

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
(Appellate Jurisdiction)

**APPEAL No.64 OF 2017**

Dated: 01.07.2025

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

**In the matter of:**

**National Energy Trading and Services Ltd.**

Plot No. 397, Phase – III,  
Udyog Vihar, Gurgaon – 122016  
Haryana

... Appellant

*Versus*

**1. Rajasthan Electricity Regulatory Commission**

Vidyut Viniyamak Bhawan  
Near State Motor Garage  
Sahakar Marg, Jaipur  
Rajasthan – 302 005  
*Through its Secretary*

**2. Jaipur Vidyut Vitran Nigam Ltd.**

Vidyut Bhawan, Janpath,  
Jaipur – 302 005  
Rajasthan  
*Through its Managing Director*

**3. Ajmer Vidyut Vitran Nigam Ltd.**

Vidyut Bhawan, Panchsheel Nagar,  
Makarwali Road, Ajmer – 305004  
Rajasthan  
*Through its Managing Director*

**4. Jodhpur Vidyut Vitran Nigam Ltd.**

Near Power House,  
Industrial Area,

Jodhpur – 342003  
Rajasthan  
*Through its Managing Director*

**5. Rajasthan Discoms Power Procurement Centre**

Vidyut Bhawan, Janpath,  
Jaipur – 302 005  
Rajasthan  
Through its Chairman/ Director

... Respondent (s)

Counsel on record for the Appellant(s) : Deepak Khurana  
Vineet Tayal  
Abhishek Bansal

Counsel on record for the Respondent(s): Raj Kumar Mehta  
Himanshi Andley for Res. 1  
  
Ranjitha Ramachandran  
Poorva Saigal  
Anushree Bardhan  
Tanya Sareen  
Shubham Arya for Res. 2 to 5

**J U D G M E N T**

**PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. M/s National Energy Trading and Services Limited (in short “NETS”), an inter-State electricity trading licensee, has filed the instant appeal against the order dated 14.12.2016 passed by the 1<sup>st</sup> respondent Rajasthan Electricity Regulatory Commission (hereinafter referred to as “the Commission”) in petition no.478/2014 filed by the Rajasthan Discoms i.e. respondent nos.2 to 5 seeking recovery of a sum of Rs.1,08,54,539/- after adjusting Rs.60 lakhs held by them as Earnest Money Deposit (EMD), as compensation from the appellant for shortage in supply of electricity below

80% of the contracted capacity in terms of the Letter of Intent (Lol) dated 31.01.2011. The Commission has held the appellant liable to compensate the discoms for short supply of electricity to them.

2. Facts of the case, shorn of unnecessary details, are that the respondent nos.2 to 5 (hereinafter collectively referred to as "Rajasthan Discoms") had floated tender for purchase of electricity through publication of notice bearing No.RDPPC/TN/06 for short term commencing from 01.10.2010 to 31.07.2011. In response to the same, the appellant had submitted its offer dated 31.01.2011. The appellant's offer was accepted by the discoms and accordingly a Letter of Intent dated 31.01.2011 was issued to the appellant for purchase of power during the period February 2011 to June 2011 on the terms and conditions mentioned in the Lol. Clause 13 of the Lol provided that the appellant would be liable to pay a compensation of Rs.2/kWh for quantum of shortfall in power supply below 80% in energy terms in a month.

3. The appellant supplied electricity to the discoms in terms of the said Lol. However, there was a shortfall in quantum of electricity agreed to be supplied for the period of three months i.e. from February 2011, April 2011 and May 2011. Accordingly, the discoms issued bills in the amount of

Rs.1,68,54,539/- for compensation against the short supply as per clause 13 of the Lol dated 31.01.2011.

4. The appellant did not pay the said compensation amount claimed by the discoms even after receipt of legal notice dated 24.04.2012 from them in this regard. In the reply dated 28.05.2012 sent by the appellant to the said legal notice, it disputed the bills raised by the discoms and denied liability to pay any amount towards compensation to them.

5. It appears that the discoms deducted the amount of Rs.1,68,54,539/- from the bills of M/s V S Lignite Power Private Limited (in short "VSLP"), the generating company from whom the appellant had purchased power to be sold to the discoms.

6. Feeling aggrieved by the action of the discoms in recovering the compensation amount from its bills, VSLP approached the Commission by way of petition no.393/2013 claiming wrongful deduction of Rs.1,68,54,539/- from its bills by the discoms and refund of the said amount. The petition was disposed off by the Commission vide order dated 24.01.2014 holding that the discoms have wrongly adjusted the said amount from the bills of the petitioner VSLP instead of recovering the same from the electricity supplier NETS i.e. the appellant herein. The relevant portion of the said order is extracted hereinbelow: -

*“11. In light of submissions made by the petitioner and the respondents, there appears to be two basic questions to be answered; (i) whether by virtue of the letter dated 1.2. 2011 issued by VSLP to NETS the TN-06 has become a tripartite contract between VSLP, NETS and RDPPC and whether there is any privity of contract under TN-06 between RDPPC and VSLP; (ii) Whether the source generator or the seller is liable under TN-06 for making good for any loss or shortage caused to RDPPC.*

*12. The Commission observes that RDPPC issued LOI for purchase of power under TN-06 on 31.1.2011 in favour of NETS in which name of the source and region was mentioned as VS Lignite Power Ltd. and Rajasthan respectively. Subsequent to issue of the said LOI, VSLP vide its letter dated 1.2.2011 sent to NETS, confirmed the quantum and terms and conditions as mentioned in the LOI. However, RDPPC neither communicated with nor took consent of VSLP as regards the agreement made between*

*RDPPC and NETS. VSLP has not given its consent to RDPPC nor conveyed its agreement to RDPPC. RDPPC issued its LOI to NETS and it was accepted by NETS and not jointly by NETS and VSLP.*

*13. As per section 2(71) of Electricity Act "trading" means purchase of electricity for resale thereof and if a trader is entering into a contract for selling power, it is the duty of the trader to enter into appropriate agreement for purchase of electricity for re-sale thereof. In the matter under consideration, it was NETS which was 'seller' of power to Discoms and not the generator. NETS as trader in turn had made arrangement for purchase of power from VSLP (generator) and thus generator was seller of power to trader instead of Discoms.*

*14. Let us now have a look at relevant provision of LOI dt. 31.1.2011 placed on NETS under TN-06 relating to compensation for default in supply, which is as under:*

*“13. Compensation for Default in Supply/Off-take*

*Without prejudice to the provisions of Force Majeure, if you fail to supply 80% of the contracted quantum of power, you will pay compensation to RDPPC @ Rs. 2.00 (Rupees Two only) per Kwh for quantum of shortfall of 80% in energy terms in a month.*

*In case RDPPC fails to schedule 80% of contracted quantum of power, RDPPC shall pay compensation to you @ Rs. 1.00 (Rupees One only) per Kwh for the quantum that falls short of 80% of contracted quantum of power in energy terms in a month.*

*In case of generators situated within Rajasthan, the compensation shall be computed for the short fall in actual sale to Rajasthan Discoms with respect to the contracted quantum.*

*It is also informed that the request from your side for reduction of supply quantity of citing the*

*machine breakdowns or unforeseen conditions of generating companies will not be accepted.”*

*15. The above clause regarding “Compensation for Default in Supply/Offtake” of LOI dated 31.1.2011 issued to NETS casts responsibility of paying compensation on NETS as seller and does not include any liability on the source of power. As mentioned earlier, seller in this case is NETS, not the generator (VSLP).*

*16. In case any liability in sale of electricity by trader to distribution licensees is to be fastened on the party from which the trader has sourced its power, the said liability has to so stated and accepted by the source. As mentioned earlier, the LOI issued by RDPPC to trader doesn't bind the 'Source' with compensation in case of any short supply than the quantum agreed. In view of this, even if VSLP as a source, has given consent to the trader (NETS) on quantum of power and terms and conditions given in LOI; this consent itself doesn't amount to the compensation liability*



*getting fastened on the generator and that trader gets freed from the said liability.*

*17. In the light of the position discussed above, it clearly emerges that there is no privity of contract under TN-06 between RDPPC and VSLP and further that there is no obligation on the part of generator (VSLP) on account of failure of trader to meet its supply commitment. NETS as seller of power and having accepted the LOI issued by RDPPC cannot wriggle out of the obligation on them as a seller to supply power as contracted under the plea that they are only a trader and the shortfall in the power supply has occurred on account of failure of generator to supply power. It was NETS, which in response to bid issued by RDPPC had committed for supply of required power. The source from which they in turn were to get power and obligation of such a source is a matter between the trader and the source. The trader on account of any default on the part of source cannot be absolved of its commitment given to procurer of power i.e. RDPPC.*

18. *Considering the above discussed position, the contention of respondents given in para 6 of their reply, the relevant part of which is quoted below, is untenable because responsibility, which accrued on the supplier NETS in TN-06 cannot be passed on the generator by the respondents:*

*“6. .... It is submitted here that under TN Number 06, the Petitioner generator was the source generator and, on account of the non-supply by generator, the trader NETS could not supply to the answering Respondents and therefore, the answering Respondents were totally justified in recovering the dues of TN Number 06 from the source generator.”*

19. *Further, the argument that trader gets only a trading margin and any failure on the part of source (generator) to supply power should lead to such generator bearing penalty for non-supply of power is not acceptable in absence of any such obligation*

*cast on the source in the agreement among the parties, as discussed earlier.*

*20. In the light of aforesaid position, Commission comes to the conclusion that Discoms have wrongly adjusted the said amount from the claim of petitioner in TN-09, which is a contract separate and independent from TN-06 and the same should be released.”*

7. Against the said order of the Commission, the appellant had filed a review petition bearing no.502/2015 which came to be rejected by the Commission vide order dated 14.12.2016. In pursuance to the said order of the Commission, the Rajasthan Discoms refunded the deducted amount to the generating company VSLP and filed separate petition bearing no.478/2014 for recovery of the sum of Rs.1,08,54,539/- as compensation from the appellant for short supply of electricity contracted on the basis of the terms of Lol dated 31.01.2011 after adjusting Rs.60 lakh held by them as EMD from the appellant. The petition has been disposed off by the Commission vide impugned order dated 14.12.2014 holding the discoms entitled to recover the said compensation amount from the appellant.

8. We have heard learned counsel for the appellant as well as learned counsel appearing for the respondent discoms. We have also perused the impugned order as well as the written submissions filed by the learned counsels.

9. The primary ground of challenge to the impugned order of the Commission agitated before us on behalf of the appellant is with regards to the limitation. It is submitted that the period of supply of power under the Lol to the respondent discoms was 01.02.2011 to 30.06.2011 and the shortage of supply of power is stated to have occurred in the months of February 2011, April 2011 and May 2011. Therefore, under clause 13 of the Lol right to sue accrued to the discoms in these three months and as per Article 55 of the Schedule 1 to the Limitation Act, 1963, the period of three years for claiming compensation for breach of the terms of the Lol commenced on 31.05.2011. The petition ought to have been filed by the discoms on or before 31.05.2014 and the same having been filed on 30.10.2014 was patently barred by the limitation. It is argued that the Commission has erred in holding that the petition is not barred by time on the erroneous assumption that the appellant, in its reply to the legal notice received from the discoms, has acknowledged its liability to pay compensation on account of breach of terms of Lol.

10. Learned counsel for the appellant vehemently submitted that the discoms, in their petition, had nowhere pleaded extension of period of

limitation for filing the petition on account of the said purported acknowledgement, and in the absence of specific pleadings in this regard, the Commission ought to have rejected the petition as barred by the limitation. It is argued that even otherwise also there is no acknowledgment on the part of the appellant of its liability to pay compensation to the respondent discoms on account of short supply of power during the relevant period, in any of its correspondences addressed to either the discoms or the generating company VSLP.

11. According to the learned counsel, the petition filed by the respondent discom before the Commission was clearly time bared and therefore, the impugned order of the Commission is not sustainable.

12. Learned counsel for the respondent discoms drew our attention to letter dated 22.09.2012 written by the appellant to generating company VSLP, particularly the below extracted portion: -

*“RDPPC has levied compensation claim of Rs.1,68,54,539/- In terms of the above clause-13 of LOI, computed for short fall in actual sale of power with respect to 80% of contracted quantum for the month of February 2011, April 2011 and May 2011.*

*You will appreciate that NETS as a Trader purchased the power from VSLP and sold the same to RDPPC in line with the terms and conditions of the Lol, which are binding on all the three parties. The compensation has been raised by the Purchaser viz. RDPPC as per the provisions of the terms and conditions of the LOI; It is therefore the Generator who has to pay for less Injected power and not the Trader”*

13. Learned counsel argued that the appellant has clearly admitted that there was shortage in supply of electricity below 80% of the contracted capacity which amounted to breach of Lol dated 31.01.2011 and has merely stated that the compensation is to be paid by the power generator and not by the trader i.e. the appellant. According to the learned counsel, the contents of the said letter dated 22.09.2012 of the appellant clearly tantamount to acknowledgment of its liability towards discoms in terms of Section 18 of the Limitation Act, 1963, and therefore, the period of limitation began to run from the said date. Accordingly, as per the submissions of the learned counsel, the petition having been filed on 30.10.2014 is well within the period of limitation.

14. It is also argued by the learned counsel that prior to passing of order dated 24.01.2014 by the Commission in petition no.393/2013 filed by VSLP, the matter was sub-judice and the discoms had already deducted the compensation amount from the bills of VSLP. It was only vide said order dated 24.01.2014 that the Commission clarified that the liability for shortfall in power supplied for the months of February 2011, April 2011 and May 2011 was not to be borne by the VSLP but was the responsibility of appellant NETS and therefore, the discoms could initiate the action against the appellant NETS only after passing of the said order by the Commission. According to the learned counsel, in these circumstances also it cannot be said that the petition filed by the Rajasthan Discoms before the Commission was barred by the limitation.

**Our Analysis: -**

15. It is not in dispute that upon acceptance of the bid/offer of the appellant to supply power to them during the relevant period, the Rajasthan Discoms placed Lol upon the appellant for supply of power on firm basis on the terms and conditions mentioned in the Lol. The Lol acknowledges that the appellant would be arranging supply of power from generating station of VSLP. Clause 13 of the Lol is material and is extracted hereinbelow: -

***“13. Compensation for Default in Supply/Off-take***

*Without prejudice to the provisions of force majeure, if you fail to supply 80% of the contracted quantum of power, you will pay compensation to RDPPC @ Rs.2.00 (Rupees Two only) per kWh for quantum of shortfall of 80% in energy terms in a month.*

*In case RDPPC falls to avail 80% of contracted quantum of power, RDPPC shall pay compensation to you @ Rs.1.00 (Rupees One only) per kWh for the quantum that falls short of 80% of contracted quantum of power in energy terms in a month.*

*In case of generators situated within Rajasthan, the compensation shall be computed for the short fall in actual sale to Rajasthan Discoms with respect to the contracted quantum.*

*It is also informed that the request from your side for reduction of supply quantity citing the machine breakdowns or unforeseen conditions of generating companies will not be accepted.”*

16. Perusal of the said clause of Lol makes it clear that in case the appellant failed to supply 80% of contracted quantum of power (except where the short supply is on account of some *force majeure* event) the appellant



would be liable to pay compensation @Rs.2/kWh for the quantum of shortfall of 80% in energy terms in a month.

17. Concededly there had been shortfall in supply of power by the appellant to the discoms below 80% of the contracted quantum in the months of February 2011, April 2011 and May 2011. Accordingly, the Rajasthan Discoms sought compensation from the appellant in the amount of Rs.1,68,54,539/- by raising bills in the said amount in the name of appellant. Since the appellant did not pay the bills, the discoms got issued a legal notice dated 24.04.2012 through their counsel to the appellant calling upon the appellant to pay said compensation amount within 15 days of the receipt of the notice. The appellant had sent reply dated 28.05.2012 through his counsel to the said legal notice, disputing therein the right of the discoms of imposition of compensation and denying liability to pay compensation to them.

18. It appears that on account of denial of the appellant to pay compensation amount claimed by the Rajasthan Discoms, the discoms recovered the same from the bills of the generator VSLP for the month of May, 2012, which was conveyed to VSLP vide letter dated 29.08.2012. VSLP approached the Commission by way of petition no.393/2013 challenging the recovery of compensation amount by the discoms from its bills, which was disposed off on 24.01.2014 by the Commission holding that

the discoms have wrongly adjusted the compensation amount from its bills instead of recovering the same from the trader i.e. the appellant NETS to whom the Lol dated 31.01.2011 was issued by the discoms. The Commission came to the conclusion that there was no privity of contract between the Rajasthan Discoms and VSLP.

19. Accordingly, in terms of the said order of the Commission, the discoms refunded the compensation amount to VSLP and filed petition before the Commission against the appellant seeking recovery of compensation amount of Rs.1,08,54,539/- for the short supply of electricity during the relevant period in terms of the Lol dated 31.01.2011 after adjusting the EMD amount of Rs.60 lakh from the appellant.

20. Undisputedly, the petition was filed by the discoms before the Commission on 30.10.2014. It is also not disputed that the short supply of electricity had occurred in the months of February 2011, April 2011 and May 2011.

21. Since the discoms have been claiming compensation from the appellant on account of breach of the terms of the Lol, Article 55 of Schedule 1 attached to the Limitation Act, 1963 is attracted which provides for a period of limitation of three years for claiming compensation for the breach of any contract, express or implied. It also provides that in the cases involving

breach of contract, the period of limitation would begin to run from the date when the contract is broken or when the breach ceases in case of continuous breach. The Article also provides that where there are successive breaches, the period of limitation would begin when the breach in respect of which the suit is instituted occurs.

22. Manifestly, in the instant case there were successive breach of the terms of Lol. First breach had taken place in the month of February, 2011. Second and third breach took place in the months of April 2011 and May 2011 respectively. Therefore, in view of above quoted article 55, the period of limitation for the breach in respect of the short supply in the month of February, 2011 began to run on 28.02.2011. Similarly, the period of limitation in respect of the breaches in terms of Lol occurring in the months of April 2011 and May 2011 began to run on 30.04.2011 and 31.05.2011 respectively. Thus, the period of limitation for claiming compensation in respect of these three breaches came to an end on 28.02.2014, 30.04.2014 and 31.05.2014 respectively. This will go on to show that the petition filed by the discoms before the Commission on 30.10.2014 was *prima facie* barred by the limitation.

23. Now turning to the plea of “acknowledgment of liability” on the part of the appellant raised on behalf of the respondents.

24. In this regard Section 18 of the Limitation Act, 1963, which provides for effect of acknowledgment in writing on the period of limitation, is material and is quoted hereinbelow: -

***“18. Effect of acknowledgment in writing***

*(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

*(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*

*Explanation.—For the purposes of this section,—*

*(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the*

*property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,*

*(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”*

25. According to this legal provision, where there is an acknowledgment of liability in respect of a property or a right in writing under the signatures of the party against whom such property or right is claimed or by any person through whom he derives his title or liability, fresh period of limitation would commence from the date when the acknowledgement was signed by him. The section also provides that such acknowledgment in writing should have been made before the expiry of the actual period of limitation for the claim in question as provided under the Limitation Act. Explanation (a) attached to

the Section stated that even if such an acknowledgment in writing is accompanied by refusal to pay, or deliver or perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right in question, it would be sufficient and proper acknowledgment as envisaged under the Section.

26. In other words, where there is admission of liability by a person in writing either to the person to whom he is liable or to some other person, it tantamount to sufficient acknowledgment as envisaged under section 18 of the Limitation Act, 1963. On this aspect we find following observations of the Delhi High Court in Rajiv Khanna v. M/s Sunrise Freight Forwarders Pvt. Ltd & Anr. 2016 SCC OnLine Del 3359 profitable and are quoted hereinbelow: -

*“11. Attention is then invited to the explanation (a) to Section 18 supra and to Khan Bahadur Shapoor Freedom Mazda Vs. Durga Prosad Chamaria AIR 1961 SC 1236 in which Green Vs. Humphreys (1884) Ch.D. 474 defining acknowledgment as "an admission by the writer that there is a debt owing by him, either to the receiver of the letter or to some other person on whose behalf the letter is received but it is not enough that he refers to a debt as being*

*due from somebody. In order to take the case out of the statute there must upon the fair construction of the letter, read by the light of the surrounding circumstances, be an admission that the writer owes the debt was quoted with approval.”*

27. The admission of liability, in order to constitute an acknowledgment under section 18 of the Limitation Act, must be in writing and clear as well as unambiguous so as to give a fair impression to the reader that the writer owes some debt or liability.

28. In the instant case, the Commission has held the petition not bared by time upon observing that the appellant has acknowledged, in its reply to the legal notice of the discoms, the breach of Lol and its liability of compensation. We quote the relevant Paragraph of the impugned order hereinbelow: -

*“36. The contention of the Respondent that the present petition is barred by time also cannot be accepted as the Respondent has neither denied the right of the Petitioners to claim compensation under the terms of the Lol nor breach of the terms of the contract. Further, the Respondent, while replying to legal notice of Petitioner, significantly states that the*

*compensation is already recovered and hence no further amount is required to be paid. In other words, the Respondent has acknowledged the breach of Lol and liability of compensation. The only argument of Respondent is that compensation is to be paid by generator not by him. Therefore, in Commission's view, Petition is not barred by time."*

29. We have gone through the entire reply dated 28.05.2012 sent on behalf of the appellant to the legal notice dated 24.04.2012 received on behalf of the discoms. We do not find any such acknowledgment of liability on the part of appellant in the entire reply. In fact, the appellant in the said reply, has referred to clause 3 of the Lol which reads as under: -

*"If the actual injected power stands below the scheduled one, the recovery/settlement for such less injected power shall be at the contract rate or the UI rate of the respective block, whichever is higher and it is clarified that the difference of UI rate to contract rate will be charged on the less injected power if the UI-rate is more than the contract rate".*



30. The appellant has accordingly contended in the reply that on account of short supply in the contracted quantum of power in the months of February 2011, April 2011 and May 2011, the recovery / settlement for the same was to be done in terms of said clause 3 of the Lol and which was actually done by the discoms by deducting a total amount of Rs.2,84,52,500/- from its bills for the months of April 2011 and May 2011. The appellant has specifically denied that any further compensation is liable to be recovered from it. At page 4 of the reply (Page 117 of the appeal paper book), it has been denied on behalf of the appellant that the amount of Rs.1,68,54,539/- is due and payable from him

31. At best, what can be inferred from the contents of the above reply of the appellant is that the appellant acknowledged its liability to pay for the less injected power as envisaged under clause 3 of the Lol. There is nothing in the entire reply to show that the appellant acknowledges its liability to the Rajasthan Discoms for the short supply of contracted quantum of power as per clause 13 of the Lol. In last but one paragraph of the reply at Page 5 (Page 118 of the appeal paper book) it has been stated that appellant is not liable to pay any amount towards compensation to the discoms.

32. In view of the same, we are unable to discern as to how the Commission assumed that the appellant has acknowledged its liability to pay

compensation to the Rajasthan Discoms. Such assumption on the part of the Commission is absolutely erroneous as the same is not borne out from record.

33. Learned counsel for the respondent discoms, in her written submissions, has not supported the reasoning of the Commission in holding the petition within limitation. She does not rely upon the reply sent on behalf of the appellant to the legal notice of the discoms. To the contrary, she has referred to letter dated 22.09.2012 addressed by appellant to VSLP to canvass that the appellant has acknowledged its liability to pay compensation to the discoms on account of short supply of power. We find it appropriate to extract here the relevant portion of the written submissions filed by the learned counsel: -

*“15. It is submitted that it is NETSL’s own admission that the shortage in supply of electricity below 80% of the contracted capacity amounts to a breach of the Lol dated 31.01.2011 and the requisite compensation is liable to be paid (Ref. Letter dated 22.09.2012 from NETSL to VSLP at Pages 122 to 124 of the Appeal paperback). Accordingly, NETSL may not be allowed to take the plea of limitation:*

*“RDPPC has levied compensation claim of Rs.1,68,54,539/- In terms of the above clause-13 of LOI, computed for short fall in actual sale of power with respect to 80% of contracted quantum for the month of February 2011, April 2011 and May 2011.*

*You will appreciate that NETS as a Trader purchased the power from VSLP and sold the same to RDPPC in line with the terms and conditions of the Lol, which are binding on all the three parties. The compensation has been raised by the Purchaser viz. RDPPC as per the provisions of the terms and conditions of the LOI; It is therefore the Generator who has to pay for less Injected power and not the Trader”*

*...*

*17. It is submitted that the legal notice was sent by Rajasthan Discom to NETSL on 24.04.2012 and subsequently NETSL issued a letter dated 22.09.2012, wherein, NETSL admitted that compensation on account of shortfall of supply of electricity is payable to Rajasthan Discoms in terms*

*of clause 13 of the Lol dated 31.01.2011. Thus, the letter dated 22.09.2012 shall be treated as acknowledgment in terms of Section 18 of the Limitation Act, 1963 and the period of limitation shall begin to run from the said date. The Petition was filed in September, 2014 and is within the period of limitation of 3 years as prescribed under Limitation Act, 1963.”*

34. We have gone through the entire letter dated 22.09.2012 written by appellant to VSLP. There is absolutely nothing in the said letter to show or suggest that the appellant has acknowledged its liability to compensate the Rajasthan Discoms for short supply of contracted quantum of power in terms of clause 13 of Lol. In the portion of the letter referred to by the learned counsel for the discoms in her written submissions, as reproduced hereinabove, the appellant has merely stated that the purchaser of the power has claimed compensation in terms of clause 13 of the Lol on account of shortfall in actual sale of power and has further intimated VSLP that it is actually the generator who has to pay such compensation for less injected power and not the trader. It would be totally incongruous to say that the appellant has, in the said communication to VSLP, acknowledged its liability to pay compensation to the Rajasthan Discoms under clause 13 of the Lol.

35. There is one more aspect which comes to our mind while analyzing as to whether the respondent discoms have rightly claimed the extension of limitation period on account of some purported acknowledgment of liability on the part of the appellant. It is a settled principle of law that where a suit or a petition is instituted after the expiration of prescribed period of limitation, the plaintiff or petitioner is required to specifically plead and show the ground upon which extension of limitation period is claimed. We have gone through the petition filed on behalf of the respondent discoms before the Commission. There is reference to the letter dated 22.09.2012 written by appellant to VSLP in paragraph no.6 of the petition but nowhere has it been pleaded in the entire petition that a fresh period of limitation began to run from the date of the said letter in view of the purported acknowledgment of liability on the part of the appellant contained in the said letter and therefore, the petition, even if filed after the expiry of actual period of limitation provided under the Limitation Act, is not barred by limitation. In this regard, a reference can be made to Rule 6 of Order 7 Civil Procedure Code, 1908 which reads as under: -

***“6. Grounds of exemption from limitation law.—***

*Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint*

*shall show the ground upon which exemption from such law is claimed:*

*Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.”*

36. In view of said legal provision it was incumbent upon the discoms to specifically plead in the petition the exemption from the period of limitation as well as ground upon which such exemption was claimed. On this aspect, we find the following paragraph of the judgment of Delhi High Court in Rajiv Khanna case (supra) apposite and the same is extracted hereunder: -

*“19. Supreme Court, as far back as in Sant Lal Mahton Vs. Kamala Prasad 1951 SCC 1008 : AIR 1951 SC 477 held that if the plaintiff’s right of action is apparently barred under the statute of limitation, Order VII Rule 6 of CPC makes it his duty to state specifically in the plaint the grounds of exemption allowed by the Limitation Act upon which he relies to exclude its operation and that to claim exemption the plaintiff must have alleged and proved such ground*

*of limitation. This Court also in Ms. Susanne Lenatz Vs. C.J. International Hotels Ltd. (2005) 125 DLT 498 (FAO(OS) No.373/2007 whereagainst was dismissed by the Division Bench on 21st September, 2007) held that though a suit may be instituted after the expiration of the period prescribed by the law of limitation but the plaintiff is required to show in the plaint itself the grounds upon which exemption from such law is sought and that if no such ground is indicated or no such exemption is claimed, then the plaint, if it is beyond the period prescribed by the law of limitation, would be liable for rejection straightway under Order VII Rule 11(d) CPC. Again, in Alliance Paints and Varnish Works Pvt. Ltd. Vs. Hari Kishan Gupta (2010) 168 DLT 591, relying on the judgments of the High Courts of Madras and Himachal Pradesh, it was held that where the plaintiff in the plaint has not pleaded an exemption from the Limitation Act, it would not be open to the plaintiff to rely on an exemption not specifically pleaded in the plaint. (I must however notice that Single Judges of the Madras High Court in Indo International Ltd. Vs.*

*Continental Carriers Private Ltd. and in Swarna Paper Cutting Works Vs. Indian Express (Madurai) Pvt. Ltd., Madras have taken a different view on the basis of the Proviso to Order VII Rule 6 of CPC).”*

37. Therefore, even if it is assumed for the sake of argument that the appellant had, in any of the correspondences addressed to the discoms or to VSLP, acknowledged its liability to pay compensation to the discoms in terms of clause 13 of Lol on account of short supply in contracted quantum of power, the same having not been pleaded as a ground for exemption from the Limitation Act in the petition, the petition was liable to be rejected straightaway as having been filed beyond the prescribed period of limitation.

**Conclusion: -**

38. Having regard to the above discussion, we are of the considered view that the petition filed by the discoms before the Commission was barred by limitation. The Commission has fallen into error in holding the same within the period of limitation. Hence, the impugned order of the Commission cannot be sustained. The same is hereby set aside. The appeal stands allowed.



39. The petition no.478/2014 filed by the respondent discoms before the Commission stands dismissed as being barred by limitation.

Pronounced in the open court on this the 1<sup>st</sup> day of July, 2025.

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

✓  
*REPORTABLE / ~~NON-REPORTABLE~~*

*tp*