Inter-state or Intra-state transmission system. Such Open Access consumers would be liable to pay only the applicable transmission charges to the transmission Licensee whose network has been accessed under the Transmission Open Access Regulation."

ii. MERC (DOA) Regulation 2016 –

*"**14.6** Wheeling Charge:*

b. Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station."

iii. MERC (DOA) (First Amendment) Regulation 2019 –

*"**14.6** Wheeling Charge:*

b. "Wheeling Charges shall not be applicable in case a Consumer or Generating Station is connected to the Transmission System directly or using dedicated lines owned by the Consumer or Generating Station only if such dedicated lines are used for point-to-point transmission or wheeling of power from Generating station to load centre without any interconnection with distribution system."

Regulation 14.1(v) of the DOA Regulation, 2019 relates to Transmission Charges, and reads thus:-

"Provided that a Partial Open Access Consumer, Generating Station or Licensee, as the case maybe, shall pay the Transmission Charges to the Distribution Licensee instead of the Transmission Licensee for using a transmission network which

shall be passed on to the STU within the stipulated time period as specified under Regulations 14.5;

Provided that the applicable transmission charges in case of such repeated STOA transactions of Open Access Consumer(s) shall be increased by a multiplication factor of 1.25, 1.5 and 2.0 respectively for every 2nd, 3rd and 4th STOA transaction during financial year beyond which the transmission charges for STOA shall be payable at two times of the approved transmission charges for STOA;

Provided further that existing STOA consumer that applies for MTOA subsequent to notification of these Regulations and in the interim avails STOA, shall be exempted from application of the aforesaid provision for an initial period of three months from the date of notification of these amended Regulations but shall be subjected to applicability of multiplication factor as above, thereafter.

Provided further that the Transmission charges for STOA transactions by Distribution Licensee shall be governed by the provisions in the Maharashtra Electricity Regulatory Commission (Multi Year Tariff) Regulations, 2015 and amendments thereof.

Provided further that for renewable energy based MTOA and LTOA transactions, the applicable transmission charges shall continue to be on per unit basis, except that the same shall be equivalent to two times the approved transmission charges for short term open access.

Provided further that a Partial Open Access Consumer availing STOA are liable to pay the Transmission Charges irrespective of whether or not the Generator from whom they source power has a BPTA with the STU."

D. JUDGEMENT RELIED ON BEHALF OF THE PETITIONER:

In **Celir LLP v. Sumati Prasad Bafna, 2024 SCC OnLine SC 3727,** the Borrower had, admittedly, failed to indicate certain issues to the Supreme Court earlier, let alone raise such contentions in both the Main Appeals and the review thereof. The question which arose for consideration before the Supreme Court was whether it was permissible for the Borrower to raise it and again litigate the same subsequently either in the present contempt petition or in S.A. No. 46 of 2022 which was still pending before the DRT.

It is in this context that the Supreme Court held that the 'Henderson' Principle was a corollary of Constructive Res-Judicata; the 'Henderson Principle' was a foundational doctrine in common law that addressed the issue of multiplicity in litigation; it embodied the broader concept of procedural fairness, abuse of process and judicial efficiency by mandating that all claims and issues that could and ought to have been raised in a previous litigation should not be relitigated in subsequent proceedings; the extended form of *res-judicata,* more popularly known as 'Constructive Res Judicata', contained in Section 11 Explanation VII of the CPC originates from this principle; in **Henderson v. Henderson, [1843] 3 Hare 999,** it was held that where a given matter becomes the subject of litigation and the adjudication of a court of competent jurisdiction, the parties so litigating are required to bring forward their whole case; once the litigation has been adjudicated by a court of competent jurisdiction, the same parties will not be permitted to reopen the *lis* in respect of issues which might have been brought forward as part of the subject in contest but were not, irrespective of whether the same was due to any form of negligence, inadvertence, accident or omission; the principle of *res judicata* applies not only to points upon which the Court was called upon by the parties to adjudicate and

pronounce a judgment but to every possible or probable point or issue that properly belonged to the subject of litigation and the parties ought to have brought forward at the time; this proposition of law came to be known as the 'Henderson Principle' and underwent significant evolution, adapting to changing judicial landscapes and procedural requirements; the fundamental policy of the law is that there must be finality to litigation; multiplicity of litigation benefits not the litigants whose rights have been determined, but those who seek to delay the enforcement of those rights and prevent them from reaching the rightful beneficiaries of the adjudication; the Henderson Principle, in the same manner as the principles underlying *res judicata*, is intended to ensure that grounds of attack or defence in litigation must be taken in one and the same proceeding; a party which avoids doing so does it at its own peril; in deciding whether a matter might have been urged in the earlier proceedings, the court must ask itself whether it could have been urged; in deciding whether the matter ought to have been urged in the earlier proceedings, the court will have due regard to the ambit of the earlier proceedings and the nexus which the matter bears to the nature of the controversy; in holding that a matter ought to have been taken as a ground of attack or defence in the earlier proceedings, the court is indicating that the matter is of such a nature and character and bears such a connection with the controversy in the earlier case that the failure to raise it in that proceeding would debar the party from agitating it in the future; the doctrine itself is based on public policy flowing from the age-old legal maxim *interest reipublicae ut sit finis litium* which means that in the interest of the State there should be an end to litigation and no party ought to be vexed twice in a litigation for one and the same cause.

The Supreme Court further observed that the Henderson Principle was approvingly referred to and applied in ***State of U.P.*** **v.** ***Nawab***

***Hussain*, (1977) 2 SCC 806** as the underlying principle for *res-judicata* and constructive *res-judicata* for assuring finality to litigation; the Supreme Court in ***Devilal Modi* v. *Sales Tax Officer, Ratlam*, AIR 1965 SC 1150,** held that, if the underlying rule of constructive *res judicata* is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time, and would be inconsistent with considerations of public policy; in ***Shankara Coop. Housing Society Ltd.* v. *M. Prabhakar*, (2011) 5 SCC 607,** the Supreme Court held that the ground of non-compliance of statutory provision which was very much available to the parties to raise but did not raise it as one of the grounds, cannot be raised later on and would be hit by the principles analogous to constructive res judicata; the 'Henderson Principle' is a core component of the broader doctrine of abuse of process, aimed at enthusing in the parties a sense of sanctity towards judicial adjudications and determinations; it ensured that litigants are not subjected to repetitive and vexatious legal challenges; at its core, the principle stipulates that all claims and issues that could and should have been raised in an earlier proceeding are barred from being raised in subsequent litigation, except in exceptional circumstances; and this rule not only supports the finality of judgments but also underscores the ideals of judicial propriety and fairness.

The Supreme Court held that there are four situations where, in second proceedings between the same parties, the doctrine of res judicata as a corollary of the principle of abuse of process may be invoked : (i) cause of action estoppel, where the entirety of a decided cause of action is sought to be relitigated; (ii) issue estoppel or, "decided issue estoppel," where an issue is sought to be relitigated which has been raised and decided as a fundamental step in arriving at the earlier judicial decision; (iii) extended or constructive res judicata i.e., "unraised issue estoppel,"

where an issue is sought to be litigated which could, and should, have been raised in a previous action but was not raised; (iv) a further extension of the aforesaid to points not raised in relation to an issue in the earlier decision, as opposed to issues not raised in relation to the decision itself.

The Supreme Court observed that as part of the broader rule against abuse of process, the Henderson principle is rooted in the idea of preventing the judicial process from being exploited in any manner that tends to undermine its integrity; it is not a rigid rule but rather a flexible principle to prevent oppressive, unfair, or detrimental litigation; ordinarily this principle has been applied to instances where a particular plea or ground was not raised at any stage of the proceedings, but were later sought to be raised; construing this rule in a hyper-technical manner or through any strait-jacket formula will amount to taking a reductive view of this broad and comprehensive principle.

The Supreme Court further observed that, although in the present case, the Borrower had raised the issue of the validity of the measures taken by the Bank under the SARFAESI Act and the legality of the 9th auction conducted in the earlier stages albeit in a different proceeding, yet its conduct of having conveniently abandoned the same in a different proceeding elected by it for the same cause of action and then later reagitating it in the pretence that the two proceedings were distinct, is nothing but a textbook case of abuse of process of law; piecemeal litigation where issues are deliberately fragmented across separate proceedings to gain an unfair advantage is in itself a facet of abuse of process of law, and would also fall foul of this principle; merely because one proceeding initiated by a party differs in some aspects from another proceeding or happens to be before a different forum, will not make the subsequent proceeding distinct in nature from the former, if the underlying subject matter or the seminal issues involved remains substantially similar to each

other or connected to the earlier subject matter by a certain degree, then such proceeding would tantamount to 'relitigating' and the Henderson Principle would be applicable; and, in the present case, the very issue of the validity of the measures taken by the Bank under the SARFAESI Act and the legality of the 9th auction proceedings was innately and inextricably linked to the proceedings before the Supreme Court in the Main Appeals.

E. ANALYSIS:

The Petitioner filed the Petition, in Case No. 59 of 2015, before the MERC under Section 86(1)(f) and 86(1)(i) read with Section 42(2) of Electricity Act, and Regulation 18 of the MERC (Distribution Open Access) Regulations ('DOA Regulations'), 2005. In the said Petition, the Petitioner questioned the levy of wheeling charges and applicable losses by MSEDCL from FY 2014-15, in contradiction to the Open Access (OA) permission granted for FY 2012-2013 and 2013-2014, and in erroneously and illegally applying temporary category Tariff charges for FY 2013-14. In the said Petition, the Petitioner sought the following reliefs: (a) to direct MSEDCL to refund a sum of Rs.375 Lakhs with interest paid under protest by the Petitioner for the period May, 2014 to February, 2015; (b) to declare that levy of the temporary tariff by MSEDCL, for the period May, 2013 to October, 2013 for over-drawal of energy, is bad in law; and (c) to direct the MSEDCL to refund a sum of Rs. 128 Lakhs with interest paid under protest by the Petitioner for the period May, 2013 to October, 2013.

In its order, in Case No. 59 of 2015 dated 03.06.2016, MERC framed the following two issues: (i) whether the Petitioner's Unit 1, for which a separate underground cable had been laid, is a grid-connected consumer?; and (ii) whether MSEDCL could levy temporary category tariff

for exceeding Contract Demand during the OA period while the Petitioner's application for its enhancement was in process?"

On issue No.1, MERC concluded that, irrespective of the network arrangement of the CPP and Units 1 and 2, it became an integral part of the grid, and hence the Petitioner was liable for levy of wheeling charges and applicable losses by MSEDCL; and the fact that MSEDCL did not levy wheeling charges and losses in FY 2012-13 and FY 2013-14, presumably because of its understanding of the position at that time, had no bearing on this conclusion, and could not estop their levy in the subsequent years.

On Issue No.2, ie whether MSEDCL could levy Temporary category tariff for exceeding the contract demand during the OA period while the Petitioner's application for its enhancement was in process, MERC held that, since Issue No.1 had been discharged, the question of whether or not there was inordinate delay in enhancing the Contract Demand, the augmentation required and any consequential relief or compensation for such delay and its consequential impact, was within the purview of the Consumer Grievance Redressal Forum (CGRF) under the MERC (CGRF and Electricity Ombudsman) Regulations, 2006 read with the Electricity Supply Code and the Standards of Performance Regulations, and not the Commission; the CGRF would also ascertain the factual position; and as regards any bar of limitation, and considering the pendency of the present Case before the Commission, the Petitioner was at liberty to approach the concerned CGRF within two months.

The Petitioner thereafter filed Case No. 97 of 2016 before the MERC seeking review of the order in Case No. 59 of 2015 dated 03.06.2016. The review petition was filed under Section 94(1)(f) of the Electricity Act read with Regulation 85 of the MERC (Conduct of Business) Regulations, 2004 and Order 47 Rule 1 of the Code of Civil Procedure. The Petitioner also filed MA No. 9 of 2016 seeking interim stay of the operation of the

impugned Order. In its review petition, the Petitioner sought the following reliefs: (a) to review the order dated 03.06.2016 passed in Case No. 59 of 2015 and declare that wheeling charges and wheeling losses are not applicable to the Petitioner; (b) to stay the operation, implementation and execution of the order dated 03.06.2016 passed in Case No. 59 of 2015; (c) to direct the Respondent to not levy wheeling charges and wheeling losses till the adjudication and final disposal of Review Petition; and (d) to allow the Petitioner to pay the current bill excluding the wheeling charges and wheeling losses till the adjudication and final disposal of Review Petition.

In its Order, in Case No. 97 of 2016 dated 02.04.2018, the MERC held that, in its order in Case No. 59 of 2015 dated 03.06.2016, the Petitioner was held liable to pay wheeling charges and applicable losses to MSEDCL; the Petitioner had sought review on the ground that the Commission did not take into account and address the factual matrix presented in the earlier proceedings and, consequently, the conclusion arrived at by them, that wheeling charges and losses were payable to MSEDCL, was erroneous; and that the Commission had erred in not considering the relevant portion of its own tariff order in Case No. 54 of 2005 dated 20.10.2006.

After taking note of Regulation 16.1, 35.5 and 36.2 of the 2014 DOA Regulations, and Regulation14.6 of the 2016 DOA Regulations, the Commission observed that wheeling charges were payable to the Distribution Licensee only when its distribution system is used; in the present case, it was clear from the factual matrix that the relevant premises was directly connected to the Transmission System and not to the Distribution System; further, Unit 2 was internally connected by a 22 kV Dedicated Line and Cable (DDF), and maintained by the Petitioner; and there was clearly an error on the face of the impugned Order in the

Commission holding that the Petitioner was liable to pay wheeling charges and losses to MSEDCL. Consequently, MERC directed MSEDCL not to levy wheeling charges and wheeling losses on the Petitioner, and directed that the amounts paid in the meantime shall be refunded with applicable interest directly to the Petitioner within one month, or by adjustment in its energy bills for the ensuing billing cycle.

Aggrieved by the Order passed by MERC, in Case No. 97 of 2016 dated 02.04.2018, MSEDCL filed Appeal No. 245 of 2018 seeking a direction from this Tribunal to set aside/modify the order passed by MERC dated 02.04.2018 to the extent challenged in the appeal.

While matters stood thus, the Petitioner filed an application, under Section 142 of the Electricity Act, in Case No. 168 of 2018. The relief sought by the Petitioner therein was (i) to direct the Respondent MSEDCL to comply with the order of the MERC dated 02.04.2018, and to direct them to refund an amount of Rs.7,03,43,190/- paid by Petitioner under protest (for the period April 2014 till July 2015), with interest calculated @18% (ie an amount of Rs.6,13,30,137) totaling to Rs. 13,16,73,327; and (ii) alternatively, to direct MSEDCL to adjust the future energy bills in the amount required to be refunded by the Respondent for a sum of Rs.13,16,73,327 as per the order dated 02.04.2018 passed in Case No.97 of 2016.

While allowing Case No. 168 of 2018 by its order dated 03.11.2018, and directing MSEDCL to comply with the order in Case No. 97 of 2016 dated 02.04.2018, MERC made certain observations in Para No. 11 of its order dated 03.11.2018 to the effect that, if the Open Access consumer receives supply from a Generating Company whose injection point is connected to the Intra-state transmission system, such Open Access consumers would be liable to pay only the applicable transmission charges to the transmission Licensee whose network has been accessed under

the Transmission Open Access Regulation; as the dispute raised by the Petitioner in Case No. 97 of 2016 related to exemption of wheeling charges and wheeling losses, the Commission did not pass any directions in respect of levy of transmission charges; MSEDCL's argument that the Commission had erred by not making the Petitioner liable to pay transmission charges and applicable losses was incorrect; however, MSEDCL may levy applicable transmission charges and transmission losses in accordance with the provisions of the DOA Regulations, and the terms and conditions of the Open Access between MSEDCL and the Petitioner. Aggrieved thereby, the Petitioner filed Appeal No. 376 of 2018 before this Tribunal.

By its letter dated 02.11.2018, MSEDCL had informed the Petitioner that, in view of Regulation 36.2 of the MERC Distribution Open Access Regulation 2014, the Petitioner was liable to pay transmission charges; the invoice for transmission charges was adopted and they should pay these transmission charges amounting to Rs. 6,98,78,400/- within fifteen days. The Petitioner was also informed that this bill was raised without prejudice to the rights and contentions raised by MSEDCL before this Tribunal in Appeal No. 245 of 2018. Thereafter, by its letter dated 15.11.2018, MSEDCL informed the Petitioner that, in terms of the order of the MERC in Case No. 168 of 2018 dated 03.11.2018, MSEDCL was entitled to levy the applicable transmission charges and transmission losses of Unit 2; MSEDCL had computed the revised open access bills for the period in dispute by giving credit to wheeling losses; the financial impact due to credit of wheeling losses worked out to Rs.2,64,42,140/-, as against Rs.4,86,71,218/-; as per Section 62 of the Electricity Act, the interest rate for refund is equivalent of bank rate at 9%; and MSEDCL, by its letter dated 02.11.2018, had already issued the bill for transmission charges. After giving the net financial position with respect to the

Petitioner in a tabular form, MSEDCL informed them that, without prejudice to grounds/contentions raised in Appeal No. 245 of 2018, the Petitioner was liable to pay Rs.10,65,13,811/- to MSEDCL even after adjusting the wheeling charges and losses; and MSEDCL had, vide letter dated 02.11.2018, already issued the disconnection notice for non-payment of current bills. The Petitioner was once again requested to pay outstanding bills amounting to Rs.10,65,13,811/- at the earliest and were informed that, on their failure to do so, MSEDCL shall be constrained to disconnect electricity supply without any further notice. The validity of both these letters was also the subject matter of challenge in Appeal No. 376 of 2018.

A common order was passed by this Tribunal in Appeal No. 248 of 2018 and Appeal No. 376 of 2018 dated 23.10.2024. This Tribunal observed that MERC had ruled in favour of the Petitioner on the issue of wheeling charges and wheeling losses after recording that the DDF Network was owned and maintained by the Petitioner which was directly connected through a dedicated feeder to the Transmission Network and not to the Distribution Network of MSEDCL; and, in the tariff order in Case No. 54 of 2005 dated 20.10.2006, the Commission had observed that consumers connected directly to the transmission network would not be required to pay the wheeling charge if the distribution licensee's network was not being utilised for energy wheeling transactions.

After extracting Regulations 16.1, 35.5 and 36.2 of the 2014 DOA Regulations, and Regulation 14.6 of the 2016 DOA Regulations, this Tribunal observed that, after noting the relevant legal principles and regulations, MERC had decided that wheeling charges were payable to the Distribution Licensee only when its distribution system was used, however, in the present case, it was clear from the factual matrix that the relevant premises was directly connected to the Transmission System, and not to the Distribution System; further, Unit 2 was internally connected

by a 22 kV Dedicated Line and Cable (DDF), and maintained by the Petitioner; as seen from the DOA Regulations 2014, and the DOA Regulations 2016, the term used in the Regulations is “Dedicated Line”, and the Regulations stipulated that wheeling charges would not be applicable in case dedicated lines were owned by the generating stations; the electric lines in dispute had been commissioned, operated and maintained and owned by the Petitioner; these dedicated electric lines was for the use of the Petitioner only; and the impugned order passed by the Commission confirmed with the relevant legal provisions and was in strict compliance with the Regulations. Appeal No. 245 of 2018 was accordingly dismissed.

In its order, in Appeal No. 376 of 2018 dated 23.10.2024, this Tribunal extracted the final executable order in Case No. 97 of 2016 dated 02.04.2018, and then observed that the State Commission, in Para 11 of its order in Case No. 168 of 2018 dated 03.11.2018, had travelled behind the decree; the State Commission had clearly modified the decree which was required to be set aside as it was against the settled principles of law; MSEDCL had accepted the error committed by the State Commission, and had submitted that this Tribunal may expunge Para 11 of the impugned order; they found the order of the State Commission to be erroneous to the limited extent as mentioned above, and this be set aside; the said order, to that limit, be modified by deletion of a part of Para 11 as quoted above; and they also allowed the prayer of the Petitioner for quashing MSEDCL’s letters dated 02.11.2018 and 15.11.2018, *inter alia,* setting aside any liability placed on the Petitioner to pay any transmission charges and transmission losses in accordance with the impugned order.

In its order in the Review Petition, i.e. in Case No. 97 of 2016 dated 02.04.2018, MERC had relied on the proviso to Regulation 35.5 of the 2014 DOA Regulations in terms of which wheeling charges would not be

applicable in case the dedicated lines are owned by the generating stations, and on Regulation 14.6 of the 2016 DOA Regulations which provided that wheeling charges shall not be applicable in case a consumer or a generating station is connected to the transmission system directly or using dedicated lines owned by the consumer or the generating station. The MERC then observed that wheeling charges are thus payable to the distribution licensee only when the distribution system is used; in the present case, the relevant premises were directly connected to the transmission system and not to the distribution system; further, Unit-2 was internally connected by a 22 kv dedicated line and cable and maintained by the petitioner; therefore, MSEDCL should not levy wheeling charges and wheeling losses on the petitioner; and the amount paid in the meanwhile should be refunded with the applicable interest to the petitioner within one month or by adjustment in the energy bills for the ensuing billing cycle. It is this order which has been affirmed by this Tribunal in its judgment in Appeal No. 245 of 2018 dated 23.10.2024.

In Para 83 of its judgment in Appeal No. 245 of 2018 dated 23.10.2024, this Tribunal, after taking note of the findings of the MERC and the proviso to the Regulation which stipulated that wheeling charges would not be applicable in case the dedicated lines are owned by the generating stations, observed that it could not be disputed that the electrical lines had been commissioned, operated, maintained and owned by the petitioner, inter alia, dedicated electrical lines for use by the petitioner only; and the impugned order passed by the State Commission conformed to the relevant legal provisions and was in strict compliance with the Regulations.

Consequently, the factual finding that (1) the subject premises are directly connected to the transmission system and not to the distribution system; and (2) Unit-2 of the Petitioner is internally connected by a 22 kv

dedicated line and cable and is maintained by the petitioner, are findings which are binding inter-parties including MSEDL and the Respondent-Commission. Consequently, the principles of res-judicata under Section 11 CPC may well be attracted disabling parties from contesting this issue in subsequent proceedings, provided that the order of this Tribunal, in Appeal No. 245 of 2018 dated 23.10.2024, is not interdicted by the Supreme Court in the Civil Appeal preferred by MSEDCL against the said order.

The 'Henderson' Principle, as explained by the Supreme Court, in **Celir LLP v. Sumati Prasad Bafna, 2024 SCC OnLine SC 3727,** (and on which reliance is placed on behalf of the Petitioner), is a corollary of Constructive Res-Judicata, and is a foundational doctrine in common law that addresses the issue of multiplicity in litigation. It mandates that all claims and issues that could and ought to have been raised in a previous litigation should not be relitigated in subsequent proceedings; where a given matter becomes the subject of litigation and the adjudication of a court of competent jurisdiction, the parties so litigating are required to bring forward their whole case; once the litigation has been adjudicated by a court of competent jurisdiction, the same parties will not be permitted to reopen the *lis* in respect of issues which might have been brought forward as part of the subject in contest, but were not. The principle of *res judicata* applies not only to points upon which the Court was called upon by the parties to adjudicate and pronounce a judgment, but to every possible or probable point or issue that properly belonged to the subject of litigation and the parties ought to have brought forward at the time. The Henderson Principle, in the same manner as the principles underlying *res judicata*, is intended to ensure that grounds of attack or defence in litigation must be taken in one and the same proceeding.

According to this principle, there are four situations where, in second proceedings between the same parties, the doctrine of res judicata as a corollary of the principle of abuse of process may be invoked : (i) cause of action estoppel, where the entirety of a decided cause of action is sought to be relitigated; (ii) issue estoppel or, “decided issue estoppel,” where an issue is sought to be relitigated which has been raised and decided as a fundamental step in arriving at the earlier judicial decision; (iii) extended or constructive res judicata i.e., “unraised issue estoppel,” where an issue is sought to be litigated which could, and should, have been raised in a previous action but was not raised; and (iv) a further extension of the aforesaid to points not raised in relation to an issue in the earlier decision, as opposed to issues not raised in relation to the decision itself.

The finding of the MERC and this Tribunal, that the subject line is a dedicated line connected to the transmission system, and not to the distribution system of MSEDCL, may be a finding binding inter-parties in a subsequent dispute, and may possibly constitute res judicata in terms of Section 11 CPC, and attract the Henderson Principle. It is unnecessary for us to express a conclusive opinion on this issue, as it is always open to the Petitioner in proceedings, if any, instituted by them challenging the subsequent action of MSEDC, to raise all such pleas.

The fact, however, remains that the directions in the judgement of this Tribunal dated 23.10.2024 required MSEDCL not to levy wheeling charges and wheeling losses for the period in dispute, that too in terms of the 2014 and 2016 regulations. As the letters dated 02.11.2018 and 15.11.2018 were set aside, it is possible to hold that recovery of transmission charges and losses, in terms of the said letters, would also be in violation of the directions of this Tribunal in the afore-said judgement.

We are not concerned in the present case with the application of the doctrine of res judicata, since what is sought by the petitioner, in the

present Petition filed under Section 146 of the Electricity Act, is for the Respondent-MSEDCL to be punished for its failure to comply with the order of this Tribunal in Appeal No. 245 and 376 of 2018 dated 23.10.2024, and the directions given in the said order. Since Appeal No. 245 of 2018, preferred by MSEDCL against the order passed by the MERC in Case No. 97 of 2016 dated 02.04.2018, has been dismissed, MSEDCL is bound to comply with the directions issued by MERC in Case No. 97 of 2016 dated 02.04.2018 i.e. not to levy wheeling charges and wheeling losses on the petitioner, and to refund the amounts paid by them in the meanwhile. As noted hereinabove, MERC issued these directions in view of Regulations 16.1, 35.5 and 36.2 of the 2014 DOA Regulations, and Regulation 14.6 of the 2016 DOA Regulations, for periods when these Regulations governed the field. In the light of the order of the MERC in Case No. 97 of 2016 dated 02.04.2018, and as long as the 2016 DOA Regulations continued to remain in force, MSEDCL was disabled from levying wheeling charges and wheeling losses on the petitioner.

It is not the case of the petitioner that MSEDCL is insisting on their payment of wheeling charges and wheeling losses for the period prior to 08.06.2019 till which period the 2016 DOA Regulations remained in force. The 2019 amended Regulations was notified on 08.06.2019. Neither the order of the MERC in Case No. 97 of 2016 dated 02.04.2018 nor the judgment of this Tribunal in Appeal No. 245 of 2018 considered the scope and ambit of the 2019 amended DOA Regulations which came into force on 08.06.2019, as the dispute relating to wheeling charges and wheeling losses related to periods prior thereto.

While the finding of fact, regarding the petitioner's dedicated line being connected to the transmission system and not to the distribution system of MSEDCL, may possibly constitute res-judicata even in subsequent proceedings inter-parties, the fact remains that the scope of

enquiry under Section 146 of the Electricity Act is extremely limited, and all that can be examined in such proceedings is whether MSEDCL had failed to comply with the order passed by this Tribunal in Appeal No. 245 of 2018 dated 23.10.2024 or had contravened the directions issued therein. The Appellant's complaint, of failure of MSEDCL to comply with the order of this Tribunal dated 23.10.2024, is on the ground that they had raised invoices from November 2024 onwards levying wheeling charges and wheeling losses on the Petitioner.

While the legality or otherwise of these invoices, raised on the Petitioner by MSEDCL, would necessitate examination on an interpretation of the 2019 amended DOA Regulations which came into force on 08.06.2019, such an enquiry can only be caused in appropriate legal proceedings instituted by the petitioner questioning the legality of the invoices raised by MSEDCL after the 2019 amended DOA Regulations came into force on 08.06.2019. The judgment of this Tribunal, in Appeal No. 245 of 2018 dated 23.10.2014, rendered in the context of the 2014 and the 2016 DOA Regulations, cannot be understood as barring levy of wheeling charges and wheeling losses for eternity and for all times to come, even if the amended 2019 DOA Regulations enabled levy of such wheeling charges and wheeling losses. In any event, the validity or otherwise of such invoices raised by MSEDCL cannot be examined in proceedings under Section 146 of the Electricity Act nor is it permissible for this Tribunal to proceed on the premise that, irrespective of a change in law (the 2019 amended DOA Regulations are in the nature of subordinate legislation and have the force of law), the judgment of this Tribunal in Appeal No, 245 of 2018 dated 23.10.2024, wherein the scope and ambit of the 2019 amended DOA Regulations was not even considered, would still necessitate compliance.

In so far as imposition of transmission charges are concerned, it is relevant to note that, in the Petition filed in Case No. 168 of 2018 under Section 142 of the Electricity Act, the Petitioner had complained before the MERC of the failure of MSEDCL to comply with the order of MERC in Case No. 97 of 2016 dated 02.04.2018. In Para 11 of its order, in Case No. 168 of 2018 dated 03.11.2018, MERC, while observing that they did not pass any direction in respect of levy of transmission charges, observed that they did not do so as the dispute in Case No. 97 of 2016 related only to exemption of wheeling charges and wheeling losses. MERC further observed that MSEDCL may levy applicable transmission charges and transmission losses in accordance with the provisions of the DOA Regulations, and the terms and conditions of open access between MSEDCL and the petitioner. Aggrieved by these observations, the Appellant filed Appeal No. 376 of 2018 before this Tribunal. In its order in Appeal No. 376 of 2018 dated 23.10.2024, this Tribunal observed that an executing court's jurisdiction is limited to questions relating to the execution, discharge or satisfaction of a decree; it cannot go behind the decree to adjudicate upon matters that were determined in the original suit; and the executing court cannot re-evaluate the merits of the case or modify the terms of the decree. After extracting the final executable order passed by the MERC in Case No. 97 of 2016 dated 02.04.2018, this Tribunal observed that MERC, in Para 11 of its order in Case No. 168 of 2018 dated 03.11.2018, had travelled beyond the decree, and had modified the decree which was required to be set aside.

The action of MSEDCL, in seeking to recover wheeling charges and losses, in terms of the 2019 amended DOA Regulations from November 2024 onwards, and recovery of transmission charges and losses, in terms of the applicable statutory Regulations, for the period subsequent to those referred to in the letters dated 02.11.2018 and 15.11.2018, cannot be said

to be in violation of the judgement of this Tribunal dated 23.10.2024 or the directions issued therein, justifying filing a petition under Section 146 of the Electricity Act in as much as events which took place subsequent to 23.10.2024, and which are based on Regulations not considered by this Tribunal in its judgement dated 23.10. 2024, cannot be said to be in violation of the said judgement or to contravene the directions issued therein.

The question whether MSEDCL was entitled to levy transmission charges and transmission losses on the petitioner was not independently examined by this Tribunal, and it is only because such observations could not have been passed by an executing court, since these observations did not form part of the original decree, that Para 11 of the order of the MERC in Case No. 168 of 2018 dated 03.11.2018 was set aside. It is true that this Tribunal allowed the prayer of the petitioner quashing MSEDCL's letters dated 02.11.2018 and 15.11.2018 setting aside any liability placed on the petitioner to pay any transmission charges and transmission losses in accordance with the impugned order. While the submission, urged on behalf of MSEDCL, is that this Tribunal has not assigned any reasons for setting aside the said letters, it is impermissible for us, in proceedings under Section 146 of the Electricity Act, to examine the validity or otherwise of the order of this Tribunal in Appeal No. 376 of 2018 dated 23.10.2024 or the directions issued therein setting aside the letters dated 02.11.2018 and 15.11.2018. Consequently, MSEDCL would be disabled from levying transmission charges, as detailed in the said letters dated 02.11.2018 and 15.11.2018, as long as the order of this Tribunal in Appeal No. 376 of 2018 dated 23.10.2024 continues to remain in force.

The petitioner's complaint, in the present Contempt Petition. is not that MSEDCL was seeking to recover transmission charges referred to in the letters dated 02.11.2018 and 15.11.2018, but that they are not entitled

to recover transmission charges and transmission losses even for periods subsequent thereto. As noted hereinabove, the scope of enquiry under Section 146 of the Electricity Act is confined only to an examination as to whether or not MSEDCL has contravened the order of this Tribunal in Appeal Nos. 245 and 376 of 2018 dated 23.10.2024, and the directions issued therein. It is impermissible for this Tribunal, in proceedings under Section 146 of the Electricity Act, to examine the validity of imposition of wheeling charges and wheeling losses by MSEDCL pursuant to the 2019 amended DOA Regulations, or imposition of transmission charges and transmission losses for periods subsequent to those referred to in the letters dated 02.11.2018 and 15.11.2018.

i. INTERIM ORDER OF THIS TRIBUNAL DATED 31.07.2013: ITS SCOPE:

In its interim order, in IA No. 889 of 2020 and 900 of 2020 in Appeal No. 245 of 2018 dated 31.07.2013, this Tribunal noted that the Petitioner (applicant in the IAs) was aggrieved by the demand made by MSEDC for payment of wheeling charges, and for wheeling charges to be borne by them in addition to transmission charges/losses, as a pre-condition to its application for STOA to be considered; this was in the teeth of the interim orders whereby MSEDCL had earlier been directed not to take any precipitate action on the subject against the petitioner as the contentions of MSEDC, to the contrary, had been rejected by the State Commission.

This Tribunal observed that the Petitioner was not connected to the distribution system; the communication, which had given the trigger for the present applications to be moved, proceeded on the assumption that the applicant's system was interconnected with the distribution network of the licensee.

This Tribunal, thereafter, noted that, after some hearing and having taken instructions, learned counsel for the non-Applicant/Appellant (MSEDCL) had submitted that the communication, impugned by these applications, was being withdrawn, and the STOA application would be processed without insistence on wheeling charges/losses to be borne; and open access was being accordingly granted in continuity from 01.08.2020.

After observing that MSEDC was bound by the submissions made as above, this Tribunal noted that, in this view, the Learned Senior Counsel appearing on behalf of the Petitioner did not press for the further relief in these Applications. Accordingly, the applications were disposed of.

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

Reliance placed on the interim order of this Tribunal dated 31.07.2013, to contend that payment of arrears cannot be stipulated as a

pre-condition for consideration of the MTOA application filed by the Petitioner on 12.12. 2024, more than a month and half after the final judgement of this Tribunal dated 23.10.2024, is therefore misplaced. In any event, as has been pointed out on behalf of the Respondent-MSEDCL, the existing open access arrangement with the petitioner is for the period from 01.12.2020 to 30.11.2025, and what the petitioner now questions is with respect to a fresh MTOA application submitted by them on 12.12.2024 for the period from 01.01.2025 to 31.12.2029 seeking 2500 kva contract demand. It is with respect to this fresh MTOA application that the petitioner contends that they are not liable to clear past dues for grant of open access. Since the application itself was made only on 12.12.2024 more than 1½ months after the judgment of this Tribunal dated 23.10.2024, it is not open to the petitioner to either contend that these aspects are also covered by the judgement of this Tribunal dated 23.10.2024, or that these questions would necessitate examination in proceedings under Section 146 of the Electricity Act.

The Henderson principles, on which the petitioner relies upon, can be as well be referred to in any subsequent proceedings instituted by them questioning levy of wheeling charges and wheeling losses for the period from November 2024 onwards, or with respect to levy of transmission charges and transmission losses for the period subsequent to the period referred to in the letters of MSEDCL dated 02.11.2018 and 15.11.2018. In an appeal preferred against the order of the MERC, which had only considered the scope of the 2014 and 2016 DOA Regulations, MSEDCL cannot be faulted for not referring to the 2019 amended DOA Regulations. What the petitioner has left unsaid is that they also did not choose to rely on the 2019 amended DOA Regulations before this Tribunal in Appeal Nos. 245 and 376 of 2018.

ii. APPLICATION DATED 12.12.2024 FOR GRANT OF MTOA:

In so far as the relief sought for in I.A. No. 341 of 2025, which is to consider the fresh MTOA application filed by the Petitioner on 12.12.2024, without any insistence on clearance of payment of the arrears due in terms of the MERC DOA Regulations 2019 is concerned, it is contended on behalf of MSEDCL that insistence on payment of arrears is in terms of the mandate of Regulation 4.5 of the MERC DOA Regulations 2016; and payment of arrears is a pre-requisite for consideration of a fresh MTOA application.

Regulation 4.5 of the MERC DOA Regulations 2016 reads thus:-

*"**4.5. Settlement of Dues**:*

"A Consumer applying for Open Access to the Distribution System shall settle all dues of the Distribution Licensee prior to applying for Open Access:

Provided that, where there is a dispute between the Distribution Licensee and the Consumer relating to any charge for electricity or some other charge for electricity, such consumer shall be allowed Open Access pending resolution of such dispute upon deposit of the disputed amount with the Distribution Licensee, in accordance with Section 56 of the Act;

Provided further that the Distribution Licensee shall pay interest at a rate equivalent to the Bank Rate of the Reserve Bank of India for the amount of deposit that is returned to the Consumer upon resolution of the dispute."

It is impermissible for us, in a Petition filed under Section 146 of the Electricity Act alleging violation of the judgement of this Tribunal in Appeal Nos. 245 and 376 of 2018 dated 23.10.2024, to consider whether or not MSEDCL was justified in insisting on payment of arrears by the Petitioner for consideration of their MTOA application dated 12.12.2024, or to

consider whether or not Regulation 4.5 of the MERC DOA Regulations 2016 is attracted. The MTOA application submitted by the Petitioner on 12.12.2024, more than one and half months after the judgement of this Tribunal dated 23.10.2024, was independent of, and had no connection with the said judgement of this Tribunal. Insistence on payment of arrears, which the Respondent-MSEDCL claims is in terms of Regulation 4.5 of the MERC DOA Regulations 2016, cannot be said to have resulted in failure to comply with the directions of this Tribunal in its judgement dated 23.10.2024.

We are satisfied, therefore, that the petitioner has not made out a case of non-compliance by MSEDCL of the directions contained in the judgment of this Tribunal, in Appeal Nos. 245 and 376 of 2018 dated 23.10.2024, justifying their initiating proceedings under Section 146 of the Electricity Act. Suffice it to make it clear that all that we have observed is that, for the period subsequent to the judgment of this Tribunal, levy of wheeling charges and wheeling losses in terms of the 2019 amended DOA Regulations, or levy of transmission charges and transmission losses for the period subsequent to the periods referred to in the letters of MSEDCL dated 02.11.2018 and 15.11.2018, are not matters for examination in proceedings under Section 146 of the Electricity Act. We also make it clear that we have not examined the validity of such levy by MSEDCL or whether MSEDCL could have insisted on the petitioner paying arrears for grant of Medium-Term Open Access to them pursuant to their application dated 12.12.2024. Any grievance, which the petitioner may have in this regard can be agitated by them in independent legal proceedings. In case any such proceedings are instituted, the appropriate forum shall examine the petitioner's claim on its merits uninfluenced by any observations made in this order.

X.DIRECTIONS SOUGHT FROM THIS TRIBUNAL:

Sri. Subir Kumar, Learned Counsel for the Petitioner, would submit that *MSEDCL* should be directed to remove the wheeling charges and transmission charges from the bills issued from November 2024 to the Petitioner; remove the arrears amounting to Rs.43,66,33,323/- contained in the bills dated 12.11.2024 towards wheeling charges and transmission charges as these arrears were reflected on account of Appeal No.245 of 2018; and to direct MSEDCL to sanction the application seeking reduction in Contract Demand.

As noted hereinabove, the Appellate Tribunal for Electricity is not among the entities, specifically referred to in Section 151 of the Electricity Act, which are empowered to give a complaint in writing to the competent criminal court. Even if we were to proceed on the premise that this Tribunal has the power to direct the Appropriate Commission to file such a complaint, no action to punish the person referred to under Section 146 can be taken either by the said Commission or this Tribunal. All that can be done by the Commission is to file a complaint before the competent criminal court, or for this Tribunal to direct the Commission to do so. In any view of the matter, no action can be taken either by MERC or by this Tribunal to punish the Respondent-MSEDCL under Section 146 of the Electricity Act, since such power is conferred, by the said provision, only on the competent criminal court.

What the Petitioner seeks is not just to punish the Respondent-MSEDCL for the offence under Section 146 of the Electricity Act, but for directions to be issued to them in addition thereto. No such power is available to be exercised either by the Commission or by this Tribunal under Section 146 of the Electricity Act. Consequently, the directions, which the Petitioner seeks, cannot be issued. Even otherwise, the

Petitioner has not made out any case for such directions to be issued in proceedings under Section 146 of the Electricity Act.

XI. CONCLUSION:

The Contempt Petition fails and is, therefore, dismissed. Suffice it to make it clear that we have not examined the question as to whether the Respondent-MSEDCL is, in view of the 2019 Regulations, entitled to impose wheeling charges, transmission charges etc. on the petitioner, as these are all matters to be examined in appropriate legal proceedings, if any, instituted by the Petitioner before the appropriate forum. The Contempt Petition is, accordingly, dismissed. As the main Contempt Petition is dismissed, all the I.As filed therein do not survive dismissal of the main Petition and, accordingly, stand dismissed.

Pronounced in the open court on this ***15th day of May, 2025.***

(Seema Gupta)
Technical Member

(Justice Ramesh Ranganathan)
Chairperson

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REPORTABLE/NON-REPORTABLE