IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 81 of 2018

Dated: 04.09.2025

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

IN THE MATTER OF:

Maharashtra State Electricity Distribution Corporation Limited
Through the Director Operations)
5th Floor, Plot No. G-9,
Prakashgad, Bandra (East),
Mumbai 400051. **....Appellant(s)**

Versus

1. Maharashtra Electricity Regulatory Commission
(Through its Secretary)
World Trade Centre No.1, 13th Floor,
Cuffe Parade, Colaba,
Mumbai- 400001.

2. TATA Motors Limited
(Through its Director)
Central Plant Engineering Division
Pimpri - Pune, Maharashtra – 411018. **….Respondent(s)**

Counsel for the Appellant(s) : Mr. Samir Malik
Ms. Rimali Batra
Ms. Nikita Choukse
Mr. Manuj Kaushik
Mr. Lakshya Mehta
Mr. Tushar Mathur
Ms. Himani Yadav

Counsel for the Respondent(s) : Ms. Dipali Sheth for R-2

JUDGEMENT

PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER

1. The captioned appeal has been filed by M/s. Maharashtra State Electricity Distribution Corporation Limited (in short "Appellant" or "MSEDCL") against the final order dated 18.12.2017 passed by the Maharashtra Electricity Regulatory Commission (in short "Commission" or "MERC") in Case No. 88 of 2016.

Description of the Parties

2. The Appellant, Maharashtra State Electricity Distribution Corporation Limited, was incorporated under the Indian Companies Act, 1956, pursuant to the decision of the Government of Maharashtra to reorganize the erstwhile Maharashtra State Electricity Board. The Appellant is a Distribution Licensee under the provisions of the Electricity Act, 2003, having a licence to supply electricity in the State of Maharashtra except some parts of the city of Mumbai.

3. The Respondent No. 1 is the Maharashtra Electricity Regulatory Commission, constituted under the Electricity Act, 2003, and Respondent No. 2, Tata Motors Limited (in short "Respondent No. 2" or "TML"), is a private company registered under the Companies Act, 1956, engaged in the manufacturing and sale of automotive vehicles, components, and parts.

Factual Matrix of the Case (as submitted by the Appellant)

4. Vide its Order dated 18.12.2017, MERC directed MSEDCL to grant Open Access (OA) to TML for captive wind energy for the period April 2015-October 2015

and to issue credit notes for the energy injected during this period for adjustment in the next billing cycle despite TML's non-compliance with conditions precedent under the Metering Regulations and the Distribution Open Access Regulations, 2014.

5. MERC further directed the refund of the non-refundable processing fees paid by TML in December 2015 through an adjustment in its ensuing energy bill.

6. Thus, being aggrieved by the Impugned Order dated 18.12.2017 passed by the MERC in Case No. 88 of 2016, the Appellant has preferred the present Appeal.

Our Observations and Analysis

7. The Appellant has prayed for the following relief before us:

> *"(a) That this Hon'ble Appellate Tribunal may be pleased to set aside the impugned order dated 18.12.2017, passed by the Ld. MAHARSHTRA State Electricity Regulatory Commission in Case No. 88 of 2016;*
> *(b) That this Hon'ble Appellate Tribunal may be pleased to correct/revise/rectify and/or modify the impugned order dated 18.12.2017, and declare the Respondent No 2 as not entitled to the non- refundable processing fees paid in December, 2015;*
> *(c) Pass such other and further order or orders as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the present case and in the interest of justice."*

8. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondent at length and carefully considering their respective

submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issues arise for determination in this Appeal:

<u>Issue No.1:</u> Whether MERC was justified in directing the grant of Open Access (OA) to Tata Motors for April-October 2015 with energy credit adjustment despite the Special Energy Meters (SEMs) then being configured for 30-minute time blocks instead of the 15-minute requirement under the DOA Regulations, 2014, and CEA Metering Regulations, 2006.

<u>Issue No.2:</u> Whether under the DOA Regulations, 2014 SEMs must be programmed for 15-minute time blocks at the time of OA application/ installation, or it is sufficient that they are capable of such configuration, and who bears the responsibility for programming, inspection, reprogramming, and ensuring compliance- the Distribution Licensee or the OA consumer.

<u>Issue No.3:</u> Whether the delay in reprogramming/ replacing SEMs to meet the 15-minute time-block requirement and the resulting non-grant of OA during April-October 2015 was attributable to MSEDCL/MSETCL or to Tata Motors.

<u>Issue No.4:</u> Whether MERC's directions to allow energy credits despite non-compliant metering and ordering a refund of multiple OA processing fees were legally sustainable.

9. By the impugned order, the State Commission allowed the petition filed by Respondent No. 2, Tata Motors Limited and directed the Appellant to grant Open Access (OA) to TML for captive use of wind energy for the period April to October, 2015 and to issue credit notes for the energy injected during this period notwithstanding that the Special Energy Meters (SEMs) at the relevant time were

configured for 30-minute time blocks instead of the 15-minute time blocks prescribed under the MERC (Distribution Open Access) Regulations, 2014 ("DOAR 2014") and the CEA (Installation and Operation of Meters) Regulations, 2006. The State Commission further directed the refund of OA processing fees collected from TML.

10. Respondent No. 2, Tata Motors Limited, operates a large automotive manufacturing facility at Pimpri, Pune, and is a consumer of the Appellant with a Contract Demand of 55.372 MVA and connected load of 1,94,000 kW. TML also operates wind-based generating units in Maharashtra with an aggregate installed capacity of 21.95 MW, availing captive Open Access ("OA") from MSEDCL since 2008 for consumption of such generation at its plant.

11. In February 2010, a joint meeting between TML, MSEDCL, and Maharashtra State Electricity Transmission Company Limited ("MSETCL") finalized an upgrade of TML's metering system. MSETCL supplied 0.2 class 220 kV Current Transformers (CTs), and MSEDCL procured and installed a Secure Apex Special Energy Meter ("SEM") having Availability-Based Tariff features. The installation was tested and commissioned by MSEDCL in May 2011.

12. Under the MERC (Distribution Open Access) Regulations, 2005 ("DOAR 2005"), OA consumers were required to install SEMs, but no specific time-block granularity was prescribed.

13. On 03.01.2013, MERC in Case Nos. 8, 18, 20, and 33 of 2012 directed installation of SEMs at both generation and consumption ends capable of 15-minute time-block recording within 6 months.

14. Pursuant to this order, on 09.04.2013, MSEDCL issued Commercial Circular No. 194 mandating OA consumers to install such SEMs by 03.07.2013 at their own cost.

15. On 24.05.2013, MSEDCL wrote to TML in that regard. By letter dated 04.06.2013, TML replied that SEMs with the requisite specifications, including 15-minute time-block capability, were already installed. MSEDCL granted OA permissions to TML for captive use of wind energy for FY 2013-14 and FY 2014-15 during which the same SEM arrangement remained in place.

16. On 25.06.2014, MERC notified the new DOA Regulations, 2014 ("DOAR 2014"), which under Regulation 23.2 required SEMs at both injection and drawal points to record active energy in 15-minute time-blocks and under Regulation 26.8 provided for energy crediting on such basis. In July-October 2014, internal MSEDCL correspondence noted that TML's installed SEM was configured for 30-minute time-block integration rather than the mandated 15 minutes. TML was formally informed of this only on 29.01.2015.

17. On 15.11.2014, TML applied for renewal of OA for FY 2015-16 in respect of its five wind farms. Thereafter, in November-December 2014, TML raised billing disputes with MSEDCL for non-crediting of injected wind energy units despite subsisting OA permission for FY 2014-15.

18. On 09.02.2015 and 19.02.2015, TML clarified that the existing SEMs installed by MSEDCL in 2011 were capable of reconfiguration to 15-minute blocks and requested reprogramming without stopping energy credits, offering to bear the cost. MSEDCL maintained that OA could not be granted unless SEMs were actually programmed and compliant.

19. In May 2015, MSEDCL reiterated the requirement to re-programme SEMs and replace Current Transformers (CTs), partly relaxing earlier demands for additional check metering. TML agreed and, by October 2015, procured a new SEM with ABT features and 0.2S class CTs. On 05.11.2015, the new SEM was installed and commissioned at TML's drawal point.

20. While MSEDCL released pending credit adjustments for part of FY 2014-15, it declined to renew OA for FY 2015-16 for the period April-October 2015, citing non-compliant SEM programming for that period. OA was granted only from November 2015 onwards. TML's MTOA applications for later years were also processed separately.

21. On 24.06.2016, TML filed Case No. 88 of 2016 before MERC seeking:

- OA for April-October 2015,
- credit notes for energy injected during that period, and
- refund of multiple OA processing fees.

22. MERC, by its order dated 18.12.2017, held that the matter was mishandled by MSEDCL and directed the grant of OA with energy credits for the disputed period, notwithstanding the SEM configuration as well as refund of excess processing fees.

23. Aggrieved, MSEDCL filed the present Appeal No. 81 of 2018 challenging MERC's findings on the applicability of DOAR 2014, allocation of responsibility for SEM compliance, and the consequential financial directions.

Issue No.1: *Whether MERC was justified in directing the grant of Open Access (OA) to Tata Motors for April-October 2015 with energy credit adjustment despite the Special Energy Meters (SEMs) then being configured for 30-minute time blocks instead of the 15-minute requirement under the DOA Regulations, 2014, and CEA Metering Regulations, 2006.*

24. The Respondent No. 2 has submitted the following table of events:

Sr. No.	Date	Event
1.	February 09, 2010	Joint meeting was held between Respondent No. 2, the Appellant and Maharashtra State Electricity Transmission Company Limited ("**MSETCL**") for carrying out the installation of apex metering to upgrade the prevailing metering of Respondent No. 2. This conversion included replacement of existing healthy 0.2 Class 220 kV Current Transformers ("**CTs**"), modification of support structure of CTs, earthing and jumpering arrangement. Further, the CTs and Special Energy Meters ("**SEMs**") were tested and commissioned by the Appellant which ascertains the fact that the CTs and SEMs were in accordance with the laws applicable at the time.
2.	May 02, 2011	After the work was completed, the Appellant filed Form NC-1 for connection checking of High Tension ("**HT**") consumer. The Appellant also filed replacement report of the SEM of Respondent No. 2 at Pimpri.

3.	August 28, 2012	Appellant's internal letter for meter replacement with new Availability-Based Tariff ("**ABT**") meters for Respondent No. 2.
4.	January 03, 2013	Vide Order in Case No. 8, 18, 20 and 33 of 2012 ("**Order**"), Maharashtra Electricity Regulatory Commission ("**State Commission**") directed installation of SEMs at both wind generation and consumption end by July 03, 2013. The State Commission also gave a period of six (6) months from date of the Order to develop a pilot case for installation of SEM for both the generation and consumption end.
5.	January 16, 2013	Internal letter of the Appellant for meter replacement of Respondent No. 2.
6.	March 16, 2013	Internal letter of the Appellant for meter replacement for Respondent No. 2.
7.	April 03, 2013	The Appellant granted Open Access ("**OA**") permissions to Respondent No. 2 for the period from April 01, 2013 to March 31, 2014 for developer Nos. 4028, 4057, 4067, 1002 and 1005.
8.	April 09, 2013	The Appellant issued Commercial Circular No.194 ("**Circular 194**") that *inter alia* provided for installation of SEM by OA consumers not later than July 03, 2013.
9.	May 24, 2013	The Appellant called upon Respondent No. 2 to install SEM as per Circular 194 by July 03, 2013.
10.	June 04, 2013	Respondent No. 2 responded stating that SEM installed by it was capable of being configured to a 15-minute time block, and that the Appellant's concurrence was sought for such configuration, in accordance with the

		Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2005 ("**DOAR, 2005**").
11.	April 30, 2014	OA permission granted by the Appellant for April 01, 2014 to March 31, 2015.
12.	July 07, 2014	The Appellant's Ganeshkhind office wrote to SE, Rastapeth office that the SEM connected to billing meter of Respondent No. 2 has maximum demand integration of 30 minutes whereas the requirement was to install SEM at injection and withdrawal point having active energy recording at every 15 minutes. **This was an internal correspondence and Respondent No. 2 was not sent any intimation regarding this.**
13.	October 16, 2014	SE, Testing Division of the Appellant wrote to SE, Ganeshkhind stating that the metering arrangement is not compatible with SEM installed by Respondent No.2 and the load survey data in the meter is of 30 minutes and the maximum demand integration is also of 30 minutes. **This was an internal correspondence and Respondent No. 2 was not sent any intimation regarding this.**
14.	November 15, 2014	Respondent No. 2 applied for renewal of OA approvals for FY 2015-16.
15.	November 19, 2014	Respondent No. 2's Medium Term Open Access ("**MTOA**") Applications rejected by MSEDCL.
16.	December 09, 2014	Respondent No. 2 received the bill for its Pimpri plant for the month of November, 2014 wherein there was levy of certain additional charges as well as 1,33,257

		units injected into the grid by Respondent No. 2 were not credited for.
17.	December 12, 2014	Respondent No. 2 wrote to the Appellant wherein it raised its concerns with respect to the bill of November, 2014.
18.	January 07, 2015	In the bill for December, 2014 credit for the wind power generated for the months of October and November, 2014 to the extent of 22,04,298 units was not given.
19.	January 10, 2015	Respondent No. 2 wrote to the Appellant seeking adjustment of 22,04,298 units injected in the months of October, 2014 and November, 2014.
20.	January 21, 2015	The Appellant called upon Respondent No. 2 to cure the discrepancies in the application for Medium / Long term OA for self-use made on November 15, 2014.
21.	January 29, 2015	Respondent No. 2 received an internal communication between the officers of the Appellant pertaining to SEM wherein correspondence since the month of July, 2014 pertaining to metering of Respondent No. 2 had been referred to. It *inter alia* stated that the load survey data in the meter is of 30 minutes and the accuracy of CTs to be installed should be 0.2S instead of existing 0.2.
22.	February 06, 2015	The Appellant conducted inspection to evaluate the metering at the premises of Respondent No. 2.
23.	February 09, 2015	Respondent No. 2 replied to the January 29, 2015 letter of the Appellant. Respondent No.2 inter alia clarified that the metering system was upgraded in 2010 by the Appellant for which Respondent No. 2 had incurred expenses and paid all cost in respect of such

		replacement. The existing SEM available at injection and drawl point are in accordance with DOAR, 2005 and Circular 194. Further, the SEMs have the option to be configured to 15-minutes' time blocks for load survey data. Also, as per DOAR, 2005, Circular 194 and the Order, there is no requirement of check meter. In view of the clarifications, Respondent No. 2 requested adjustment of wind energy credits in the monthly energy bills.
24.	February 16, 2015	The Appellant wrote to the testing department to approve certain proposed changes with respect to SEM technical specification of Respondent No. 2.
25.	February 19, 2015	Respondent No. 2 requested that reprogramming of SEM from 30-minute time block to 15-minute time block be done without stopping wind power credit and also undertook to pay charges. Further, Respondent No. 2 pointed out that the Order and CEA (Installation and Operation of Meters) Regulations, 2006 ("**CEA Regulations, 2006**") does not mandate replacement of existing healthy CTs/Potential Transformers ("**PTs**").
26.	February 20, 2015	Respondent No. 2 once again requested adjustment of wind power credit withheld since November, 2014.
27.	March 9, 2015	Email received from the Appellant informing Respondent No. 2 that MTOA Applications for FY 2015-16 remained incomplete. The Appellant granted OA permissions, Appellant stated that consumers applying late for OA from April 2015 can immediately apply for Short-Term Open Access ("**STOA**") and permissions

		will be granted promptly upon receipt of such applications.
28.	March 20, 2015	Respondent No. 2 vide this letter stated that SEM was installed by it prior to July 03, 2013. Further, if reprogramming was required to be carried out it should be done by the Appellant and the costs for the same shall be borne by Respondent No. 2. Also, Respondent No. 2 informed the Appellant that as the existing CT/PT are healthy and had been replaced by the Appellant in 2010 with the earlier healthy CT/PT, there is no need to replace it further. However, in case of a need to replace it again Respondent No. 2 agreed to bear the costs for replacement of CTs by the Appellant.
29.	April 06, 2015	As there was no reply to the earlier letter, Respondent No. 2 once again explained its urgency. As the wind mills were operating and injecting power, the need for OA permission for forthcoming years was crucial.
30.	May 14, 2015	The Appellant reiterated requirement of reprogramming of existing SEM to 15 minutes' load survey data and replacement of 0.2 class CTs. It also directed installation of apex meter of same specification of main meter as a check meter with CT/PT at the cost of Respondent No.2.
31.	May 15, 2015	Respondent No. 2 agreed to reprogramming and replacement of CTs as it had already lost considerable time.
32.	May 21, 2015	Internal communication between officers of the Appellant wherein it was stated that the testing

	(Received by Respondent No. 2 on June 02, 2015)	department of the Appellant has approved installation of SEM and the Appellant requested the testing department to provide charges and arrangements for reprogramming of the existing SEM for 15 minutes load survey data with ABT features.
33.	May 26, 2015	Testing department of the Appellant informed SE, Ganeshkhind that all approvals were accorded for replacement of CTs, reprogramming of SEM and provided specification of check meter and CTs.
34.	June 17, 2015	The Appellant provided an estimate to Respondent No. 2 for sanction of installation of apex meters as per the given terms and conditions.
35.	August 04, 2015	The Appellant informed Respondent No. 2 that their pending credit adjustment from November 01, 2014 to March 31, 2015 has been released. However, renewal of OA permission for FY 2015-16 with existing energy meter of 30 minutes time block was declined.
36.	August 06, 2015	Respondent No. 2 wrote to SE, Pune Division requesting a factory inspection at Secure Meters Limited.
37.	August 18, 2015	Respondent No. 2 requested renewed OA permissions for FY 2015-16 from April 01, 2015.
38.	October 13, 2015	Letter from the Appellant with test reports enclosed stating that meters were found with errors within specified limit. It was observed by the Appellant in the letter, which is as follows:

		• Meter requires the auxiliary power for working. In the absence of auxiliary power meter does not record energy; • Meter is panel mounting type; • Load survey interval is 15 minutes; • Demand integration period is 15 minutes with sliding window mechanism with 5 minutes subinterval period; • The meter records RKVAH as only lag in all quadrants; and • All the reading of meter is in kilo (KWH, KVARH, KVAH)
39.	October 20, 2015	Respondent No. 2 informed the Appellant that the new SEM is ready for installation and therefore requested arrangement of installation of this SEM at the site. Respondent No. 2 further stated that once the new SEM is installed existing SEM can be taken out and sent for re-programming.
40.	October 30, 2015	Respondent No. 2 made application for renewal of MTOA from FY 2016-17 to FY 2018-19 for 100% captive consumption.
41.	November 04, 2015	The Appellant rejected the applications for FY 2016-17 to FY 2018-19 stating SEM was not installed at the drawl point and all the requirements necessary for installations have not been complied with by Respondent No. 2.
42.	November 05, 2015	The SEM with 15 minutes integration time was tested and commissioned.

43.	November 06, 2015	Respondent No. 2 confirmed that the existing SEM at 220 KV switch yard of the Pimpri Pune plant is removed and replaced by new 3 feeder SEM as per approved specifications.
44.	November 07, 2015	Meeting held between Respondent No. 2 and the Appellant, Testing Division recording replacement of Secure make Apex Meter (SEM) at 220 KV Switchyard.
45.	November 09, 2015	Respondent No. 2 once again requested the Appellant to issue renewed OA permissions for 100% captive use of wind power generation in FY 2015-16 w.e.f. April 01, 2015 and submitted all confirmatory evidence of installation of new SEM and requested the Appellant to send the old SEM for reprogramming.
46.	November 18, 2015	Officials of Respondent No. 2 met the authorities of the Appellant to apprise them about the status of the SEM installed.
47.	November 19, 2015	The Appellant rejected MTOA application for FY 2016-17 to FY 2018-19 for self-use and purchase of wind energy from third party on the grounds that sourcing of power from multiple sources is not permissible under Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2014 ("**DOAR, 2014**") and SEM with required specifications is not yet installed at drawal point by Respondent No. 2.
48.	November 19, 2015	Respondent No. 2 once again requested the Appellant to issue OA permission for 100% captive use of wind power for self-use for FY 2015-16 w.e.f. April 01, 2015 as all evidence regarding installation of SEM's, report of

		installation of meter, photographs of new SEM's installed etc. had all been submitted.
49.	November 19, 2015	Internal correspondence to the testing department of the Appellant requesting inspection of old SEM after its reprogramming for ABT features.
50.	November 21, 2015	Chief Engineer, Testing Dept. requested the Executive Engineer (Testing) to be present at the works of M/s. Mehru, Bhiwadi, Rajasthan for testing / inspecting the CT of Respondent No. 2. Further, the report was to be submitted after joint inspection with MSETCL.
51.	December 08, 2015	Vide another letter, Respondent No. 2 sought OA permission for 100% captive use of wind power from FY 2016-17 to FY 2018-19.
52.	December 17, 2015	Respondent No. 2 re-submitted fresh application for MTOA for self-use for the period from April 01, 2016 to March 31, 2019.
53.	February 16, 2015	Internal Letter of the Appellant for requesting approval for proposed changes in SEM Technical Specification for OA at Pimpri.
54.	March 15, 2016	The Appellant directed (verbal) Respondent No. 2 to re-submit one-time processing fee to enable the Appellant to grant MTOA from June 01, 2016. The Appellant also directed Respondent No. 2 to submit application for STOA for April, 2016 and May, 2016 by paying one time processing fee.

55.	March 21, 2016	Approval of MTOA from November 5, 2015 to March 31, 2016.
56.	March 29, 2016	Despite follow up and compliance, the Appellant issued OA for FY 2015-16 only from November, 2015. So, Respondent No. 2 wrote to the Chairman and Managing Director of the Appellant regarding the non-issuance of OA permissions from April, 2015 to October, 2015.
57.	June 24, 2016	Respondent No. 2 filed Petition (Case No. 88 of 2016) before the State Commission inter alia praying for grant of OA from April, 2015 to October, 2015, issuance of credit notes to Respondent No. 2 for energy injected till date and refund of processing fees wrongly collected thrice from Respondent No.2.
58.	November 15, 2016	Reply filed by the Appellant in Case No. 88 of 2016 before the State Commission.
59.	November 18, 2016	Rejoinder filed by Respondent No. 2 in Case No. 88 of 2016 before the State Commission.
60.	December 18, 2017	The State Commission pronounced the Order in Case No. 88 of 2016 (" **MERC Order**") wherein it directed the Appellant to grant OA to Respondent No. 2 for captive use of its wind energy from April to October, 2015, and to issue the credit notes for the energy injected during this period for adjustment in the ensuing billing cycle, notwithstanding the fact that the metering configuration at that time was not in line with the CEA Regulations, 2006.

61.	February, 2018	The Appellant filed the present Appeal before this Hon'ble Tribunal challenging the MERC Order of the State Commission.

25. The primary issue is the correctness of MERC's decision to direct the Appellant to grant Tata Motors Limited Open Access for the period April to October 2015 and to issue energy credit notes notwithstanding that the Special Energy Meters (SEMs) installed at TML's premises were configured to record data in 30-minute time blocks whereas the DOAR 2014 and the Central Electricity Authority (CEA) Metering Regulations, 2006 prescribe a 15-minute time block configuration for metering.

26. **Undisputedly, the Appellant, MSEDCL, and MSETCL installed the TML's SEMs with Availability-Based Tariff (ABT) features in 2010-11 with a 30-minute time block configuration. These installations were tested and commissioned by MSEDCL, and OA permissions were granted for FY 2013-14 and FY 2014-15 with the existing metering setup.**

27. **It cannot be denied that the above installations were in non-compliance with the CEA Regulations, 2006.**

28. Internal communication within MSEDCL as early as July 2014 identified the non-compliance of TML's SEMs configuration with the 15-minute requirement. However, TML was formally informed only in January 2015.

29. TML applied for OA renewal for FY 2015-16 in November 2014. Upon becoming aware of the issue, TML repeatedly requested reprogramming of SEMs

and expressed willingness to bear the costs. Despite TML's cooperation, MSEDCL delayed reprogramming and renewal of OA for the disputed period.

30. MERC observed that both MSEDCL and MSETCL mishandled the issue by failing to coordinate and communicate effectively resulting in the delayed resolution and improper denial of OA to TML.

31. It is also seen that the reprogramming of SEMs was the function of the Appellant and MSETCL, and as such, any delay in such activity shall be the liability of the Appellant, and the TML cannot be penalized for the same.

32. Importantly, MERC noted that OA permission for TML was granted in earlier years with similar SEM configurations without objection from MSEDCL. Considering the above, MERC directed MSEDCL to grant OA for April-October 2015 and issue energy credit notes notwithstanding the meter configuration during that period.

33. We note that the explicit regulatory requirement for SEMs to record energy data in 15-minute time blocks aims to ensure accurate energy accounting for OA consumers and generators. Non-compliance with this specification can potentially compromise the integrity of energy audits and billing.

34. **However, the record establishes that TML installed SEMs compliant with prevailing regulations at the time (2005) and MSEDCL had granted OA previously on the basis of similar metering. The failure to recognize and act promptly on the non-compliance lies primarily with MSEDCL which delayed informing TML and delayed reprogramming the SEMs despite internal awareness**.

35. **TML consistently cooperated and offered to bear costs for reprogramming and replacement when required and sought to regularize compliance once informed.**

36. Regulation 44.3 of DOAR 2014 is as follows:

> *"44.3 Open access customers to the Distribution system in the State on the date of coming into force of these Regulations under an existing agreement / contract shall be entitled to continue to avail such access to the distribution system on the same terms and conditions, as stipulated under such existing agreement/contract. Such persons are eligible to avail Long-term Open Access or Medium-term access or Short-term Open Access under these Regulations on expiry of such existing agreement/contract. Provided that the wheeling charge, cross-subsidy surcharge, additional surcharge, stand-by charge and any other charge as determined by the Commission under this regulation would be applicable to all Open Access consumers."*

37. The provision under Regulation 44.3 of DOAR 2014 permits continuity of existing contracts and arrangements which supports MERC's decision to grant credit for energy injected despite technical non-compliance during the disputed period.

38. Accordingly, MERC's direction to grant OA and issue energy credits for April-October 2015 despite the SEMs being set to 30-minute intervals is justified. The relief balances the regulatory requirements with the facts of delay and mishandling

by MSEDCL. It prevents unwarranted penalization of TML for lapses attributable to the licensee and upholds the purpose of the regulatory framework.

39. **For all these reasons, this issue is decided in favor of affirming the impugned order on this point. MERC acted within its jurisdiction, considering both the letter and spirit of the regulations and the equities of the situation.**

> ***Issue No.2:*** *Whether under the DOA Regulations, 2014 SEMs must be actually programmed for 15-minute time blocks at the time of OA application/ installation, or it is sufficient that they are capable of such configuration, and who bears the responsibility for programming, inspection, reprogramming, and ensuring compliance- the Distribution Licensee or the OA consumer.*

40. Regulation 23.2 of DOAR 2014 is as follows:

> *"23.2 Special Energy Meters installed shall be capable of time-differentiated measurements for time- block-wise active energy and voltage differentiated measurement of reactive energy in accordance with the State Grid Code."*

41. The definition of time block as per Regulation 2.1 (mm) is as follows:

> *"(mm) "Time Block" means time block of 15-minute each for which special energy meters record specified electrical parameters and quantities with first time block starting at 00:00 hours."*

42. The regulation requires SEMs to have the technical capability but does not explicitly state that they must be actually programmed to record data in 15-minute slots at the time of installation or application.

43. Regulation 23.1 places the responsibility for the installation of SEMs on the Distribution Licensee at the cost of the consumer.

> *"23.1 In case of Open Access consumer and all generating stations irrespective of their capacity, Special Energy Meters shall be installed by the Distribution Licensee, for and at the cost of the consumer;*
> *Provided that such meters may be procured from the Distribution Licensee or from any supplier duly approved by the Distribution Licensee in accordance with specification made in compliance with Central Electricity Authority (Installation and Operation of Meters) Regulation, 2006 and its amendment from time to time.*
> *Provided also that the specification to be issued by the Distribution Licensee should be compatible with SLDC's requirement for energy accounting.*
> *Provided further that the Distribution Licensee should notify the particulars of at least two meter manufacturers from whom the consumers can purchase the Special Energy Meters that shall have provisions to meet billing requirements of Distribution Licensee."*

44. Regulation 23.4 requires the Distribution Licensee to conduct meter readings at least once every two months, suggesting ongoing responsibility for meter management.

"23.4 The Distribution Licensee shall be responsible for reading the consumer's meter at intervals of at least once in every two months:
Provided that the authorized representative of the Supplier shall be entitled to be present at the time of meter reading:
Provided further that the authorized representative of the Distribution Licensee shall be entitled to access the premises of the consumer for meter reading, inspection and testing at such times and in such manner as in the case of the Distribution Licensee's own consumers in accordance with the Act and the Electricity Supply Code."

45. Regulation 26.8 provides for credit adjustment for energy based on recorded 15-minute time blocks, underscoring the importance of accurate time-block recording for energy accounting.

"26.8 The Regulation 26 shall not be applicable in case an Open Access consumer arranges supply from Renewable Energy generating plant identified as 'Non –firm power' in the MERC (Terms and conditions for determination of RE Tariff) Regulations, 2010, as amended from time to time :
Provided that for sourcing 'Non –firm power' from a Renewable energy generator as defined in MERC (Terms and conditions for determination of RE Tariff) Regulations, 2010, as amended from time to time, the surplus power after set off with Open Access Consumer's consumption shall be purchased by the Distribution Licensee with following conditions :---
(1) Credit for energy injected should be provided strictly on the basis of 15 minute time block basis.

(2) The surplus energy after set off with Open Access Consumer's consumption in the same 15 minutes time block shall purchased by the Distribution Licensee at the approved Average Power Purchase Cost of the Distribution Licensee by the Commission for respective year :

Provided that the Distribution Licensee would be able to meet its Renewable Purchase Obligations through purchase of such surplus energy.

Explanation. --- for the purpose of these Regulations, 'Average Power Purchase Cost' means the weighted average price at which the Distribution Licensee has purchased the electricity including cost of self generation, if any, approved by the Commission in the Tariff Order or Truing Up Order or any other general or specific Order. In case of absence of any such Order, last approved 'Average Power Purchase Cost' shall be used for settlement purpose."

46. The Appellant contends that actual programming of SEMs at 15-minute intervals at installation time is mandatory, and since the Respondent's SEMs were configured for 30-minute time blocks initially, the Respondent was non-compliant.

47. **The Respondent (TML) argues that the SEMs installed were capable of being programmed for 15-minute intervals and that the responsibility for reprogramming, inspection, and ensuring compliance lies with the Distribution Licensee as per the requirement of the Regulations as quoted above. TML also asserts that it cooperated fully once informed of the issue.**

48. The wording of Regulation 23.2 indirectly specifies that SEMs must be capable of recording in 15-minute time blocks but does not expressly mandate that

the SEMs be programmed at 15-minute intervals immediately upon installation or OA application. The focus is on technical capability, allowing for programming or reprogramming as required.

49. The regulatory scheme read as a whole places significant responsibility on the Distribution Licensee for installation (Regulation 23.1), timely inspection and meter reading (Regulation 23.4), and compliance enforcement. This structure implies that while consumers must install SEMs at their cost, either procuring it from the distribution licensee or from the empaneled suppliers (Regulation 23.1), it is the Distribution Licensee's duty to ensure meters are properly programmed and functional for compliance.

50. Undoubtedly, the Respondent's SEM was procured and installed by the Distribution Licensee and was capable of 15-minute time block recording. The delay in actual programming or reprogramming to 15-minute intervals was due to the Distribution Licensee's failure to promptly test, inspect, communicate, and act on technical non-compliance. This is corroborated by internal MSEDCL communications and the timeline showing a delayed notice to the consumer.

51. Further, the purpose of the 15-minute time block requirement is to ensure accurate energy accounting and crediting under the regulatory framework. Penalizing the consumer when the licensee, responsible for programming and inspection, delays or fails to perform its duties would be inequitable.

52. Paragraph 9 of the Impugned Order dated 18.12.2017 is as follows:

> "***9. Being a leading industrial consumer with Contract Demand of 55.37 MVA and availing OA for a long time, TML ought to have***

been aware of the process and the technical and other requirements. Nevertheless, in the Commission's view, the sequence of events set out above shows that the entire matter was mishandled by MSETCL and MSEDCL, quite apart from belated responses by MSEDCL. In 2011, MSETCL and MSEDCL, respectively, had themselves procured the CTs and the Apex Meter. The configurations were also verified and the equipment tested and commissioned by MSEDCL. However, neither of them thought it necessary to consider the specifications prescribed in the CEA Metering Regulations as amended from time to time, resulting in the subsequent complications and delays brought out in these proceedings."

53. We note that the impugned MERC Order rightly recognized these aspects, observing that the entire matter was mishandled by MSEDCL/MSETCL and that the Respondent cooperated and agreed to bear costs for required reprogramming once notified.

54. **In view of the above, it is sufficient under DOAR 2014 that SEMs are technically capable of recording in 15-minute time blocks at installation or application. The actual programming and reprogramming to achieve 15-minute interval recording, as well as inspection and compliance assurance, are the responsibilities of the Distribution Licensee. The OA consumer must cooperate but cannot be held solely liable for failure in programming or compliance when the licensee delays or mishandles these duties. This interpretation aligns with the regulatory framework's intent and promotes fairness and operational efficiency.**

55. **Accordingly, this issue is decided in favor of the Respondent, TML, affirming the MERC's approach and ruling that MERC was justified in accepting that mere capability of the SEM to record 15-minute time blocks suffices at the time of installation/application and that programming, inspection, and compliance responsibilities lie with the Distribution Licensee.**

> ***Issue No.3:*** *Whether the delay in reprogramming/ replacing SEMs to meet the 15-minute time-block requirement and the resulting non-grant of OA during April-October 2015 was attributable to MSEDCL/MSETCL or to Tata Motors.*

56. The third issue relates to assigning responsibility for the delay in reprogramming or replacing the SEMs to comply with the 15-minute time-block recording requirement as stipulated under the DOAR 2014 and Central Electricity Authority (CEA) Metering Regulations, 2006, which ultimately resulted in the withholding of Open Access permissions to Tata Motors Limited for the period April to October 2015.

57. It is evident that Tata Motors procured and had installed Special Energy Meters with Availability-Based Tariff features as early as 2010-11 through the Licensee. These SEMs were commissioned by MSEDCL and MSETCL and were programmed to record in 30-minute time blocks rather than the 15-minute time blocks mandated by DOAR 2014, which came into force on 25.06.2014. For several years prior to this implementation, the SEMs and metering arrangement were accepted by MSEDCL, and OA permissions were granted for fiscal years 2013-14 and 2014-15 without objection to the metering configuration, even to the fact that it is not consistent with CEA Regulations.

58. Paragraph 5 of the Impugned Order dated 18.12.2017 is as follows:

"5. At the hearing held on 17 November, 2016, TML and MSEDCL reiterated their respective submissions.

(1) TML stated that

(i) TML is a Captive OA Consumer since 2008. On 15 November, 2014, TML submitted applications for renewal of OA permissions for the period from April, 2015 to March, 2016.

(ii) On 29 January, 2015, TML received an internal communication between the officers of MSEDCL in which it was stated that Load Survey data and Maximum Demand integration period were of 30 minutes.

(iii) Vide its letter dated 9 February, 2015, TML wrote to MSEDCL stating that the existing SEMs are in accordance with the DOA Regulations, 2005 and MSEDCL Circular No. 194, and that the SEMs have the option for reconfiguration to 15 minute time blocks. TML requested MSEDCL to accordingly reinstate the adjustment of wind energy credits in its monthly energy bills.

(iv) Vide letter dated 19 February, 2015, TML requested that reprogramming of the SEM from 30 minute time block to 15 minute time block should be done without stopping the wind power credits, and undertook to pay the charges.

(v) Vide letter dated 20 October, 2015, TML informed MSEDCL that it has procured 'Secure' make SEM with ABT features and 9 new 0.2S class CTs, and that testing of this meter at the lab of MSEDCL has been completed and the new SEM is ready for installation. Therefore, TML requested arrangement of installation of this SEM at the site.

(vi) On 30 October, 2015, TML applied for renewal of MTOA from FY 2016-17 to FY 2018-19 for 100% captive consumption. However, vide e-mail dated 4 November, 2015, MSEDCL rejected the applications stating that SEM was not installed at the drawal point and all the requirements necessary for installation have not been complied with.
(vii) Vide its letter dated 6 November , 2015, TML confirmed that the existing Summation Meter (SEM) at the 220 KV switchyard of its Pimpri, Pune Plant is removed and replaced by a new 3-feeder Summation Meter as per the approved specifications. TML also requested MSEDCL to send the old SEM for reprogramming."

59. Internal communications within MSEDCL, notably from July 2014 onward, recognized that the SEMs were configured with 30-minute integration periods and did not meet the 15-minute time block specification. However, this internal awareness was not contemporaneously communicated to TML, with formal notification occurring only on 29.01.2015. This delayed communication was a critical shortcoming on the part of MSEDCL because TML was operating on the assumption that its metering configuration complied with prevailing regulations, as it had been granted OA on this basis previously.

60. Once informed, TML promptly responded by seeking reprogramming of the SEMs to the 15-minute configuration and expressed willingness to bear the associated costs. Subsequent correspondence and meetings established TML's cooperation and proactive stance, including procurement of new SEMs and 0.2S class Current Transformers (CTs) by October 2015. Notwithstanding this, MSEDCL delayed the reprogramming and replacement process, which culminated in OA permissions being withheld for the relevant months in FY 2015-16 until November 2015.

61. We find that the delay in addressing SEM non-compliance was largely attributable to MSEDCL and MSETCL. Their failure to promptly communicate with TML about the metering defect from July 2014 to January 2015 led to the consumer being unable to take timely remedial action. Moreover, the delay in effectuating reprogramming and testing of meters despite TML's repeated requests and readiness evidences administrative inaction and lack of coordination within MSEDCL/MSETCL.

62. Furthermore, as already noted in the foregoing paragraphs, MSEDCL, by virtue of its role and express regulatory responsibility under DOAR 2014 (Regulations 23.1 and 23.4), bore the obligation to ensure installation, inspection, and commissioning of compliant meters. The internal records reveal a lack of due diligence by MSEDCL/MSETCL in concurrently aligning meter specifications with updated regulatory standards when initially installed or modified. This dereliction contributed decisively to the delayed compliance. The same is also noted and observed by the State Commission.

63. TML's conduct throughout was marked by cooperation and compliance to the extent possible given the delayed notice. There is no material to imply negligence or delay on TML's part in either responding to instructions or in procuring improved meters and accessories once the issue was brought to its attention.

64. Therefore, we uphold the MERC's observation that the entire matter was mishandled by MSEDCL and MSETCL rather than Tata Motors as reflected in the Impugned Order. MERC rightly noted that the deficiencies in metering arrangements originated with the Licensee's failure to consider evolving metering

regulations and to communicate deficiencies to the consumer proactively and timely. These lapses caused unwarranted withholding of OA and financial credits to TML.

65. **We are, therefore, satisfied that the delay in reprogramming and replacing SEMs to meet the 15-minute time-block requirement for the disputed period (April to October 2015) and the consequent denial of Open Access permissions cannot be attributed to Tata Motors Limited. Instead, the primary responsibility for the delay rests squarely with MSEDCL and MSETCL, who failed to discharge their rightful statutory and administrative duties in a timely and effective manner. Accordingly, we affirm MERC's findings and directions that MSEDCL was liable for the delay and that Tata Motors should not suffer for the Licensee's lapses.**

> ***Issue No.4:*** *Whether MERC's directions to allow energy credits despite non-compliant metering and ordering a refund of multiple OA processing fees were legally sustainable.*

66. The fourth issue concerns the MERC's directions allowing energy credit adjustments to Tata Motors Limited despite the non-conforming Special Energy Meter configuration and the ordering of a refund to TML of multiple OA processing fees collected by MSEDCL.

67. Regulation 44.3 of the DOAR 2014 provides a mechanism allowing existing agreements or arrangements entered before the commencement of these regulations to continue on their original terms until their expiry or renewal. TML's OA permissions for fiscal years 2013-14 and 2014-15 granted by MSEDCL were based on SEMs installed and commissioned before the effective date of the 2014

Regulations. These SEMs were configured with a 30-minute time block integration, not meeting the post-2014 mandate of 15-minute intervals.

68. Despite this technical non-compliance during the disputed period of April to October 2015, MERC, as noted in the foregoing paragraphs, acknowledged that TML had been granted OA in previous years with the same metering setup and noted that MSEDCL had neither challenged nor rectified the non-compliance earlier. The Commission found that MSEDCL's failure to properly communicate and coordinate meter reprogramming or replacement, combined with TML's cooperative conduct upon receiving notice, justified the application of the transitional provision to prevent penalizing TML unfairly.

69. On the point of energy crediting, MERC directed MSEDCL to issue credit notes for energy injected by TML during the disputed period, preventing loss of legitimate financial benefits accruing to TML from captive wind energy. This direction is consistent with the regulatory objective of enabling lawful recovery and adjustment of energy credits and ensuring that consumers are not prejudiced due to the licensee's administrative lapses.

70. Regarding the multiple OA processing fees, the record shows that MSEDCL collected such fees from TML more than once for overlapping or related Open Access applications spanning short-term and medium-term categories during 2015-2016. MERC noted that this collection was unjustified and ordered MSEDCL to refund the excess amount by adjusting it against TML's future energy bills, thus upholding principles of fairness and preventing arbitrary financial demands.

71. We find the MERC directions legally sustainable for the following reasons:

a) The transitional provision under Regulation 44.3 explicitly contemplates continuity of extant agreements and arrangements upon the introduction of new regulations, thereby safeguarding legitimate expectations and preventing abrupt contractual disruptions.
b) MERC's factual finding that MSEDCL's own delays and omissions caused TML's non-compliance during the disputed period justifies mitigating the strict technical non-compliance in the interest of equity and fair play.
c) The relief granted that is crediting energy injections and refunding excessive fees accords with regulatory principles to protect consumers against misuse of the Distribution Licensee's dominant position and administrative errors.
d) There is no provision in the DOA Regulations or the Electricity Act, 2003 that prohibits reliance on transitional provisions in appropriate cases or that mandates penalizing consumers for licensee failings where the consumer has acted in good faith.
e) The refund of OA processing fees avoids cumulative financial burden on the consumer and aligns with MERC's mandate to regulate distribution licensees fairly and transparently.

72. **Thus, MERC's directions to allow energy credits despite non-compliant metering and ordering a refund of multiple OA processing fees are both within its jurisdiction and legally sustainable. These directions protect the contractual rights and interests of Tata Motors against procedural lapses by MSEDCL, uphold regulatory fairness, and maintain the stability and predictability of OA arrangements. Therefore, we affirm this aspect of the Impugned Order.**

Conclusion

73. In view of the above, we are of the considered opinion that the Maharashtra Electricity Regulatory Commission, in passing the Impugned Order dated 18.12.2017, acted within its jurisdiction and in consonance with the letter and spirit of the MERC (Distribution Open Access) Regulations, 2014.

74. **On Issue No. 1,** it stands established that the grant of Open Access with energy credit adjustment for April-October 2015, despite the Special Energy Meters being configured to 30-minute time blocks, was justified in the peculiar factual matrix where the non-compliance was primarily due to the licensee's own lapses.

75. **On Issue No. 2,** it is held that the regulatory requirement is for SEMs to be capable of 15-minute recording with the actual programming, inspection, reprogramming and compliance obligations lying with the distribution licensee, the consumer's role being to cooperate and bear costs where applicable.

76. **On Issue No. 3,** the evidence and chronology of communications clearly attribute the delay in reprogramming/ replacing the SEMs and the consequential non-grant of OA to MSEDCL/MSETCL and not to Tata Motors Ltd., which took timely steps once informed.

77. **On Issue No. 4,** we find MERC's order to allow energy credits as well as its direction to refund multiple OA processing fees to be legally sustainable, equitable, and consistent with principles of fair consumer protection.

ORDER

For the foregoing reasons as stated above, we are of the considered view that the captioned Appeal No. 81 of 2018 does not have merit and is dismissed.

The Impugned Order dated 18.12.2017 passed by the Maharashtra Electricity Regulatory Commission in Case No. 88 of 2016 is affirmed.

The Captioned Appeal and pending IAs, if any, are disposed of in the above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 04th DAY OF SEPTEMBER, 2025.

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

REPORTABLE / ~~NON-REPORTABLE~~

pr/mkj/kks