IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.119 OF 2018 &
IA No.577 OF 2018

Dated: 10.07.2025

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

In the matter of:

Indo Rama Synthetics Ltd.
A-31, MIDC Industrial Area,
Butibori, Nagpur – 441122,
Through Managing Director …Appellant

Versus

1. **Maharashtra Electricity Regulatory Commission**
World Trade Centre,
Centre No. 1, 13th Floor, Cuffe Parade,
Colaba, Mumbai – 400005,
Through Secretary

2. **Adani Electricity Mumbai Limited**
CTS 407/A (New) 408 (Old),
Village Eksar, Devidas Lane,
Off SVP Road, Borovali (West),
Mumbai – 400103,
Through Managing Director …Respondents

Counsel for the Appellant(s) : Ramji Srinivasan, Sr. Adv.
Mahfooz Nazki
Avinash Tripathi
Ashish Virmani
Ashish Prasad
Arpan Behl
Rohit Sharma

Counsel for the Respondent(s) : Sanjay Sen, Sr. Adv.
Hemant Singh
Mridul Chakravarty
Soumya Singh
Lakshyajit Singh Bagdwal
Shruti Awasthi
Karan Govel
Tushar Srivastava for Res. 2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. In this appeal, assail is to the common order dated 02.05.2018 passed by the 1st respondent Maharashtra Electricity Regulatory Commission (hereinafter referred to as "the Commission") in case no.125/2015 filed by the appellant M/s Indo Rama Synthetics Limited and case no.15/2016 filed by M/s Reliance Infrastructure Limited, since taken over by M/s Adani Electricity Mumbai Limited, the 2nd respondent in this appeal.

2. The appellant had submitted offer dated 08.03.2010 to 2nd respondent (Reliance Infrastructure Limited) for supply of 37MW of power at the interconnection point between the appellant and Maharashtra State Electricity Transmission Company Limited (in short "MSETCL") in the western region on firm basis from 0800 hrs. to 2400 hrs. @ Rs.6.30/kWh during the period from 01.04.2010 to 30.06.2010. The terms and conditions of the supply were mentioned in detail in the offer letter.

3. The 2nd respondent, vide Letter of Intent (LoI) of the same date accepted in principle the offer of the appellant, albeit with certain variations and modifications in the terms and conditions of the offer. The variation was to the extent that price of power shall be Rs.6.30/kWh including trading margin and all taxes/ duties.

4. The appellant acknowledged the LoI and accordingly made an application in the prescribed format on 26.03.2010 for booking a corridor with the Maharashtra State Load Despatch Centre (in short "MSLDC") for Short-term Open Access (STOA) for the period from 01.04.2010 to 12.04.2010. The appellant clarified that due to proposed annual maintenance of boiler from 01.04.2010 to 12.04.2010, the corridor is sought to be booked for less quantum i.e. 22MW only and further application shall be submitted for the period from 13.04.2010 onwards.

5. The appellant commenced injection of power into the corridor from 01.04.2010 onwards. However, on 07.04.2010 it addressed a letter to 2nd respondent informing the latter of its inability to supply power for the remaining period from 13.04.2010 to 30.06.2010 and thereby surrendering the LoI.

6. As per the mutually agreed upon terms, the appellant raised an invoice for the period from 01.04.2010 to 08.04.2010 for Rs.17,385,984/- payable on

or before 16.04.2010 i.e. within 7 days from the date of receipt of the invoice by the 2nd respondent. In the meanwhile, the appellant continued to supply power to the 2nd respondent till 12.04.2010. Power supply was discontinued by the appellant on 12.04.2010 as already intimated to the 2nd respondent vide letter dated 07.04.2010.

7. On 16.04.2010, the appellant raised a further invoice for the supply of power for the period from 09.04.2010 to 12.04.2010 for Rs.86,92,992.00 which was payable on or before 23.04.2010.

8. Since the 2nd respondent did not pay the amounts reflected in these two invoices to the appellant, the appellant sent a letter dated 29.04.2010 calling upon 2nd respondent to pay the amounts due under these invoices forthwith. However, vide reply dated 03.05.2010, the 2nd respondent denied its liability to pay the invoiced amount to the appellant. The invoiced amount remained to be paid by the 2nd respondent even after issuance of a legal demand notice dated 12.06.2010 on behalf of the appellant by its lawyer.

9. The appellant initially filed a suit bearing no.1909/2010 before the Hon'ble Bombay High Court against the 2nd respondent for recovery of Rs.2,66,11,200/- i.e. the amount reflected in the above noted two invoices along with applicable surcharge as well as interest. The High Court held that an alternative appropriate remedy is available to the appellant under the

Electricity Act, 2003. Accordingly, plaint in the suit was returned to the appellant to be submitted to the appropriate court/commission.

10. Accordingly, the appellant filed case no.125/2015 before the 1st respondent Commission claiming the amount of Rs.2,66,11,200/- along with interest from the 2nd respondent.

11. It appears that subsequent to the filing of said petition by the appellant before the Commission, the 2nd respondent also filed a separate petition bearing case no.15/2016 before the Commission seeking compensation from the appellant for breach of terms of the LoI dated 08.03.2010 due to non-supply of power under it from 13.04.2010 onwards.

12. Both these petitions have been disposed off by the Commission vide common impugned order dated 02.05.2018. The Commission has held the appellant entitled to sum of Rs. Rs.2,66,11,200/- from the 2nd respondent as price of power supplied by it to the 2nd respondent from 01.04.2010 to 12.04.2010 in terms of the LoI dated 08.03.2010. At the same time, the Commission also held the 2nd respondent entitled to compensation in the amount of Rs.3,88,73,600/- along with interest @15% per annum from the appellant on account of non-supply of power from 13.04.2010 to 30.06.2010 in terms of the clause 16 of the LoI.

13. The appellant has challenged the said impugned order of the Commission to the extent it has been directed to pay compensation in the amount of Rs.3,88,73,600/- along with interest to the 2nd respondent.

14. We have heard learned counsel for the appellant as well as the learned counsel for the respondent. We have also perused the impugned order of the Commission and the written submissions filed by the learned counsels.

15. Learned counsel for the appellant vehemently argued that the impugned order of the Commission is contrary to the law laid down by the Hon'ble Supreme Court that even if there is a clause providing for compensation/damages in a contract, still the compensation / damage is not ipso facto payable and the party claiming compensation must prove the loss suffered by it on account of breach of the terms of the contract by the other party. He submitted that in the instant case, the 2nd respondent has not, apart from a mere statement, produced any evidence to show that it had suffered actual loss due to breach of terms of LoI by the appellant.

16. It is further submitted by the learned counsel that the 2nd respondent has failed to prove that on account of non-supply of power by the appellant with effect from 13.04.2010, it was forced to purchase power from other sources at a higher rate, entitling it to claim compensation from the appellant under the terms of the LoI. He pointed out that in this regard, the 2nd

respondent has relied upon exhibit 24 annexed to its petition which is only a self-styled document prepared by the appellant itself and therefore, does not merit any consideration. It is the submission of the learned counsel that actually the 2nd respondent has made profit due to act of non-supply of power by the appellant from 13.04.2010 onwards, which is evident from energy balancing statement submitted by the 2nd respondent before the Commission.

17. The learned counsel further argued that the impugned order reflects complete non-application of mind on the part of the Commission in so far as the Commission has itself noted in the order that it does not consider necessary to go into the details and merits of the quantum of power purchased by RInfra-D for the purpose of compensation to be paid for appellant's failure to supply power in accordance with the terms and conditions of the LoI. He argued that such statement of Commission in the impugned order is patently contrary to the law laid down by the Supreme Court in Kailash Nath Associates v. Delhi Development Authority 2015 (4) SCC 136.

18. It is further argued by the learned counsel that the Commission has erred in granting interest to the 2nd respondent upon the compensation amount in the absence of any such stipulation in the LoI. It is his submission that award of interest is not automatic and has to be awarded while keeping in mind the specific facts of a particular case. On this aspect, he has referred

to another judgment of the Supreme Court in Ghaziabad Development Authority v. Balbir Singh 2004 (5) SCC 65.

19. It is also argued by the learned counsel that the contention of the appellant that it was precluded from continuing power supply to the 2nd respondent from 13.04.2010 onwards as per LoI on account of *force majeure* events, has not been considered at all by the Commission which also renders the impugned order unsustainable.

20. Per contra, it is argued by the learned counsel for 2nd respondent that the impugned order of the Commission is absolutely justified and has been passed upon consideration of all the submissions of the parties while balancing the interests of the parties and therefore, it does not call for any interference by this Tribunal. He submitted that despite there being a contract between the parties, the appellant took a complete U turn vide letter dated 07.04.2010 by informing the 2nd respondent that due to unavoidable circumstances it will not be able to supply power from 13.04.2010 onwards. Further, the appellant, in the said letter, neither invoked the *force majeure* clause of the LoI nor gave any specific reason for surrendering LoI. Therefore, according to the learned counsel, the appellant failed to give any cogent or satisfying reason for its decision to rescind from the terms of the LoI.

21. The learned counsel further argued that the 2nd respondent has incurred an additional cost of Rs.6 crores approximately on account of discontinuation of power supply by the appellant from 13.04.2010 onwards as it was constrained to procure power from other sources at much higher rate which is evident from the statement issued by SLDC, which are not disputed even by the appellant. Accordingly, the loss suffered by the 2nd respondent was consequently passed on to its consumers in its area of supply in terms of Electricity Act, 2003.

22. According to the learned counsel, there is sufficient material on record to show that 2nd respondent suffered actual loss on account of failure on the part of the appellant to honor the contractual terms and as per settled law, any breach of the terms of contract between the two partis automatically result in triggering consequences as contemplated therein. In this regard, he referred to the judgment of the Supreme Court in Bhagwan Goverdhandas Kedia v. Girdharilal Parshottamdas & Co. (1966) 1 SCR 656, and Har Shankar v. Excise & Taxation Commissioner (1975) 1 SCC 737.

23. Relying upon the judgments of the Supreme Court in Maula Bux v. Union of India (1969) 2 SCC 544, and Fateh Chand v. Balkishan Dass, 1963 SCC OnLine SC 49, the learned counsel argued that in every case of breach of contract, the person aggrieved by the breach is not required to

prove actual loss or damage suffered by him before he can claim a decree and the court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of contract. The learned counsel further submitted that since the 2nd respondent is a distribution licensee procuring power from multiple sources at any given point of time, it is difficult to estimate the loss suffered by it due to non-supply of power by the appellant for the disputed period and therefore, is entitled to compensation as stipulated by the parties under clause 16 of the LoI which is a genuine pre-estimate of the loss made by the parties at the time of finalizing the contractual terms.

24. Referring to the energy balancing statements, it is submitted by the learned counsel that the appellant has misrepresented the facts in this regard. He contended that Energy Balancing and Settlement Mechanism was prevailing in the State of Maharashtra and was approved by the Commission itself for settlement of deviation pursuant to variation of demand and supply of every State Pool Participant and is not a mechanism for purchase and sale of power. He submitted that it is incorrect to compare the drawl or injection of power from Imbalance Pool with the contract entered into with appellant to allege that there is no monetary loss to the 2nd respondent. The Pool Imbalance is a result of various purchases by 2nd respondent under its long-

term contracts, banking transactions, short-term purchases i.e. Inter-State and Intra-State as well as on power exchanges and power sold to its consumers and has absolutely no correlation with the actual loss suffered by it in respect of non-supply of power by the appellant. According to the learned counsel, the appellant cannot refer to the transactions of the Imbalance Pool as the same is dynamic and part and parcel of function of distribution licensee like the 2nd respondent. He pointed out that 2nd respondent would have earned more revenue through the transactions in the Imbalance Pool (unscheduled interchange) in the events the appellant would have supplied its contracted quantum of power to the 2nd respondent in a situation where 2nd respondent was power surplus. Thus, even on this account the 2nd respondent has suffered loss of revenue.

25. On the aspect of interest, the learned counsel argued that 2nd respondent is entitled to interest on the compensation amount on the basis of commercial principles according to which, the aggrieved parties are entitled to be compensated along with time value of money i.e. interest in the event of delay in making legitimate payments. In this regard, he has referred to the judgments of Supreme Court in Central Bank of India v. Ravindra (2002) 1 SCC 367 and Oil and Natural Gas Commission v. M.C. Clelland Engineers S.A. (1999) 4 SCC 327.

Our Analysis: -

26. Before analyzing the rival contentions and submissions of parties, we find it pertinent to extract the relevant portion of the impugned order hereunder: -

> *"22. ISSUE B: Financial claims of IRSL and RInfra-D under the terms of the LoI*
>
> *a) IRSL has admittedly supplied power to RInfra-D from 1 to 12 April, 2010. There is no dispute on this count, except that RInfra-D claims that the amount due for this supply should be adjusted against the higher amount due as compensation and damages from IRSL for not supplying power for the remaining period of the LoI.*
>
> *b) While the LoI dated 8 March, 2010 provided for supply of 37 MW from 1 April to 30 June, 2010, the initial supply of 22 MW upto 12 April for which STOA had been obtained was agreed between the parties. The STOA Application mentioned that a separate*

Application would be submitted for supply from 13 April, 2010.

c) The contracted capacity of 37 MW was subject to Clause 15 of the LoI, which permitted a deviation of 20% by either party. Hence, the Commission is of the view that the compensation due for the period from 13 April to 30 June, 2010 would be for 29.6 MW (i.e. 37 MW – (20% x 37 MW)).

d) Clause 16 of the LoI regarding compensation in the event of short supply/off- take provides that

> *"IRSL shall pay compensation to RInfra @ 100 paise per kWh for the quantum of energy that falls short of contracted quantum of energy beyond above said permitted deviation on monthly basis."*

As regards IRSL's submission that the minimum off-take provided for in the LoI was only 22 MW, the Commission is of the view that the Clause regarding minimum off-take of 22 MW was to ensure that the

CPP could run at least at Technical Minimum. On any particular day, if the Procurer scheduled less than 22 MW, the CPP could not run, and hence this Clause.

e) The short supply or non-supply of power and the compensation computed on the basis of Clause 16 are as below:

Table 1 :							
Sr. No.	*Month*	*Computation of Contracted Energy*	*Contracted Energy (kWh)*	*80% of Contracted Energy (kWh)*	*Actual Energy Supplied (kWh)*	*Short Supply (kWh)*	*Compensation Payable @ Rs. 1/kWh (Rs.)*
1	*Apr-10*	*37 MW x 16 hrs x 30 days*	*17760000*	*14208000*	*4224000*	*9984000*	*9984000*
2	*May-10*	*37 MW x 16 hrs x 31 days*	*18352000*	*14681600*	*0*	*14681600*	*14681600*
3	*Jun-10*	*37 MW x 16 hrs x 30 days*	*17760000*	*14208000*	*0*	*14208000*	*14208000*
	Total		*53872000*	*43097600*	*4224000*	*38873600*	*38873600*

f) IRSL has contended that RInfra-D needs to establish that it has suffered a loss because on non-supply of power between 13 April and 30 June, 2010, and its quantum. RInfra-D has submitted LoIs and Power Exchange Statements with regard to its purchases from other Generators/ Traders / Power Exchange.

RInfra-D has also submitted the IEX transactions from 13 April to 30 April, 2010. The summary of the LoIs or arrangements entered into by RInfra-D is as below :

Table 2 : LoIs between RInfra-D and Generators/Traders/Power Exchange

LoI Dated	*Generator/Trader/Power Exchange*	*Quantum*	*Period from*	*To*	*Rate (Rs./kWh)*
21 April, 2010	*LPTL*	*Upto 150 MW*	*1.5.2010*	*31.5.2010*	*7.41*
23 April, 2010	*Instinct Advertising and Marketing Ltd.*	*Upto 9 MW*	*1.5.2010*	*31.5.2010*	*6.87*
23 April, 2010	*SCL*	*50 MW*	*1.5.2010*	*31.5.2010*	*7.57*
21 April, 2010	*LPTL*	*Upto 150 MW*	*1.6.2010*	*30.6.2010*	*6.67*

g) From the submissions of RInfra-D, the Commission notes that it had not purchased power from the Power Exchange on 25th and 30th April, 2010. However, the Commission does not consider it necessary to go into the details and merits of the quantum of power purchased by RInfra-D for the purpose of the compensation to be paid for IRSL's failure to supply power in accordance with the terms and conditions of the LoI.

h) IRSL did not supply power from 13 April to 30 June, 2010 as required by the LoI dated 8 March, 2010. The shortfall in supply for this period is as computed in Table 1 above, along with the amount of compensation at the rate of Rs.1.00/kWh.

i) Hence, IRSL is required to pay RInfra-D an amount of Rs. 3,88,73,600/- towards non-supply of power from 13 April, 2010 to 30 June, 2010. However, the payment due from RInfra-D for the power supplied from 1 to 12 April, 2010 by IRSL shall be adjusted against this amount. Accordingly, the Commission directs IRSL to pay the net amount of Rs. 1,22,62,400/- (3,88,73,600 – Rs. 2,66,11,200).”

27. There is no dispute between the parties with regard to the facts of the case. The offer submitted by the appellant to supply 37MW of power during the period from 01.04.2010 to 30.06.2010 @Rs.6.30/kWh was accepted by the 2nd respondent vide LoI dated 08.03.2010, which was duly acknowledged by the appellant. Thus, the parties had entered into a contractual relationship whereby the appellant had agreed to supply 37MW of power to the 2nd respondent from 01.04.2010 to 30.06.2010 @ Rs.6.30/kWh. Admittedly, the

appellant supplied power to the 2nd respondent only till 12.04.2010 and thereafter discontinued the power supply. It is pertinent to state here that vide letter dated 07.04.2010, the appellant had informed the 2nd respondent about its inability to supply power with effect from 13.04.2010.

28. The appellant had raised two invoices in a total sum of Rs.2,66,11,200/- in the name of the 2nd respondent for the power supplied to it from 01.04.2010 to 12.04.2010. The 2nd respondent had denied its liability to pay the invoice amount payable due to breach of agreement by the appellant. In the petition filed before the Commission, the appellant had claimed the said amount of Rs.2,66,11,200/- along with interest from 2nd respondent. At the same time, the 2nd respondent also filed a separate petition before the Commission claiming compensation from the appellant for breach of terms of the LoI dated 08.03.2010. During the hearing of the petitions before the Commission, the 2nd respondent had not disputed its liability to pay to the appellant for the power supplied from 01.04.2010 to 12.04.2010 but had claimed that the amount due towards such power supply should be adjusted against the higher amount which it was entitled from the appellant as compensation and damages for not supplying power for the remaining period of LoI.

29. Thus, the issue which arises for adjudication in this appeal is whether the 2nd respondent is entitled to any compensation from the appellant on

account of admitted breach of terms of LoI by the appellant and if so, to what amount?

30. The Commission has found the 2nd respondent entitled to Rs.3,88,73,600/- as compensation from the appellant towards non-supply of power from 13.04.2011 to 30.06.2011 and upon subtracting the amount of Rs.2,66,11,200/- (which the 2nd respondent is liable to pay to the appellant for power supply from 01.04.2010 to 12.04.2010) the Commission has directed the appellant to pay net amount of Rs.1,22,62,400/- to the 2nd respondent along with interest @ 15% per annum.

31. Clause 16 of the LoI provides for compensation for short supply / off-take and is extracted hereinbelow: -

"

16.	*Compensation for short supply/off-take*	*Both parties should ensure that actual supply/off take of power does not deviate by more than 80% as per open access granted by SLDC/RLDC on monthly basis.* *1. Without prejudice to provisions of force Majeure, if IRSL fails to supply as per open access granted by*

		SLDC/RLDC on monthly basis. IRSL shall pay compensation to RINFRA @ 100 paisa/kWh for the quantum of energy that falls short of contracted quantum of energy beyond above said permitted deviation on monthly basis. *2. In case RINFRA defaults in off-take as per open access granted by SLDC/RLDC on monthly basis, RINFRA shall pay to IRSL @ 100 paisa/kWh for quantum of off-take that falls short of the contracted quantum of energy beyond above said permitted deviation on monthly basis.* *3. Compensation on account of shortfall in supply/off-take will be settled on monthly basis at the end of each calendar month and either party shall raise bills to raise*

		compensation. *This compensation shall be paid within 10 days of receipt of bill through tax by IRSL and within 7 days of receipt of bill by RINFRA.* *The source of power being CPP, RINFRA should ensure minimum 22 MW scheduled during the period of supply due to technical reasons.*

”

32. Thus, as per the said provision in the LoI, appellant is bound to compensate the 2nd respondent @100 paise/kWh (i.e. Rs.1/kWh) for the quantum of energy falling short of contracted quantum of energy beyond deviation of ± 20% provided in the LoI. The calculation made by the Commission in computing the quantum of compensation payable by appellant to 2nd respondent as per the said clause 16 of the LoI is reflected in the following table given in Paragraph 22 of the impugned order: -

“

Table 1 :							
Sr. No.	*Month*	*Computation of Contracted Energy*	*Contracted Energy (kWh)*	*80% of Contracted Energy (kWh)*	*Actual Energy Supplied (kWh)*	*Short Supply (kWh)*	*Compensation Payable @ Rs. 1/kWh (Rs.)*
1	*Apr-10*	*37 MW x 16 hrs x 30*	*17760000*	*14208000*	*4224000*	*9984000*	*9984000*

		days					
2	*May-10*	*37 MW x 16 hrs x 31 days*	*18352000*	*14681600*	*0*	*14681600*	*14681600*
3	*Jun-10*	*37 MW x 16 hrs x 30 days*	*17760000*	*14208000*	*0*	*14208000*	*14208000*
	Total		*53872000*	*43097600*	*4224000*	*38873600*	*38873600*

"

33. The primary argument advanced on behalf of the appellant is that since the 2nd respondent has failed to prove that it suffered any loss on account of non-supply of power by the appellant with effect from 13.04.2010, the Commission has erred in granting compensation to the 2nd respondent. The argument is based upon Sections 73 and 74 of the Indian Contract Act, 1872 which are quoted hereinbelow: -

> *"**73. Compensation for loss or damage caused by breach of contract**.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given*

for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.*—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.*

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

74. Compensation for breach of contract where penalty stipulated for*.— When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the*

party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake

any public duty, or promise to do an act in which the public are interested."

34. Section 73 of the Contract Act embodies the general principle with regards to assessment of damages caused by the breach of contract and provides that the compensation would be payable by the party committing the breach for the damages caused to the other party, which damage was anticipated by parties to be likely to occur in case of the breach of the agreement or which arose naturally in the usual course of things from such breach. Section 74 speaks of the measure of damages to be awarded in case of breach of contract where the contract itself specifies any amount to be paid in case of such breach or contains any other stipulation by way of penalty. In both the cases the measure of damages is reasonable compensation, not exceeding the amounts so specified in the contract or the penalty stipulated for, whether or not actual damage or loss is proved to have been caused by the breach.

35. Bare perusal of Section 74 would reveal that parties are free to stipulate any amount in the agreement that will be paid by the party who commits breach of the terms of the agreement i.e. defaulting party to the other party in the agreement. It further provides that the amount of liquidated damages so fixed in the agreement would be the maximum amount payable by the

defaulting party and the court will not allow more than that amount fixed in the contract but may award a smaller amount depending upon the facts and circumstance of the case. In other words, the court would award only a reasonable amount of liquidated damages even though the same are pre-estimated and spelt out in advance in the contract.

36. The Hon'ble Supreme Court has interpreted Section 74 of the Contract Act in a catena of judgements and the latest one being Kailash Nath Associates v. DDA & Anr. (2015) 4 SCC 136, the relevant paragraphs of which are reproduced hereunder: -

> *"33. Section 74 occurs in Chapter 6 of the Indian Contract Act, 1872 which reads "Of the consequences of breach of contract". It is in fact sandwiched between Sections 73 and 75 which deal with compensation for loss or damage caused by breach of contract and compensation for damage which a party may sustain through non-fulfillment of a contract after such party rightfully rescinds such contract. It is important to note that like Sections 73 and 75, compensation is payable for breach of contract under Section 74 only where damage or loss is caused by such breach."*

“43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:-

43.1 Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine preestimate of damages fixed by both parties and found to be such by the Court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the Court cannot grant reasonable compensation.

43.2 Reasonable compensation will be fixed on well known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

43.3 Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the Section.

43.4 The Section applies whether a person is a plaintiff or a defendant in a suit.

43.5 The sum spoken of may already be paid or be payable in future.

43.6 The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a

genuine pre-estimate of damage or loss, can be awarded.

43.7 Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application."

37. Thus, any damage or loss suffered by a party due to breach of contract on the part of another party to the contract is a sine qua non for applicability of this section i.e. for award of liquidated damages. Even if a sum of money is stipulated in the contract as liquidated amount payable by the defaulting party by way of damages, only reasonable compensation commensurate with the loss/damages suffered by the other party, can be awarded not exceeding the amount so specified in the contract.

38. In Maula Bux v. Union of India (1969) 2 SCC 544, the Apex court has held as under:-

6. … … … Reliance in support of this contention was placed upon the expression (used in Section 74 of the

Contract Act), "the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused there by, to receive from the party who has broken the contract reasonable compensation". It is true that in every case of breach of contract the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree, and the Court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of contract. But the expression "whether or not actual damage or loss is proved to have been caused thereby" is intended to cover different classes of contracts which come before the Courts. In case of breach of some contracts it may be impossible for the Court to assess compensation arising from breach, while in other cases compensation can be calculated in accordance with established rules. Where the Court is unable to assess the compensation, the sum named by the parties if it be regarded as a genuine preestimate may be taken into consideration as the measure of

reasonable compensation, but not if the sum named is in the nature of a penalty. Where loss in terms of money can be determined, the party claiming compensation must prove the loss suffered by him."

39. In the case of Fateh Chand v. Balkishan Dass, 1963 SCC OnLine SC 49, it has been held by the Apex court as under: -

"10. Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases (i) where the contract names a sum to be paid in case of breach and `ii) where the contract contains any other stipulation by way of penalty. We are in the present case not concerned to decide whether a contract containing a covenant of forfeiture of deposit for due performance of a contract falls within the first class. The measure of damages in the case of breach of a stipulation by way of penalty is by Section 74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable

having regard to all the circumstances of tile case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of "actual loss or damages"; it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted, because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach.

…

15. Section 74 declares the law as to liability upon breach of contract where compensation is by agreement of the parties predetermined, or where there

is a stipulation by way of penalty. But the application of the enactment is not restricted to cases where the aggrieved party claims relief' as a plaintiff. The section does not confer a special benefit upon any party; it merely declares the law that notwithstanding any term in the contract predetermining damages or providing for forfeiture of any property by way of penalty, the court will award to the party aggrieved only reasonable compensation not exceeding the amount named or penalty stipulated. The jurisdiction of the court is not determined by the accidental circumstance of the party in default being a plaintiff or a defendant in a suit. Use of the expression "to receive from the party who has broken the contract" does not predicate that the jurisdiction of the court to adjust amounts which have been paid by the party in default cannot be exercised in dealing with the claim of the party complaining of breach of contract. The court has to adjudge in every case reasonable compensation to which the plaintiff is entitled from the defendant on breach of the contract. Such compensation has to be ascertained having

regard to the conditions existing on the date of the breach."

40. It is thus well settled that the essential ingredients required to be pleaded and established by a party claiming damages on account of breach of contract are: -

(a) There has been breach of contract by the other party;

(b) the party complaining of such breach has suffered in injury or damage as a result of the breach of contract by the other party; and

(c) the injury suffered is proximate and direct result of the breach committed by the other party.

41. The expression "whether or not actual damage or loss is proved to have been caused thereby" occurring in Section 74 have been interpreted to mean that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount indicted in the contract, if a genuine preestimate of damage or loss, can be awarded.

42. In the instant case, the 2nd respondent has specifically pleaded in Paragraph No.5 of the petition filed before the Commission that it has suffered loss by reason of procurement of power at much higher price per

unit than agreed under the LoI for the power which was to be supplied by the appellant. The loss suffered by the 2nd respondent has been quantified at Rs.11,64,19,980/-. We find it apposite to reproduce the said Paragraph 5 of the petition of 2nd respondent hereunder: -

> "*5. RInfra has suffered irreparable loss by reason of procurement of such power (which was contracted to be sold by indo Rama to RInfra) at a much higher price per unit than agreed under the said order dated 8th March 2010. As stated above indo Rama has admittedly sold this power contracted to be sold to the RInfra and which it was bound to sell to the RInfra under the LoI duly accepted by Indo Rama. Hereto annexed and marked Exhibit "24" is a Statement giving particulars of the amount due and payable by Indo Rama to RInfra by reasons of Indo Rama having breached the terms and conditions of the LoI dated 8th March 2010 by reason of non supply of the contracted quantum of 37 MW of power from the period 1st April 2010 to 30th June 2010 after adjusting an amount of Rs. 2,60,78,976/- being payable by RInfra to Indo Rama for supply made for the period 1st April 2010 to*

12th April 2010. The Statement also shows the particulars of the rate at which the balance power was procured for period 13th April. 2010 to 30th June 2010. The said rate is arrived at on the basis of the Weighted Average System Marginal Price (WASMP) as per the Interim Balancing & Settlement Mechanism (IBSM) done by MSLDC on Monthly basis for period April 2010 to June 2010. RInfra has incurred an amount of Rs.11,64,19,980/- towards differential costs of Power Procurement incurred by RInfra by reason of power purchase cost of 37MW for the aforesaid period between the per unit price paid by RInfra and the price agreed under the LoI of Rs. 6.30 per unit of power."

43. Exhibit "24", referred to in this Paragraph of the petition, is a statement prepared by the 2nd respondent itself about the losses it has suffered on account of non-supply of agreed quantum of power by the appellant with effect from 13.04.2010. We do agree with the arguments of the appellant's counsel that this document, having been prepared by the 2nd respondent itself, does not merit any consideration.

44. However, on the basis of further contentions of the 2nd respondent and the documents furnished by it in support thereof, the Commission has noted in the impugned order the details of LoIs issued by 2nd respondent to other generators/ traders/power exchange for purchase of power from the period 13.04.2010 onwards. The details of these LoIs have been given in Paragraph 22(f) which is extracted hereinbelow: -

"Table 2 : LoIs between RInfra-D and Generators/Traders/Power Exchange

LoI Dated	*Generator/Trader/Power Exchange*	*Quantum*	*Period from*	*To*	*Rate (Rs./kWh)*
21 April, 2010	*LPTL*	*Upto 150 MW*	*1.5.2010*	*31.5.2010*	*7.41*
23 April, 2010	*Instinct Advertising and Marketing Ltd.*	*Upto 9 MW*	*1.5.2010*	*31.5.2010*	*6.87*
23 April, 2010	*SCL*	*50 MW*	*1.5.2010*	*31.5.2010*	*7.57*
21 April, 2010	*LPTL*	*Upto 150 MW*	*1.6.2010*	*30.6.2010*	*6.67*

"

45. It is necessary to note here that the issuance of these LoI by the 2nd respondent and purchase of power through these during the month of May and June, 2010 has nowhere been disputed by the appellant either before the Commission or before this Tribunal. Further, the 2nd respondent has also produced copies of the Daily Obligation Summary Report issued by Indian Energy Exchange with effect from 12.04.2010 to substantiate its contention

that it has purchased power from the exchange from 12.04.2010 onwards after discontinuation of the power supply by the appellant.

46. In view of these documents furnished by the 2nd respondent, it cannot be said that the 2nd respondent had not suffered any damage on account of non-supply of power by the appellant with effect from 13.04.2010 or that it has failed to prove the extent of damages suffered by it.

47. We may also note that the 2nd respondent is a distribution licensee and procures power from multiple sources at any given point of time. With effect from 13.04.2010 also, it has procured/purchased power from different sources including Power Exchange. Therefore, it would be difficult for the 2nd respondent to precisely estimate the extent of loss suffered by it due to non-supply of power by the appellant during disputed period. In this regard, we may profitably refer to the following observations of Delhi High Court in FAO(OS) Nos.275 and 281 of 2016 titled as NTPC Vidyut Vyapar Nigam Limited v. Saisudhir Energy Limited: -

> *"11. … Clause 4.6 had postulated payment of liquidated damages and was a genuine pre-estimate mutually agreed to by the parties. In cases of public utility and objective, it is difficult if not impossible, to assess the actual loss. The fact that the damages were difficult to*

compute with precision, had strengthened the presumption that the sum agreed in Clause 4.6 was a genuine attempt to estimate losses and stipulated to overcome difficulties in proving loss. Thus, even if there was absence of proof of loss suffered by NVVN, the law mandates and requires payment of reasonable compensation upto the limit of stipulated damages. NVVN had claimed Rs.54,12,32,000/- computed as per Clause 4.6 of the PPA. Striking a balance, only half of the amount, i.e., Rs.27,06,16,000/-, was awarded with the direction that the amount would be paid @ Rs.25,00,000/- per month by adjustment from Rs.2.25 crores payable per month by NVVN to SEL for supply of solar power. …

…

15. Before we deal with the case law on the subject, we would like to record that the single Judge in categorical terms has rightly held, after quoting from the pleadings filed by NVVN before the Arbitral Tribunal, that they had pleaded having suffered tangible and intangible loss as nodal agency for delay and non-performance on the part of SEL. In paragraphs 61, 62 and 63, the single

Judge has copiously reproduced different portions of the pleadings/written submissions filed by NVVN before the Arbitral Tribunal. In the said pleadings, NVVN had asserted that they would suffer loss, for they had agreed to purchase power for 25 years irrespective of fluctuation in the rate over the years. Further, the project in question was a public utility project and was of general public importance. It was not possible to assess loss because solar power to be generated from the project cannot be replaced by solar power generated by any other project as all such solar projects were tied down with agreements to supply electricity to discoms after bundling of power. Supply of electricity was certainly a public utility service and in case of delay, it was practically impossible to assess loss as electricity supply was enjoyed by thousands of users and consumers. We have dealt with this aspect subsequently also.

16. The majority Award on the question of liquidated damages in paragraph 27 has referred to the contention of SEL that the amount stipulated as

genuine pre-estimate of damages was not sufficient and the claimant must show that it had suffered some loss. Thereafter, they had referred to the contentions raised by the parties and different judicial pronouncements. In paragraph 91, they have rejected the contention that the claim made was pre-mature and NVVN had not raised demand for liquidated damages. In paragraph 95, the majority Award holds that SEL was liable to pay damages not on account of breach simplicitor but on account of loss. It was further held that NVVN cannot plead and contend that SEL had agreed to pay damages. The fact that NVVN had agreed to make payment over a period of 25 years would not show that they had suffered any loss. Thereafter, the majority Award holds:-

…

18. Accordingly, the majority Award held that it was difficult to hold that NVVN had suffered a loss, which was to be compensated. At the same time, in the majority Award, it was held that SEL must pay Rs.1.2 crores to NVVN being 20% of the amount specified in

the original performance guarantee @ Rs.30 lacs per Mega Watt for the delayed performance.

…

20. The aforesaid dictum or principles state that in case of breach, the aggrieved party can receive as reasonable compensation, the sum named in the contract as liquidated amount if it is a genuine pre-estimate of damages and is found to be such by the Court. In other cases, where a sum is named in contract as liquidated damages, only reasonable compensation can be awarded not exceeding the amount so stated as damages. Similarly where amount fixed is in nature of penalty, only a reasonable amount of compensation not exceeding the penalty amount can be awarded. Reasonable compensation has to be fixed on well-known principles as applicable to the law of contract. In view of language of Section 74, breach of contract, damage or loss caused as a consequence of the breach is a sine qua non. Party must prove actual loss and damage. However, there are class of cases where damage or loss is difficult or impossible to prove and in such cases, liquidated amount named in the

contract, if it is a genuine pre- estimate of damage or loss, can be awarded. This is the purport of the expression "whether or not actual damage or loss is proved to have been so caused thereby" used in Section 74 of the Contract Act.

21. Decision in the case of BSNL (supra) observed that if loss accruing to the claimant from default cannot be accurately and reasonably ascertained, then such terms may not be classified as penalty. This strengthens the presumption that a sum agreed between the parties represents a genuine attempt to estimate the damages and to overcome difficulties of proof at trial.

…

26. We would also reject the contention of SEL that NVVN has not acted in a fair or reasonable manner by claiming damages. Indeed, they must claim damages when there is a breach of contract of this nature. If the mandate of mission was promotion and increase in solar power production, commercial production of which was expensive but necessary for ecological sustainable

growth model for India's future energy requirements, failure on the part of SEL to abide and adhere to the time schedule and yet not pay damages would have been arbitrary and unreasonable.

…

28. On the said question, we are in agreement with the single Judge that there is a need to balance equities and compute a fair and reasonable amount. The amount awarded by the majority Arbitrators is just Rs.1.2 crores, which is a paltry and insignificant amount, which goes on the wrong precept and principle that the NVVN must prove the actual loss suffered and then only they would be entitled to damages. The majority Award, therefore, had erred and was contrary to the public policy, i.e., fundamental policy of Indian law and had required interference. The minority Award had awarded Rs. 49.9232 crores."

(Emphasis Supplied)

48. As contended by the learned counsel for 2nd respondent, the licensee had an average maximum demand of around 1460MW of power during the months of April, 2010 to June 2010 and it had to be ready with the said

quantum of power to be supplied to its consumers to meet this demand. The 2nd respondent had entered into several long-term, medium-term and short-term contracts to source the required quantum of power to be supplied to the consumers. It is manifest that the 2nd respondent was constrained to arrange alternate power, which was expensive than the contracted power with the appellant and it was absolutely on account of the failure of appellant to supply agreed quantum of power as per the LoI. The pleadings of the 2nd respondent and the documents filed in support thereof clearly indicate that it suffered loss on account of the conduct of the appellant in rescinding the LoI unilaterally and without any cogent reason. Though it would not have been possible for the 2nd respondent to quantify actual loss suffered by it yet the Daily Obligation Summary Report of the Indian Energy Exchange and the LoIs issued by it to other generators/traders demonstrate that the loss suffered by it was around Rs.6 crores.

49. We also find that the compensation payable by appellant to the 2nd respondent on account of breach of the terms of LOI, as specified in clause 16 of the LoI at Re.1/kWh, was a genuine preestimate of the damage that was anticipated to be caused to the 2nd respondent due to such breach. Even otherwise also, it is not the contention of the appellant that the extent of compensation stipulated under clause 16 is exorbitant or on higher side.

50. The argument raised on behalf of the appellant that it was precluded from continuing power supply to the 2nd respondent from 13.04.2010 onwards on account of some force majeure events which have not been considered by the Commission in the impugned order, appears to be concocted and not borne out from the record. We have perused the letter dated 07.04.2010 vide which the appellant had intimated the 2nd respondent about its inability to supply power for the remaining period of the LoI from 13.04.2010 to 30.06.2010. The letter does not refer to any force majeure event. In fact, no reason at all has been given by the appellant in the said letter as well as in the subsequent correspondences addressed to the 2nd respondent, which precluded it from performing its obligations under the LoI. Therefore, the appellant cannot be permitted to contend now that its discontinuation of power supply to 2nd respondent was due to some force majeure event. On the contrary, there is a finding of the Commission in the impugned order that between the period 13.04.2010 to 30.06.2010, the appellant had been supplying power to other entities by way of different LoIs, the details of which have been recorded in the table in Paragraph No.21 a) of the impugned order which is extracted hereinbelow:-

"

Date of LoI/Power Purchase Agreement	***Purchaser***	***Period of Loi***		***Duration***		***Quantum (MW)***	***Rate (Rs/ Unit)***
		From	***To***	***From***	***To***		
08.03.2010	*RInfra-D*	*01.04.2010*	*30.06.2010*	*08:00*	*24:00*	*37*	*6.30*

29.03.2010	*TPTCL*	*13.04.2010*	*31.05.2010*	*00:00*	*24:00*	*35*	*6.50*
06.04.2010	*GMRETL*	*13.04.2010*	*30.04.2010*	*18:00*	*24:00*	*30*	*7.00*
01.05.2010	*GMRETL*	*01.06.2010*	*30.06.2010*	*00:00*	*24:00*	*49*	*6.98*

"

51. It is evident that simultaneous with discontinuation of electricity supply to the 2nd respondent, the appellant had been contracting fresh sale of power from its generating unit to other entities which is indicative of the fact that the stoppage of electricity supply to 2nd respondent with effect from 13.04.2010 was a deliberate act of the appellant in order to gain commercially by selling electricity to other entities at a rate higher than that mentioned in the LoI dated 08.03.2010 issued by the 2nd respondent. This is another reason for which the appellant should be ordered to compensate the 2nd respondent for breach of the terms of the LoI as it appears to have gained substantially by discontinuation of the electricity supply to 2nd respondent abruptly just after 12 days of commencement of power supply in pursuance to the LoI dated 08.03.2010.

52. With regards to the Energy Balance Statement, upon which the learned counsel for the appellant has harped strenuously, we are in agreement with the submissions of the learned counsel for the 2nd respondent that these statements are not a mechanism for evaluating purchase and sale of power by a distribution licensee. These were devised by the Commission for settlement of deviation pursuant to variation of demand and supply of every

State Pool Participants. These statements have no correlation with the actual loss suffered by a distribution licensee in respect of non-supply of power by the generating company. Therefore, these have rightly not been taken into consideration by the Commission.

53. Coming to the issue of grant of interest by the Commission on the compensation amount. It is argued by learned counsel for the appellant that the Commission has erred in granting interest to the 2nd respondent upon the compensation amount in the absence of any such stipulation in the LoI. Per contra, learned counsel for the 2nd respondent argued that the 2nd respondent is entitled to interest on the compensation amount on the basis of commercial principles accordingly to which the aggrieved party is entitled to be compensated as per the time value of money i.e. along with interest in the event of delay in making legitimate payments.

54. We may note that payment of "interest" cannot be equated to payment of penalty or fine. "Interest" is normal accretion to money when invested lawfully by the person in whose hands it is. When a person is deprived of the use his money to which he is lawfully entitled, he would have a legitimate claim for interest upon such amount of money for the period during which he was deprived of its use. In other words, any person who has enriched himself by use of the money belonging to some other person, is legally duty bound to compensate the latter by payment of interest on the said money, from the use

of which he had been deprived. Payment of interest is a necessary corollary to the return on money retained by a person unjustly or unlawfully. This has been explained by the Supreme Court succinctly in Alok Shanker Pandey v. Union of India & Ors. (2007) 3 SCC 545 by way of the following illustrations: -

> *"For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B. With these observations the impugned judgment is modified and the appeal is disposed of accordingly."*

55. In the instant case, since we have held that the grant of compensation to the appellant by the Commission in the impugned order is fair and justified, it is evident that the 2nd respondent should have been compensated in the months of May and June, 2010 when it suffered losses on account of non-supply of power by the appellant as per the terms of the LoI. Thus, the 2nd

respondent was deprived of use of the compensation amount, to which he was lawfully entitled and has a legitimate claim for interest upon such amount for that period during which it has been deprived of its use.

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

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

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

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

the case of South Eastern Coal Field Ltd. v. State of M.P., (2003) 8 SCC 648.

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

"Appellant is a public sector undertaking. Respondent is the Central Government. We agree that in principle as also in equity the appellant is entitled to interest on the amount deposited on application of principle of restitution. In the facts and circumstances of this case and particularly having regard to the fact that the amount paid by the appellant has already been refunded, we direct that the amount deposited by the appellant shall carry interest at the rate of 6% per annum. Reference in this connection may be made to Pure Helium Indian (P) Ltd. v. Oil & Natural Gas Commission, JT 2003 (Suppl. 2) SC 596 and Mcdermott International Inc. v. Burn Standard Co. Ltd. JT 2006 (11) SC 376."

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

58. The Commission, in the impugned order while granting interest @ 15% per annum to the 2nd respondent on the compensation amount, has referred to clause 11 of the LoI which provides that 2nd respondent shall be liable to pay surcharge @ 15% per annum for the delay in paying outstanding amount to the appellant after 30 days from the date of issuance of the bill by the appellant. Therefore, in view of the contents of clause 11 of the LoI, which makes 2nd respondent liable for payment of surcharge in case of delay in making the payment of bill amount to the appellant, the appellant cannot claim exemption from payment of interest on the compensation amount merely for the reason that clause 16 does not mention anything about payment of interest on the Compensation amount.

59. In view of these facts and circumstances of the case and considering the legal position on the aspect of payment of interest enunciated in the above noted judgments by the Supreme Court, we are of the considered view that the Commission was right in awarding interest @ 15% per annum on the compensation amount for the period of delay.

60. Hence, in view of the above discussion, we are of the opinion that the quantum of compensation payable by appellant to the 2nd respondent on account of breach of terms of the LoI dated 08.03.2010 due to discontinuation of power supplied with effect from 13.04.2010, fixed by the Commission in the impugned order at Rs.3,88,73,600/- along with interest @ 15% per annum is fair and reasonable. We do not find any error or infirmity in the impugned order of the Commission. The appeal is devoid of any merit and is hereby dismissed.

Pronounced in the open court on this the 10th day of July, 2025.

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

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REPORTABLE / ~~NON REPORTABLE~~

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