IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.14 OF 2020

Dated: 03.07.2025

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

In the matter of:

Vidarbha Industries Power Limited
3rd Floor, South Wing, Reliance Center,
New Prabhat Colony, Off Western Express Highway,
Santacruz (East), Mumbai-400055 … Appellant

Versus

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

2. **Adani Electricity Mumbai Limited**
Through its Managing Director
Devidas Lane, Off SVP Road,
Near Devidas Telephone Exchange
Boriwali (W), Mumbai-400103 … Respondent (s)

Counsel on record for the Appellant(s) : Shri Venkatesh
Suhael Buttan
Nishtha Kumar
Somesh Srivastava
Vikas Maini
Lasya Pamidi
Revanta Solanki

Counsel on record for the Respondent(s): Hemant Singh
Mridul Chakravarty

Tushar Srivastava
Anirban Mondal
Soumya Singh
Lakshyajit Singh Bagdwal
Shruti Awasthi
Karan Govel for R-2

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The following issue arises for our consideration in this appeal: -

"Whether the appellant's generating station is liable to be billed as HT Industrial-I consumer after its complete shutdown for the power drawn from the grid of distribution licensee i.e. the 2nd respondent to run its plant illumination, office load and preservation of equipment during shutdown period?"

2. The appellant Vidarbha Industries Power Limited (in short "VIPL") is a generating company within the meaning of the term as per Section2(28) of the Electricity Act, 2003 and has set up a 600MW (2x300MW) power plant at Maharashtra Industrial Development Corporation, Butibori, District Nagpur, Maharashtra. It had entered into a Power Purchase Agreement (PPA) dated 14.08.2013 with Reliance Infrastructure Ltd.-Distribution Business ("RInfra-D"), now taken over by M/s Adani Electricity Mumbai Limited i.e. respondent no.2 (in short "AEML") for supply of electricity from its said power project. AEML is a distribution licensee operating in the city of Mumbai.

3. The PPA dated 14.08.2013 was duly approved by the 1st respondent Maharashtra Electricity Regulatory Commission (hereinafter referred to as "the Commission") vide order dated 19.07.2013 passed in case no.76/2013. Vide the said order, the Commission had also approved the consolidated agreement executed between the parties for supply of electricity under the two PPAs for unit-I and unit-II of the appellant's power projects to be treated as supply from the power station as a whole.

4. Vide order dated 20.06.2016 passed in case no.91/2015, the Commission approved the truing up of Financial Year (FY) 2014-15, provisional true up for FY 2015-16 and Multi Year Tariff (MYT) for third control period i.e. FY 2016-17 to FY 2019-20. On the basis of the tariff approved by the Commission in the said MYT order dated 20.06.2016 and in accordance with the terms and conditions of the PPA, the appellant had been raising monthly energy invoices upon the 2nd respondent AEML.

5. The appellant's power plant has been under complete shutdown since February, 2019 and has been drawing energy from the grid to run plant illumination, office floor and for preservation of the equipment.

6. As per past practice, the appellant raised monthly invoice for the month of February, 2019 also on 01.03.2019 wherein energy charges were calculated as per the following formula:-

"*Monthly Energy Charges = Net Export Energy (After netting off with import energy) x MERC approved energy charge of Rs. 2.18/kWh."*

7. The 2nd respondent, vide its letter dated 11.03.2019, objected to the approach followed by the appellant in netting off import energy with the generation from the plant on the ground that since appellant's plant has not been operational for the entire month of February, 2019, no energy was supplied by the appellant to be set off against the energy supplied by 2nd respondent temporarily during the month. Accordingly, appellant was asked to revise the invoices.

8. The appellant, vide letter dated 26.03.2019 addressed to the 2nd respondent, tried to reason out that it was not a consumer of AEML and therefore temporary tariff is not applicable in case of energy imported from the grid by the appellant. However, vide letter dated 30.03.2019, the 2nd respondent reiterated that in view of Mid-Term Review (MTR) order dated 12.09.2018 passed by the Commission in case no.200/2017, the tariff applicable for power drawn by a generating station has to be charged as HT Industry-I category.

9. It appears that in the subsequent correspondences exchanged between the parties, they have stuck to and reiterated their respective stand with regards to the applicability of tariff to the power drawn by the appellant's power project after it was completely shut down.

10. Meanwhile, vide notice dated 20.04.2019, the 2nd respondent terminated the PPA dated 14.08.2013 executed between the parties.

11. In these circumstances, the appellant approached the Commission by way of petition no.232/2019 seeking following clarification: -

> "*(a) Provide clarification on the netting of the energy drawn by the VIPL's generating station with the energy injected into the grid for the power plant having Section 62 PPA with the Distribution Licensee in accordance with the MTR Order in Case No 200 of 2017 and various other Orders passed by this Hon'ble Commission;"*

12. The petition has been disposed off by the Commission vide impugned order dated 17.10.2019 holding that: -

> *"(a) The Appellant is liable to compensate Adani Electricity Mumbai Ltd. ("AEML"/ "Respondent No. 2")*

for energy drawn from the grid during the period of shutdown (February 2019 to October 2019) at the HT Industrial-I tariff in terms of the Mid Term Review ("MTR") Order dated 12.09.2018 passed in Case No. 200 of 2017 ("MTR Order").

(b) During shutdown, there is no energy available for netting of and hence, with effect from 01.11.2019, VIPL is not permitted to follow the netting off principle and VIPL is to pay for startup power consumption to Maharashtra State Electricity Distribution Company Limited ("MSEDCL") at tariff approved for Industrial category as approved in MTR Order dated 12.09.2018 in Case No. 195 of 2017"

13. The appellant is aggrieved with the finding of the Commission to the effect that the appellant is prohibited from applying the netting off principle for its energy transactions with effect from the month of February, 2019 and is required to pay for its power consumption i.e. energy drawn from the grid, at the industrial tariff category.

14. We have heard learned counsels for the appellant and 2nd respondent and have perused the impugned order. We have also perused the written submissions filed by the learned counsels.

15. Learned counsel for the appellant vehemently argued that while imposing the HT Industrial-I tariff upon the appellant in the impugned order, the Commission has failed to appreciate that drawl of power during shut down is to be treated on the same footing as start-up power drawl. He would submit that a generator availing such power cannot be treated as a "consumer" for the purposes of tariff classification. He argued that the dispensation accorded to a "consumer" for taking supply of power for such self-consumption cannot be accorded to a "generator" which draws from the grid during shut down. It is argued that HT Industrial-I tariff is applicable to consumers of the distribution licensee and not to generating companies drawing power solely for start-up or auxiliary requirement during non-operation periods. The learned counsel relied upon the judgments of this Tribunal in appeal no.166/2010 Chhattisgarh State Power Transmission Limited v. M/s RR Energy Limited and Anr. decided on 24.05.2011, appeal no.240/2013 Tamil Nadu Generation and Distribution Corporation Ltd. v. M/s Lanco Tanjore Power Company Ltd. & Anr. decided on 03.04.2014, appeal no. 190/2013 titled as M/s Sree Rengaraaj Ispat Industries Pvt. Ltd. vs. The Tamil Nadu Electricity Board & Ors. decided on 22.08.2014, and appeal no.

132/2015 Atria Brindavan Power Ltd. v. Karnataka Electricity Regulatory Commission & Ors. decided on 01.03.2017.

16. Learned counsel for the 2nd respondent argued that the impugned order of the Commission is perfectly sound and does not call for any interference from this Tribunal. He submitted that netting off formula is not applicable to the case of the appellant in view of the protocol devised by the Commission vide order dated 12.09.2018 passed in case no.200/2017 as the appellant was not having any subsisting PPA with the 2nd respondent, which stood terminated on 20.04.2019 and the termination of PPA having been upheld by this Tribunal also vide judgment dated 15.09.2020 passed in appeal no.446/2019.

Our Analysis: -

17. In the midterm review order dated 12.09.2018 passed by the Commission in case no.200/2017, the Commission undertook rationalization of tariff schedule and harmonization of the definitions as well as applicability of each tariff category across the distribution licensees in Maharashtra including RInfra-D and devised a protocol holding, *inter alia,* as under: -

> "*d) Start-up power requirement for Power Plants may be taken from the Distribution Licensee* ***where the***

Power Plant is located, *either through a separate connection or through the existing evacuation infrastructure. In case a separate connection is taken, all the terms and conditions applicable to any consumer shall be applicable. In case a separate connection is not taken, the Power Plant shall have to enter into an agreement with the Distribution Licensee for contracting the demand for such start-up power. In either case, the Demand Charge shall be at the rate of 25% of the rates approved for HT Industry category to the extent of the start-up demand contracted by the Power Plant for Black Start, or start-up after Forced or Planned Outage of the Power Plant.* ***However, this dispensation shall not be applicable to Power Plants having PPAs with the Distribution Licensees under Section 62 of the EA, 2003, which provide for netting off the energy drawn by the Generator with the energy injected into the grid."***

(Emphasis supplied)

18. Manifestly, the protocol devised by the Commission in the said order is with regards to the start-up power required by the power plant and provides

that such startup power may be taken from the distribution licensee within whose specified area the power plant is located, either through a separate connection or through the existing evacuation infrastructure. The order further stipulates that in case a separate connection is not taken, the power plant shall have to enter into an agreement with the distribution licensee for contracting the demand for such startup power. What is important is that the order further provides that in either case, the demand charge shall be @25% of the rates approved for HT Industry Category. An exception has been carved out in the order with respect to the power plants having PPAs under Section 62 of Electricity Act, 2003 providing for netting off energy drawn by them with the energy injected by them into the grid. It is stated that the dispensation evolved in the said MTR order would not be applicable to such power plants.

19. What "start-up power", means and implies has been explained by this Tribunal in the case of Chhattisgarh State Power Transmission Limited v. M/s RR Energy Limited (supra) as under: -

> "*43 Before proceeding, further let us understand what startup power is and for what purpose it is required.*

44 Startup Power has not been defined in the Electricity Act 2003 or in the Rules and Regulations framed there under. It has also not been defined in the repealed Acts viz., Indian Electricity Act 1910, Electricity (Supply) Act 1948 and Electricity Regulatory Commission Act 1998. Thus we have to go by its general meaning. ***In general parlance, word 'Startup' means to start any machine or motor. In terms of electricity, Startup Power is power required to start any machine. Thus Startup Power is power required to start a generator. Next question is why it is required. Thermal generating units, (to some extent large hydro generating units also) have many auxiliaries, such as water feed pump, coal milling units, draft pumps etc.,. These auxiliaries operate on electrical power and are essentially required to run before generating unit starts producing power of its own. These auxiliaries would draw power from grid till unit start producing power and is synchronized with the grid.*** *Once unit is synchronized, requirement of 'startup power' vanishes. Thus 'startup power' is*

required only when all the generating units in a generating station are under shutdown and first unit is required to startup. Once any one unit in a generating station is synchronized, power generated by the running unit is used to startup other units. Period of requirement of startup would vary from few minutes to few hours depending upon the size of unit."

20. Thus, "start-up power" refers to the power required to start the generator and once the first unit of the power plant starts producing power and is synchronized with the grid, the requirement of "start-up power" vanishes. The "start-up power" is required by a power plant when all its generating units are under shutdown.

21. In the judgments cited on behalf of the appellant, this Tribunal was concerned with the requirement of start-up power by the power generators and held that a generator requiring start-up power from the grid cannot be termed as a consumer. In this regard reference can be profitably made to following observations of this Tribunal in appeal no.166/2010: -

"47 Appeal no. 166 of 2010 From the above observations, it is clear that a 'startup power' consumer

can have a contract demand up to maximum of 10% of highest generating capacity unit of generating station. Further his total drawal from the grid during the month is also restricted to 10% load factor. In other words at full contracted demand, he can draw power from grid for less than three hours in a day (720 x 0.1 / 30 hours per day). Further his operational time is also restricted to one shift operation. ***With such restrictions, supply given to a generator as 'startup power' cannot be termed in pursuance to section 43 of the Electricity Act 2003.***

48 Further, consumer as defined in the Act is a person who is supplied with electricity for his own use. Here startup power is supplied to Respondent -1 to startup its generating unit. Once generating unit is synchronized with the grid, the power so generated is supplied to Appellant. Without startup power, generators cannot start and produce power. Thus, in way, startup power is supplied for the benefit of Appellant only. From this point of view, a generator taking startup power from distribution licensee and

supply power to same licensee on startup, cannot be termed as a consumer.

49. In light of above discussions a generator requiring 'startup up power' from the grid cannot be termed as a consumer."

(Emphasis supplied)

22. In appeal no.240/2013 TANGEDCO case (supra), this Tribunal has held that while availing the power during testing and commissioning stage as well as drawing start-up power the power plant cannot be considered as a consumer. Referring to earlier judgment in appeal no.47/2011, it has been held by this Tribunal in the said judgment as under: -

"40. The above observations made by this Tribunal would clearly indicate that there was a specific finding that the State Commission has wrongly held that the Generating Company was a consumer. ***While interpreting the definition, this Tribunal held that the consumer is a person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee.***

This Tribunal further held that the Generating Companies connected to the licensee's network only for supplying electricity to the licensee and not for receiving electricity by the Respondent Company. This ratio which has been decided by this Tribunal in the above case, would squarely apply to the present case also as the Generating Company is connected to the licensee's network only for supplying electricity and as such; the Respondent Company cannot be construed to be a consumer.

…

42. According to the Appellant, this would not apply to the present case as it does not deal with the start-up power. This contention is not tenable. ***The State Commission has correctly held that the Respondent Company should not be charged as a consumer for the power drawn during testing and commissioning stage and after the commercial operation date since the consequences of non***

supply of power under Article 3.3 (f) and 3.3 (g) are similar.

43. On that basis, the State Commission has held that while availing the power during testing and commissioning stage as well as withdrawing start-up power, the power plant cannot be considered as a consumer.

44. Apart from the fact that the Respondent Company cannot be considered to be a consumer as per the PPA, ***it shall be observed that even in terms of Electricity Act, 2003, the Generating Company cannot be said to be a consumer and treated similar to the other consumers who had drawn HT power supply and required to pay the tariff and applicable charges.***

45. Section 2 (15) of the Act defines a consumer as a person supplied with the electricity for his own use. The entire power generated *at the plant is meant for supply to the TANGEDCO."*

(Emphasis supplied)

23. In M/s Sree Rengaraaj Ispat case, appeal no.190/2013 (supra), this Tribunal held that if the start-up power is used exclusively for generator auxiliaries, then the generator cannot be called a consumer. The relevant portion of the judgment is extricated herein below:-

> *"17. The generator is entitled to take start up power connection as per the various tariff orders of the State Commission. The State Commission has also passed an order dated 15.05.2006 regarding charges for start up power. Therefore, use of word 'consumer' in the agreement for start up connection will not disentitle the Appellant to take start up power as a generator.* ***As long as the supply is used for meeting the auxiliaries of the generator, the supply will be treated as start up supply from the generator.*** *Similarly in a case where the Captive Power Plant and captive load are co-located at one place the auxiliaries of the Captive Power Plant and the captive load will remain connected electrically. However, it has to be ensured by the generator that when the Captive Power*

Plant trips, the captive load is isolated and is not continued to be fed from the start up power connection.

*18. …. **This Tribunal has held in various judgments that if the start up power is used exclusively for the generator auxiliaries, then the generator cannot be called a consumer**. However, in this case the power supply from the service connection taken for the purpose of start up power for 8 MW unit has been used for other purposes. The Appellant also laid down an 11 KV cable within its premises to supply power from its 8 MW plant to 30 MW plant which resulted in the undesirable situation of power being drawn from service connection HTSC 249 by 30 MW unit when 8 MW unit went under outages, resulting in use of power supply for construction, testing and commissioning of 30 MW unit."*

(Emphasis supplied)

24. In Atriya Brindavan case (appeal no.132/2015) this Tribunal referred to the judgment dated 24.05.2011 passed in appeal no.166/2010, which has already been quoted hereinabove, and held as under: -

"d) On question no. 9(c) i.e. ***Whether a generator can be charged as a HT Consumer without following the regulations, codes and license conditions prescribed for billing consumers for energy by a licensee when a PPA specifically defines the charges to be levied for import of energy?,*** *we decide as follows:*

…

iii) The Judgement dated 24.5.2011 came when the generators were rarely put under Reserve Shut Down (RSD) due to high demand conditions in the grid with respect to available capacity in the country. Presently the conditions are entirely different and many generators are put under RSD. ***We would like to further elaborate the position in present scenario where the generators are put under reserve shutdown by the procurers for longer periods or under forced shutdown or planned shutdown condition, in these***

circumstances, generators are required to draw power from the grid for keeping the machines/ auxiliaries in hot standby or readying the machine/auxiliaries for the generation along with other requirements for power drawl. These cases are to be treated similar and require start-up power drawl from the grid. *The power so drawn by them from the grid is to paid as per the regulations/orders of the appropriate commission from time to time. The appropriate commission while deciding the payment of start-up power shall not consider the generator as a consumer as per the Judgement.*

iv) In view of the above since generator is not a consumer, the HT Tariff along with demand charges which are applicable to the consumers of a distribution licensee are not applicable to it.

…

We are of the considered opinion that the issues raised in the present appeal except the applicability of HT rate for generator's start up power on this Tribunal's findings as discussed above, are devoid of merit. Hence the Impugned Order dated 13.11.2014 passed by the State Commission is hereby upheld on all the issues excepting the applicability of HT rate for generator's start up power.

However, in light of the Judgment dated 24.05.2011 deciding therein the generator is not a consumer and the HT tariff along with the demand charges are not applicable to the generators, we have decided the nonapplicability of the same to the Appellant with effect from 01.06.2011*. To this limited extent, this issue is remanded back to the State Commission."*

(Emphasis supplied)

25. Thus, in view of the legal position enunciated by this Tribunal in the above referred judgments, a generator drawing start-up power from the grid for operational readiness or auxiliary purposes cannot be treated as a

"consumer" under section 2(15) of the Electricity Act, 2003 and thus, cannot be subjected to tariffs applicable to HT Industrial-I consumers. In the instant case also, the appellant's power plant, after having been completely shut down with effect from February, 2019, has been drawing power from the grid of 2nd respondent for its operational readiness or auxiliary purposes (start-up power) i.e. illumination, office load and for preservation of equipment. The appellant's power plant was put under shut down with effect from February, 2019 and at the same time, the power plant continued to draw power from the grid to keep its machines / auxiliaries in standby condition or for readying the machine/auxiliaries for generation of power again. Therefore, the appellant falls in the category specified in these judgments and thus cannot be billed under HT Industrial-I category for the power drawn from the grid.

26. It is true that the PPA dated 14.08.2013 executed between the parties was terminated by the 2nd respondent by way of notice dated 20.04.2019 and the termination of the PPA has been upheld by the Commission vide order dated 16.12.2019 passed in case no.247/2019 and thereafter by this Tribunal also vide order dated 15.09.2020 passed in appeal no.446/2019. It is on this basis that argument was advanced on behalf of the 2nd respondent that the appellant does not fall within the exempted category specified in MTR order dated 12.09.2018 which provides that dispensation

devised therein shall not be applicable to the power plants having PPAs with the distribution licensees under section 62 of the Electricity Act, 2003 providing for netting off of the energy drawn by the generator with the energy injected into the grid. It is submitted that since the PPA executed between the parties has been validly terminated by the 2nd respondent, the provision of netting off energy is not available to the appellant at all.

27. We do not find any force in these arguments. The appellant was having a valid PPA with the 2nd respondent in February, 2019 when it shut down its power plant. The 2nd respondent had sent notice of termination of PPA on 20.04.2019. However, the termination of PPA has been approved by the Commission vide order dated 16.12.2019 i.e. about two months after the passing of impugned order in the instant case. It is for this reason that the Commission has noted in the impugned order that legality of the termination notice would be dealt with in the concerned petition no.247/2019.

28. The issue formulated by us in Paragraph no.1 stands answered accordingly. The Commission has erred in holding the appellant liable to be billed as HT-I consumer for the energy drawn by it from the grid of 2nd respondent during the period of shutdown of its power plant.

Conclusion: -

29. In view of the above discussion, the impugned order of the Commission cannot be sustained. Same is hereby set-aside. The appeal is allowed.

Pronounced in the open court on this the 3rd day of July, 2025.

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

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REPORTABLE / ~~NON REPORTABLE~~

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