

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

**APL No. 218 OF 2025 & IA No. 887 OF 2025 & IA No. 1040 OF 2025 &
IA No. 1037 OF 2025**

Dated: 31.10.2025

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

In the matter of:

BYRNIHAT INDUSTRIES ASSOCIATION,

Through its Law Officer,

Having its Registered Office at:

Upper Baliyan, Umtru Road, Byrnihat,
RiBhoi District, Meghalaya – 793101.

... **Appellant No.1**

PIONEER CARIDE PRIVATE LIMITED,

Through its Executive Director,

Upper Baliyan, Umtru Road, Byrnihat,
RiBhoi District, Meghalaya – 793101.

... **Appellant No.2**

MAITHAN ALLOYS LIMITED,

Through its Director Operations,

EPIP, Rajabagan, Byrnihat,
RiBhoi District, Meghalaya – 793101.

... **Appellant No.3**

VERSUS

1. MEGHALAYA STATE ELECTRICITY REGULATORY COMMISSION,

Through its Secretary,

1st Floor, Front Block Left Wingh

New Administrative Building, Lower Lachumiere,
Shillong, Meghalaya - 793001

... **Respondent No.1**

2. MEGHALAYA POWER DISTRIBUTION CORPORATION LIMITED,

Through its Chairman & Managing Director,

Lumjingshai, Short Round Road,
Shillong, Meghalaya- 793001.

... **Respondent No.2**

Counsel on record for the Appellant(s) : Suparna Srivastava
for App. 1

Suparna Srivastava
for App. 2

Suparna Srivastava
for App. 3

Counsel on record for the Respondent(s) : Tanishka Khatana
Shri Venkatesh
Shryeshth Ramesh Sharma
Ashutosh Kumar Srivastava
Suhael Buttan
Kanika Chugh
Akash Lamba
Nihal Bhardwaj
Priya Dhankar
Siddharth Nigotia
Abhishek Nangia
Mohit Mansharamani
Vineet Kumar
Kartikay Trivedi
Mohit Gupta
Manu Tiwari
Surbhi Kapoor
Indu Uttara
Kunal Veer Chopra
Shivam Kumar
Harsh Vardhan
Aashwyn Singh
Punyam Bhutani
Vedant Choudhary
Aniket Kanhaua
Nikunj Bhatnagar
Adarsh Singh
Tarang Saraogi
Ananya Dutta
Manav Bhatia
Drishti Rathi for Res. 1

Aditya K. Singh
Anukriti Jain
Vineet Gupta
Divyansh Singh
for Res. 2

Judgement

**(PER HON'BLE MRS. SEEMA GUPTA, TECHNICAL MEMBER,
ELECTRICITY)**

1. The instant appeal is preferred by the Appellant No.1- Byrnihat Industries Association on behalf of its members namely, Appellant Nos.2 and 3 herein (being Ferro alloys industries operating in the State of Meghalaya) challenging the Tariff Order dated 24.3.2025 passed by the State Commission (Respondent No.1) in Case No.09/2024 read with the Corrigendum Order dated 18.06.2025. The Appellant No.1 has been participating in tariff proceedings from time to time before the State Commission and placing its objections/suggestions in the interest of its member industrial units for rationalization of tariffs determined for the industrial consumers in the State. Respondent No.1 is the Electricity Regulatory Commission in the State of Meghalaya (hereinafter referred as **“MSERC/ State Commission”**) and Respondent No.2 is the Distribution company in the State of Meghalaya (hereinafter referred as **“MePDCL/State Discom”**)
2. The IA 887 of 2025 has been filed by Appellants seeking Stay of the Impugned Order to the extent it imposes the additional open Access charges on the Ferro alloys Industries as well as Stay of Invoices dated 09.05.2025 raised by Respondent No 2 upon Appellant No 2 & 3 levying Open Access Charges as per Impugned Order dated 24.03.2025 for the period from 01.04.2025 – 30.04.2025
3. The Corrigendum order dated 18.06.2025 to the Impugned Tariff Order dated 24.03.2025 was passed by the State Commission, specifying that industries connected at 132 kV and above (EHT level), including that

of Appellants, are not liable to pay Distribution Wheeling charges, however Cross Subsidy Surcharge (CSS) was recalculated and was levied including on Ferro alloy industries at EHT level, which was hitherto zero as per Impugned Order dated 24.03.2025. The IA No 1040 of 2025, has been filed by Appellants seeking stay of the Impugned Corrigendum order dated 18.06.2025 to the Impugned Order dated 24.03.2025 to the extent it levies cross subsidy surcharge @ Rs 1.02/ Kwh on Ferro alloys industries under category (≥ 132 kV) for FY 2025-26. IA No. 1037 of 2025 has been filed by Appellants to place on record the invoice raised by Respondent No 2 on Appellants 2 & 3, correspondence with State Commission related to Corrigendum Order dated 18.06.2025.

4. Learned Counsel for the Appellants submitted that vide Impugned Order dated 24.03.2025, State Commission had approved the revised net revenue gap/(surplus) for FY 2025-26 including true-up gap/surplus of the previous years, in which for determination of retail supply tariff for FY 2025-26, State Commission observed that there was lack of data regarding cost of supply at various voltage levels, and proceeded on the basis of average cost of supply for working out consumer category-wise cost of supply. Learned Counsel for the Appellants submitted that State Commission has also noted that Respondent No.2 had not proposed any increase in the existing tariffs through the Petition but had only prayed to allow the recovery of the Gap through uniform tariff hike across all categories. The State Commission determined the revision in rates of fixed charges and energy charges for various categories along with average tariff for FY 2025-26. For the Ferro alloys (HT &EHT) industries, the fixed demand charges were approved at Rs.500/kVA/month and the energy charges were approved at Rs.5.92/kWh (HT) and Rs.5.83/kWh (EHT); consequently, the total average tariff was approved at

Rs.7.06/kWh (HT) and Rs.6.95/kWh (EHT). Assessing the revenue at revised tariffs as Rs.1,666.55 Cr. for FY 2025-26, the Commission arrived at the net revenue gap/(surplus) including true-up revenue gap/(surplus) of the previous years as detailed below:

	Particulars	Amount (Rs./lakhs)
1.	Revised ARR approved for FY 2025-26	166512.47
2.	Revenue at Existing Tariff as approved in ARR for 2025-26	132532.19
3.	Revenue at Revised Tariff as proposed in ARR for 2025-26	166554.52
4.	Gap/ (Surplus) (w.r.t. revenue at existing tariff)	33980.28
5.	Gap /(Surplus) (w.r.t. revenue at Revised tariff)	-42.05

5. In the Impugned Order dated 24.03.2025, for Open Access Customers, CTU charges of Rs. 0.58/Kwh and additional surcharge of Rs. 1.35/Kwh & Rs. 1.38 Kwh was levied for HT and EHT Ferro Alloy category respectively as well as Distribution Wheeling Charges @ Rs 1.96/Kwh. Pursuant to the passing of the said Impugned Tariff Order and imposition of open access charges therein, Appellant Nos.2 and 3 have received invoices dated 09.05.2025 issued by Respondent No.2 as “provisional cross subsidy surcharge bill, additional surcharge bill, distribution wheeling charges and CTU charges bill” for the period from 01.04.2025 to 30.04.2025, with the due date for payment thereof being 23.05.2025. Subsequently, Appellant Nos.2 and 3 have received invoices dated 06.06.2025 issued by Respondent No.2 as “provisional cross subsidy surcharge bill, additional surcharge bill, distribution wheeling charges bill, CTU charges bill” for the period from 01.05.2025 to 31.05.2025, with the due date of payment thereof being 21.06.2025.

6. Learned counsel for the Appellant submitted that the invoices dated 9.5.2025 for open access charges levied on Appellant Nos.2 and 3 have

since then been discharged under protest with intimation to Respondent No.2 vide email/letter dated 31.05.2025; however, owing to financial constraints, the invoices dated 06.06.2025 have remained undischarged by Appellant No.2. Vide letters dated 17.06.2025 and 19.06.2025, Appellant Nos.2 and 3 have requested Respondent No.2 for grant of No Objection Certificate for availing Open Access for the period from 01.07.2025, however, no such open access has yet been granted to Appellant No.2.

7. Subsequently, State Commission has issued the Impugned Corrigendum Order dated 18.06.2025 to the impugned Tariff Order dated 24.03.2025, which has levied Cross Subsidy surcharge. Learned Counsel for the Appellants further submitted that imposition of such high Open Access charges/ and other charges has seriously jeopardised the economic viability of such industries who by very nature of their operations are highly energy intensive where electricity constitute about 60 % of production cost and industries are getting shut. Being aggrieved with the finding in the impugned Tariff Order dated 24.03.2025 and Corrigendum order dated 18.06.2025, the Appellants, being Ferro alloys industries in the State, have filed the present Appeal and also sought Interim Stay of the Orders.

8. During the hearing of IAs by this Tribunal, elaborate submissions were made by Ms Suparna Srivastava, learned Counsel for the Appellants, Mr Shri Venkatesh, learned counsel for the State Commission and Mr Aditya K. Singh, learned counsel for the Respondent No 2. Learned counsel for the Appellants submitted that this Tribunal may, if consider necessary to pass final Orders on the issue of Open Access Charges including Cross Subsidy Surcharge (CSS), additional surcharge

and CTUIL charges, granting the Appellants liberty to file a separate appeal on other issues raised in this Appeal. Considering these submissions, deliberation is limited to the levy of Open Access Charges i.e. CSS, Additional Charges and CTUIL Charges on the Appellants.

Analysis and Discussion

Issue No 1: Levy of Cross Subsidy Surcharge

Appellants Submission

9. Learned counsel asserted that the cross-subsidy surcharge was initially computed under the Impugned Tariff Order dated 24.03.2025 by correctly applying the prescribed formula, as done in previous years, resulting in “nil” levy on the Appellants. However, under the Impugned Corrigendum order, State Commission modified the application of the formula, resulting in a levy of Rs.1.02/kWh as Cross Subsidy Charge, which is prima facie erroneous for the following reasons:

- i) The *suo-motu* powers under Regulation 22.2 of the MYT Regulations, 2014 are confined to rectification of clerical or apparent errors, whereas any modification in the exercise of review powers requires adherence to the procedure of public hearing and stakeholder consultation, which was not followed, as held in **“Damodar Valley Corporation v. Jharkhand Electricity Regulatory Commission & Anr.”**, Judgment dated 5.8.2024, Appeal No.80/2024;
- ii) MSERC has adopted a questionable and opaque approach, modifying the Tariff Order in violation of the Provisions of regulation 21 and 22 of the Conduct of Business Regulations, which mandate the State Commission to *“initiate the process of review of tariff”* only upon satisfaction of its necessity as noted in **“Tata Motors Ltd. v.**

Maharashtra Electricity Regulatory Commission”, Judgment dated 22.8.2014, Appeal No.295/2013;

- iii) the levy of cross-subsidy surcharge is mandatory upon an Open Access consumer in Law, however, it must reflect the current level of cross-subsidy for the relevant consumer category, which requires knowledge of the category-wise cost of supply. The State Commission has itself acknowledged that no such category-wise cost of supply was furnished by MePDCL-Respondent No.2, and prior to imposing any surcharge, it ought to have directed MePDCL to provide the category-wise cost of supply for open access consumers in its area of supply which would have enabled it to determine the current levels of cross-subsidy in the State and only thereafter, ought to have proposed the cross-subsidy surcharge on the Ferro alloys (EHT) consumers after inviting suggestions/objections from them on the same, as also held in ***“Maruti Suzuki India Ltd. v. Haryana Electricity Regulatory Commission”***, 2015 SCO Online APTEL 127; ***“PSPCL v. Punjab State Electricity Regulatory Commission”***, 2015 7 SCO 387. Consequently, the Cross Subsidy surcharge under the Corrigendum Order is *ad hoc* and based on incomplete data.

10. It is further submitted that in the MePDCL’s Revised ARR for FY 2025-26, no cross-subsidy surcharge for Ferro alloy industries at the EHT level was projected. Notwithstanding this, the Impugned Corrigendum Order purports to “correct” the computation by deducting distribution wheeling charges from the formula, which is impermissible, as the term ‘D’ in the formula is explicitly defined to comprise the aggregate of transmission and wheeling charges. Without undertaking any proper determination of the surcharge actually payable by Ferro alloy industries

at 132 kV and above, the State Commission has “*determined*” the amount of surcharge such industries are required to pay to meet the current levels of cross subsidy in the State.

Submissions by Respondent No 1- State Commission

11. Learned Counsel submitted that the Corrigendum Order does not occasion any violation of principles of natural justice. By way of the Corrigendum, MSERC has neither altered nor modified the methodology for computation of Cross Subsidy Surcharge (“CSS”); it has merely recalculated the CSS, applying the very same formula and methodology already adopted in the original order, resulting in a CSS of Rs. 1.02/kWh in terms of the National Tariff Policy with all components already present and known in the Original Tariff order. The Corrigendum Order only rectifies an inadvertent error in the Impugned Tariff Order, wherein wheeling charges had been wrongly included in the value “D” (i.e., the aggregate of transmission, distribution and wheeling charges applicable to the relevant voltage level), which had led to a CSS of Rs. 1.20/kWh for EHT consumers. Such rectification does not amount to any change in methodology. Further, it is well settled that the determination of CSS is a distinct exercise from tariff determination. CSS may be determined simultaneously with the tariff order or separately and independently, and the State Commissions are vested with the authority both to determine CSS and to incorporate it within tariff design, and placed reliance upon the judgment of the Supreme Court in “**JVVNL & Ors. v. Rajasthan Textile Mills Association & Ors.,**” 2025 SCC OnLine SC 976. Moreover, MSERC has not reviewed its Tariff Order on the basis of Dalmia Cement’s letter; rather, the review was undertaken *suo motu*, and Dalmia Cement’s letter was not a review petition. It is further submitted that in

terms of Regulation 103.1 of MYT Regulations, 2014, as noted below the MSERC can determine tariff in terms of average cost of supply.

103.1 "Cross-subsidy for a consumer category" in the first phase (as defined below) means the difference between the average tariff from that category and the combined average cost of supply per unit. In the second phase (as defined below) means the difference between the average tariff from that category and the combined per unit cost of supply for that category."

12. Contrary to the Appellant's submissions, the formula in NTP, 2016 merely states that *"T is the tariff payable by the relevant category of consumers, including reflecting the Renewable Purchase Obligation"*. As such, the component 'T' has been rightly calculated.

13. The Appellant has also wrongly argued that wheeling charges should be removed from component 'T' as well, if they are removed from component 'D'. However, 'T' represents the tariff payable by the relevant category of consumers when purchasing power from Respondent No.2, and therefore necessarily includes wheeling charges. If distribution wheeling charges were excluded, it would result in stranded fixed costs for Respondent No.2, which would ultimately have to be subsidized by other consumers during the true-up exercise. Accordingly, MSERC is well within its powers to determine CSS on the basis of the average cost of supply for working out consumer category-wise cost of supply.

Respondent No 2 Submissions

14. Learned counsel submitted that the Cross Subsidy Surcharge (CSS) was being calculated for every category of consumer in the Order

in terms of the National Tariff Policy and has not been challenged by the Appellant. For determination of CSS, computation of the following components is mandatory: (a) tariff payable by the relevant category of consumers, (b) weighted average cost of power purchase, (c) aggregate of transmission, distribution and wheeling charges applicable to the relevant voltage category, (d) aggregate of transmission, distribution and commercial losses expressed as a percentage applicable to the relevant voltage category, and (e) regulatory asset. It is not in dispute that all the aforementioned charges were determined in the Order and are not the subject matter of the Appeal, except demand charge; therefore, if State Commission was correct in removing distribution wheeling charges without hearing MePDCL, then rectification of the arithmetical mistake by removing distribution wheeling charges was only a consequential act.

15. It is further contended that the Corrigendum Order dated 18.06.2025 was passed, which has also been challenged herein, without making any consumer a party to the Appeal (including the one which had filed an application), and in the revised Appeal also, the Appellant did not challenge the tariff imposition on the ground that the relevant voltage level cost of supply had not been determined; in such absence, the average cost of supply can be considered for determining the cross-subsidy level as held in the judgement of this Tribunal in “**Maruti Suzuki India Limited v. HERC**”, Appeal No. 103 of 2012. The Appellant, in its pleadings, has not pointed out any error in computation and has merely contended that it was required to be heard before passing the Corrigendum, whereas the Corrigendum has only corrected an arithmetical error, the non-correction of arithmetical error would have caused prejudice to MePDCL. It is further submitted that the Appellant is relying on review provisions while ignoring the second part of Regulation 22 of the MSERC Tariff Regulations 2014,

which does not require initiation of the review process for correction of clerical errors. Even assuming, without conceding, that notice was required, the Conduct of Business Regulations mandate notice only to parties to the proceedings and not to objectors; therefore, if notice to all affected parties were indeed necessary, then this Appeal itself would fail on the ground of maintainability, as it has been filed without impleading any other consumers or objectors as parties.

16. Learned counsel further submitted that the Corrigendum Order issued by Respondent No. 1 was in due exercise of the powers vested in it under Section 152 of the Code of Civil Procedure, 1908, which empowers a court to amend judgments, decrees or orders to rectify errors arising from accidental slips or omissions, either on the application of a party or *suo motu*. In the present case, the correction made by Respondent No. 1 to Table No. 60 of the Impugned Order was confined to rectification of clerical and arithmetical errors. Reliance in this regard is placed on the Order dated 27.01.2025 passed by this Tribunal in EP No. 09 of 2024, ***M/s Aditya Industries (Partnership Firm) v. Himachal Pradesh State Electricity Board Limited*** “.

17. It is further submitted that the Appellant has erroneously relied on Table No. 46 to contend that wheeling charges have been recovered under “T,” which is a factually incorrect submission, as Table No. 46 merely records those expenses which Respondent No.2 is obliged to bear in the discharge of its power supply obligations. Consequently, even if this Tribunal were to consider that the Appellant has not been heard, the filing of this Appeal would amount to an empty formality, as the Appellant has failed to demonstrate any grounds warranting interference, and made reference to Judgment dated 23.02.2007 passed by the Hon’ble Supreme

Court in CA No. 4761 of 2006, “**Ashok Kumar Sonkar v. Union of India & Ors**”.

Consideration & Our View:-

18. The learned Counsel for the Appellants has contended that Cross Subsidy Surcharge (CSS) has been levied by the Corrigendum Order dated 18.06.2025, by modifying the Original Tariff Order dated 24.03.2025 using its *suo-moto* power under Regulation 22.2 of the MYT Regulations which is erroneous in law, as the said provision is only for rectification of clerical mistake; and while passing the Corrigendum Order there was no public hearing and stake-holders comments were not even invited. There is no dispute that levy of Cross Subsidy Surcharge is mandatory upon the Open Access consumers in law, however Appellant has also contended that it is required to be calculated to meet the current level of cross subsidy from that category of consumers and State Commission in spite of its observation in the Impugned Order found that no such category wise cost of supply has been provided by the 2nd Respondent, State Commission has worked out the Cross Subsidy Surcharge on Ferro alloys consumers based on average cost of supply. *Per Contra*, learned counsel for the State Commission and State Discom has contended that there has been no violation of the principles of natural justice in issuance of the Corrigendum Order, as State Commission has not altered or modified the methodology on computation of Cross Subsidy Surcharge rather it has re-calculated strictly applying the formula/methodology which was already adopted in the Original Tariff Order; the State Commission has reviewed its tariff order exercising its *suo-moto* powers in accordance with law and the Cross Subsidy Surcharge has been determined in terms of NTP 2016 and the relevant Regulations. The Learned Counsel for the 2nd

Respondent has also contended that even if it is concluded by this Tribunal that the Appellants were not heard while passing the Corrigendum Order, remanding this Appeal will be empty formality as, by the Corrigendum Order, the formula has been rightly implemented.

19. In the above context, it is important to note the provisions of the National Tariff Policy dated 28.1.2016 with regard to Cross Subsidy Surcharge (CSS), which is reproduced below:

“8.5 Cross-subsidy surcharge and additional surcharge for open access

8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access.

A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. A consumer would avail of open access only if the payment of all the charges leads to a benefit to him. While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers.

SERCs may calculate the cost of supply of electricity by the distribution licensee to consumers of the applicable class as aggregate of (a) per unit weighted average cost of power purchase including meeting the Renewable Purchase Obligation; (b) transmission and distribution losses applicable to the relevant voltage level and commercial losses allowed by the SERC; (c) transmission, distribution and wheeling charges up to the relevant voltage level; and (d) per unit cost of carrying regulatory assets, if applicable.

Surcharge formula:

$$S = T - [C / (1 - 1/100) + D + R]$$

Where

S is the surcharge

T is the tariff payable by the relevant category of consumers, including reflecting the Renewable Purchase Obligation

C is the per unit weighted average cost of power purchase by the Licensee, including meeting the Renewable Purchase Obligation

D is the aggregate of transmission, distribution and wheeling charge applicable to the relevant voltage level

L is the aggregate of transmission, distribution and commercial losses, expressed as a percentage applicable to the relevant voltage level

R is the per unit cost of carrying regulatory assets.

Above formula may not work for all distribution licensees, particularly for those having power deficit, the State Regulatory Commissions, while keeping the overall objectives of the Electricity Act in view, may review and vary the same taking into consideration the different circumstances prevailing in the area of distribution”

20. The same formula, as above has been used for calculation of Cross Subsidy Surcharge in the Impugned Order and the Cross Subsidy Surcharge for the Ferro alloys in the impugned order dated 24.03.2025 was worked out as (–) Rs.0.92 per KWh for at HT level and (–) Rs.0.94 per KWh at EHT level for the FY 2025-26. In the said Order under ‘D’ both transmission and distribution charges were considered and vide Corrigendum order dated 18.06.2025, the State Commission noted that distribution wheeling charges are not applicable for industries connected at 132 KV level, and accordingly by considering removal of the distribution wheeling charges from “D’ in the above formula, the Cross Subsidy Surcharge for Ferro alloys industries for FY 2025-26 was worked out as Rs.1.02 / Kwh at EHT level (132kV and above). Such a revision in CSS has been conducted *suo-moto* by the State Commission, without consulting stakeholders which has been contended to be in violation of

the principles of natural justice, by Appellants. On the other hand Respondents have contended it to be correction of clerical mistake for which provisions for review of the Order are of not applicable.

21. The provision available under **Meghalaya State Electricity Regulatory Commission (conduct of business Regulation 2007)** for review of the decision and orders of the Commission are noted as under:

“21. Review of the decisions and orders of the Commission

(1) A person aggrieved by a decision or order of the Commission from which no appeal is preferred, or is not allowed to be preferred, can seek a review of the order if new and important facts which, after the exercise of due diligence, were not within his knowledge or could not be produced by him at the time when the order was passed or on account of some mistake or error apparent on the face of record or for any other sufficient reason, by making an application within 60 days of the date of the order.

(2) The procedure for filing a review application shall be the same as in case of filing of a petition.

22. Proceedings to be open to the public generally.

Proceedings before the Commission shall generally be open to the public:

Provided that the Commission may, in any particular case and for reasons to be recorded in writing, direct at any stage of the proceeding that the public in general or any person or group of persons in particular shall not be present while the proceeding is being conducted.”

Provisions available under MSERC (MYT) Regulations 2014

“22 Review of Tariff Order

22.1 All applications for the review of tariff shall be in the form of petition accompanied by the prescribed fee. A petition for review of tariff can be admitted by the Commission under the following conditions: a) the review petition is filed within sixty days for the date of the tariff order, and / or b) there is an error apparent on the face of the record.

22.2 On being satisfied that there is a need to review the tariff of any generating company or the licensee, the Commission may on its own initiate process of review of the tariff of any generating company or the licensee. The Commission may also, in its own motion review any tariff order to correct any clerical error or any error apparent of the face of the record.”

22. We also take note that under Section 152 of the Code of Civil Procedure, 1908, a court is empowered to amend any judgments, decrees, or orders to rectify errors arising from accidental slips or omissions, either on the application of a party or *suo motu*.

23. Thus, as per MSERC (MYT) Regulations, 2014 and Code of Civil Procedure, State Commission/Court can amend the judgement on account of accidental slip or clerical mistake *suo-moto*, however, any modification beyond such rectification would fall within the ambit of the MSERC (conduct of business) Regulations, 2007 and MSERC (MYT) Regulations, 2014. So the basic question, which need deliberation is whether the modifications carried out by way of Corrigendum order are for rectification of clerical or accidental errors.

24. We take note that in the tariff orders of the preceding years, though the distribution wheeling charges were not made applicable to the Ferro alloys industries connected at 132 KV level and above, yet in the computation of Cross Subsidy Surcharge (using the same formula as used in Original Tariff Order for FY 2025-26), in the value of 'D', distribution wheeling charges were included and same approach was followed in the Original Tariff Order dated 24.03.2025. The Appellants were aggrieved by separate application of Distribution Wheeling Charges upon them, and have accordingly raised this issue in the Original Appeal.

In the meantime, subsequent to receipt of a letter dated 12.05.2025 from Dalmia Cement Bharat Limited, and after due diligence as stated in the Corrigendum Order, the State Commission, in accordance with the provisions under Section 22.2 of the MSERC (MYT) Regulations, 2014 issued Corrigendum Order, and noted that since consumers connected at 132 kV and above are not using distribution system, and hence, Distribution Wheeling Charges are not payable by this category of consumers while availing Open Access and Appellants excluded this issue from the amended Appeal. However, Appellants are aggrieved by the issue of levy of CSS through the Corrigendum Order, altering the methodology used for calculation of 'D' in the CSS formula from original Tariff Order as well as in the tariff orders of the previous years..

25. We are of the view that had the Corrigendum Order been limited to only non-application of Distribution Wheeling Charges to Open Access Customers connected at 132 kV and above, it can be construed as rectification of clerical error by the State Commission in exercise of its *suo moto* powers. However, in the present case, the Distribution Wheeling Charges has been removed from the calculation of 'D', which resulted in levy of CSS upon the Appellants, which were hitherto calculated as zero in the Original Tariff Order. As noted above, Appellants have also stressed that in previous years also, no Distribution Wheeling Charges were levied on 132 KV and above open Access Consumer, yet such charges were included in the computation of the parameter "D", distribution wheeling charges were included and CSS worked out accordingly. Thus, in our view, such an exclusion of distribution wheeling charges from the value of 'D' in the corrigendum order, more so when it is also a deviation from the methodology followed in previous years tariff, it cannot be construed as a simple rectification of clerical error for the

applicability of provisions available under Section 152 of the Code of Civil Procedure, 1908 and MSERC (MYT) Regulations, 2014. Change in the methodology in calculation of “D” by excluding the distribution wheeling charges from ‘D’ used in the Cross Subsidy Surcharge formula already used in Original Tariff Order as well in previous year’s tariff order, would tantamount to review of the Original Tariff order dated 24.3.2025 for which the State Commission ought to have applied the provisions available under MSERC (MYT) Regulations, 2014 and MSERC (conduct of business) Regulations, 2007 for review of any orders.

26. It is not in dispute that Appellants were neither afforded an opportunity of hearing nor was any public hearing conducted prior to the determination of the CSS, which was computed using the same formula as used in Original Tariff Order, albeit with change in methodology in calculation of “D” in the formula from that followed in previous years tariff order.

27. In this regard, reliance has been placed by Respondent No. 2 on the judgement of this Tribunal in **Aditya Industries v Himachal Pradesh State Electricity Board** (Execution Petition No. 9 of 2024 dated 27.01.2025), wherein it has been held that *“power under section 152 CPC inheres in the Court, which passed the judgement to correct clerical mistakes or an error arising from an accidental slip or omission, and to vary its judgement so as to give effect to its meaning and intention”*. However, in our view, the said judgement is of no avail to the Respondents, as in the present case it is not just the correction of clerical mistake but changing the methodology of calculation of ‘D’ in the CSS formula from the original Order as well as from that followed in previous years tariff orders, without any explanation provided in the Corrigendum

order and without affording due consultation or opportunity of hearing to the stakeholders.

28. There can be no cavil with the proposition that the principle of *audi alteram partem* is one of the basic principle of natural justice which means no one should be condemned unheard. In view of modifications carried out through the Corrigendum Order, which resulted in levy of CSS, this principle should have been followed by the State Commission. We do not find merit in the submissions of the Respondent Discom that remanding the matter to the State Commission would be an empty formality as Corrigendum Order has correctly applied the CSS formula and relied upon the judgment of the Supreme Court dated 23.02.2007 in **Ashok Kumar Vs UOI & Ors.** What remain unexplained in the Corrigendum order is the reasons for exclusion of Distribution Wheeling charges from the value the 'D' in CSS formula, which has been consistently included in the previous year tariff order and in the Original Tariff Order. We are of the view that *suo moto* powers available to the State Commission under MSERC (MYT) Regulations, 2014 are confined only for rectification of clerical mistakes or error apparent on the face of the record, and not when the Original order is modified on other account, like change in methodology of calculation of 'D' in the formula etc.

29. In view of above observations and in the interest of justice, there shall be stay on the levy of Cross Subsidy Surcharge on the Appellants in terms of the Corrigendum Order dated 18.06.2025. Learned Counsel appearing on both sides have raised several other contentions with regard to issues involved for levy of Cross Subsidy surcharge and as we intend remanding the matter relating to the determination of Cross Subsidy Surcharge on Ferro Alloy Consumers to State Commission, it is open to

the parties to raise all such contentions before the State Commission. The State Commission shall provide reasonable opportunity of hearing to both the parties to put forth their contentions and after considering the issues involved pass orders afresh in accordance with Law.

Issue No 2: Levy of Additional surcharge

Appellants Submission

30. Learned counsel submitted that the imposition of additional surcharge is prima facie erroneous for various reasons: the fundamental statutory/regulatory requirement for MePDCL is to conclusively demonstrate with necessary data that its obligation to supply in terms of its existing power purchase commitments has been and continues to be stranded (Judgment of this Tribunal dated 28.8.2025 in Appeal No.282/2016, paras 18-26 in ***“M/s Lord Chloro Alkali Ltd. Vs. Rajasthan Electricity Regulatory Commission & Ors.,”***) Further, with its reasoning that if a substantial number of HT/EHT consumers opt for open access then Respondent No2 would face a revenue shortfall impacting its ability to meet fixed cost obligations, the MSERC is placing legally impermissible fetters upon such consumers statutory right to avail non-discriminatory open access; it is also wrongly assumed, on mere conjecture, that the open access consumers are not paying the fixed charges to MePDCL and are thereby burdening the other consumers in the State with a resultant tariff hike; this assumption has not been tested even though all open access data has been made available in the true-up proceedings for FY 2023-24 and despite the MSERC itself recording in the said Order that surplus power for MePDCL has generated due to its own faulty power purchase planning, which consideration has nevertheless been ignored under the impugned tariff exercise;

additionally, the imposition of additional surcharge of Rs.1.38/kWh (EHT) is in violation of clause 8.5.1 of the Tariff Policy which mandates that levy of additional surcharge ought not to be so onerous as to discourage or eliminate competition; and as Respondent No2's own case, surplus power is available due to rains in the monsoon season, since hydro projects being must-run projects cannot be backed down to avoid spillage, and as consumer demand naturally cannot match the increased generation, the resultant surplus energy generated during the monsoon has been sold on IEX with a total sale realization of Rs.209.66

31. It is also submitted that there is no case of under-recovery established by MePDCL-Respondent No2, while in fact it has earned profits from surplus power sale. In its Tariff Petition, MePDCL-Respondent No2 admitted that in FY 2023-24 it sold 209.66 MUs of surplus power, of which 131.81 MUs were sold on the Power Exchange at Rs.9.33/kWh, against a net power purchase cost of Rs.5.45/kWh and highest cost of Rs.6.06/kWh. Under the impugned Tariff Order, the Commission approved total power purchase cost of Rs.1666.75 Crore in the ARR for FY 2025-26 i.e., Rs.5.28/Kwh, with weighted average power purchase cost taken as Rs.4.45/Kwh, while also approving revenue of Rs.690.06 Crore from surplus sale at Rs.8.19/kWh, thereby negating any premise that surplus power is being disposed at lower rates on account of open access consumers.

32. The methodology adopted by the MERC in computing the additional surcharge is ex facie erroneous. The settled legal position is that additional surcharge may be levied only to the extent of unrecovered *stranded* fixed cost arising from a consumer availing open access. Instead, the Commission has considered the total power purchase cost of

Rs.1403.91 Crore without bifurcation of fixed and variable components. Of this, Rs.441.87 Crore relates to thermal and short-term procurement, while the balance Rs.962.04 Crore includes hydro cost of Rs.683.03 Crore plus fixed cost of Rs.280.02 Crore of thermal stations. The State Commission has treated this entire amount as fixed cost (and not the 'stranded' fixed cost) and is apportioned as the fixed cost liability of MePDCL-Respondent No.2 to be met through levy of additional surcharge notwithstanding that demand charges in any case are levied on open access consumers

33. Additionally, the consideration of must-run hydro projects for computation of stranded fixed cost of MePDCL-Respondent No.2 is patently misconceived, as such projects are required to be excluded from the said computation. Any excess generation from hydro stations is treated as sale by MePDCL-Respondent No.2, and any resultant loss stands duly recoverable in the ARR true-up process. Section 42(4) of the Electricity Act circumscribes the levy of additional surcharge to the "*fixed cost arising from obligation to supply*" that becomes unrecoverable, whereas the cost of hydro stations is neither avoidable nor reducible on account of open access and therefore cannot be regarded as "stranded." This specific contention, urged before the MERC, has not been addressed. Without prejudice, even assuming hydro costs to be included, the MSERC has erred in treating the entire hydro cost as fixed cost, notwithstanding the mandate of Regulation 57 that hydro tariff is to be apportioned equally between fixed charges and energy charges. In fact, the Commission itself, in its Order dated 22.03.2025 in Case No. 7/2024 while determining tariff for the Meghalaya Power Generating Company Ltd. (MePGCL), comprising only hydro stations, applied the said

Regulation and categorically held that capacity charges constitute only 50% of the total annual cost.

Respondent No 1: State Commission Submissions

34. Learned counsel submitted that in its Impugned Order, State Commission has observed that a significant portion of Respondent No.2 sales is attributable to HT and EHT consumers, including Ferro alloys consumers. As per Table 15 of the Impugned Order, out of the total projected energy sales of 1963.45 MU, 473.69 MU is attributable to HT category and 821.76 MU to EHT consumers, meaning that around 65.97% of sales is projected to be from HT and EHT consumers, including Ferro alloys consumers.

35. It is thus clear that if HT and EHT consumers use open access, it shall lead to under recovery of fixed charges for MePDCL. Such under-recovery shall then be recovered from all consumers subsequently, including HT and EHT consumers during true up. The Impugned Order further notes that open access consumers procure power from the market when prices are lower but continue to rely on Respondent No.2's network during peak hours when market rates are higher, without contributing proportionately to the fixed costs embedded in energy charges. This causes the shifting of financial burden to non-open access consumers, thereby leading to an increase in tariffs. The State Commission also clarified that recovery of fixed costs is partly effected through demand charges and partly through energy charges, as recovering the entire fixed cost through demand charges would render demand charges excessively high.

36. It is submitted that the revenue realized by Respondent No.2 from the sale of surplus power on the exchange has been duly passed on to all consumers, including Ferro alloy industries. Moreover, the statement of the Appellant that Respondent No.2 is selling power at profit is not correct as the Appellant has compared the sale cost with the power purchase cost only. The correct methodology is to benchmark such sale price against the average cost of supply, i.e., the Total ARR divided by the projected sales, which for FY 2025-26 has been determined at Rs. 8.48/Kwh. For the purpose of determining the Additional Surcharge, MSERC has adopted the following methodology, first determined the per unit energy cost for FY 2025-26 and bifurcated the power purchase cost at the DISCOM periphery into fixed and energy cost; thereafter, the revenue realized from surplus power sale was determined and duly adjusted, following which the adjusted fixed and energy cost, considering power purchase from different sources and surplus sale, was arrived at; and on this basis, taking into account the demand charges payable and the adjusted fixed cost of power, the category-wise Additional Surcharge was determined. The levy of Additional Surcharge has thus been confined strictly to the extent of unrecovered fixed costs embedded in the energy charge and has not been imposed on surplus energy.

37. Further, regarding the Appellant's contention that the entire fixed cost of hydro has been considered for determination of Additional Surcharge and, therefore, the levy is erroneous is false and incorrect. In terms of Regulation 57 of the MYT Regulations, 2014, the energy charge computation of hydro generating station does not depend on the actual generation but rather it is derived on the basis of design energy, Free Electricity and Auxiliary consumption. Since, all these are fixed in nature it cannot be considered as variable cost.

38. Even if energy is not available due to hydrology, the DISCOM remains liable to pay the full fixed charge to the generating company irrespective of actual generation. Accordingly, State Commission has correctly taken fixed costs into account in line with its regulations. In this context, it is also evident that the Appellant has wrongly relied on Order dated 22.03.2025 in Case No. 07/2024 passed in respect of Meghalaya Power Generating Company Limited (“MePGCL”). Levy of Additional Surcharge under the Impugned Order is lawful and justified, being confined solely to stranded fixed costs and expressly excluding surplus power, thereby ensuring conformity with Section 42(4) of the Electricity Act, Clause 8.5 of the National Tariff Policy, 2016, and Regulation 25 of the MSERC Open Access Regulations, 2012.

Respondent No.2 Submissions

39. Learned counsel submitted that the Additional Surcharge has been determined strictly in terms of the applicable legal framework, namely Section 42(4) of the Electricity Act, Section 8.5 of the National Tariff Policy, 2016, and Section 5.8.3 of the National Electricity Policy, which expressly empower the Regulatory Commission to levy an additional surcharge to recover fixed costs otherwise left unrecovered by the licensee. In furtherance thereof, Regulation 25 of the MSERC Open Access Regulations provides that the Commission may impose an additional surcharge where fixed costs are not being recovered, prescribing two alternative tests, both of which contemplate recovery only of such stranded fixed obligations (generation and transmission) as remain unrecovered; reliance in this regard is placed on the judgment of

the Supreme Court in “***The Star Co. Ltd. v. Commissioner of Income Tax (1970) 3 SCC 864***”, which clarifies the interpretation of the term “or.”

40. Further, Regulation 99.2 of the MSERC Tariff Regulations also permits that the licensee is allowed to recover fixed cost which are not being recovered and arises due to his obligations to supply. Regarding the contention of the Appellant that, since majority of power procurement is from must-run hydro stations against which no backing down instructions can be issued, such power can never be stranded; learned counsel submitted that Appellant has mainly relied upon its own interpretation that demonstration of stranded capacity is mandatory in all circumstances; however, it neither objected to the inclusion of the entire hydro cost in the fixed cost computation before the MSERC, nor raised it as a ground of appeal, but sought to introduce the issue belatedly during oral rejoinder without supporting affidavit. In this backdrop, the MSERC, having noted that demonstration of stranded capacity is impracticable in view of nearly 80% of procurement being from must-run hydro sources, rightly adopted the alternative test of identifying unrecovered fixed costs, as reflected in paras 5.3.18 to 5.3.36 of the impugned Order.

41. This is based on the premise that Respondent No. 2 has unavoidable obligations to bear fixed costs arising from its contractual commitments with generators. Regarding the contention of the Appellants that Respondent No. 2 has failed to demonstrate “stranded capacity” of power while making a proposal for imposition of Additional Surcharge, particularly when it is seen that there is existence of surplus power, it is submitted that as per Section 42(2) of the Electricity Act, Respondent No. 1 is well within the confines of the law to adopt a different methodology for the purposes of arriving at the Additional Surcharge. In the present case,

Respondent No. 1 has considered that the Open Access consumer is also liable to pay Additional Surcharge, as may be specified by the State Commission, to meet the fixed cost (stranded cost) of the Distribution Licensee arising out of its obligation to supply and therefore, if there is a stranded cost which Respondent No. 2 has to bear on account of its obligation to supply to open access consumers, Respondent No. 2 was well within its rights to submit its claim for Additional Surcharge in its petition for ARR and tariff for consideration of Respondent No. 1. In this regard, reliance is placed on the Judgment dated 01.08.2014 of this Tribunal in Appeals Nos. 59 & 116 of 2013, "**MSEDCL v. MERC & Ors.**" and Judgment dated 09.08.2019 in Appeals Nos. 154 of 2016 and batch, "**Birla Textile Mills & Ors. v. HPERC & Ors.**".

Consideration & Our View

42. There is no dispute that under the National Tariff Policy (NTP) and the MSERC (Terms and Conditions of Open Access) Regulations, 2012 ("**MSERC OA Regulations**"), the State Commission is duly empowered and obligated to determine Open Access charges. The present dispute, however, pertains not to the existence of such power, but to the manner in which it has been exercised in the Impugned Order.

Specifically, the grievance lies in the alleged deviation from the methodology prescribed under the NTP and the relevant provisions of the MSERC (MYT) Regulations. It is contended that the Impugned Order levies Open Access charges without adhering to the normative framework and computational principles enshrined in these governing instruments.

43. The relevant extracts from the MSERC (MYT) Regulations, 2012, which form the doctrinal basis for the challenge, are reproduced below for reference and analysis.

**MSERC (Terms and Conditions of Open Access) Regulations, 2012
("MSERC OA Regulation")**

"25. Additional Surcharge

(1) Additional Surcharge

(a) A consumer availing open access and receiving supply of electricity from a person other than the distribution licensee of his area of supply shall pay to the distribution licensee an additional surcharge, in addition to wheeling charges and cross subsidy surcharge, to meet the fixed cost of such distribution licensee arising out of his obligation to supply as provided under sub-section (4) of section 42 of the Act.

(b) The additional surcharge for obligation to supply shall become payable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments including transmission charges etc, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such contract.

(c) The distribution licensee whose consumer intends to avail open access shall submit to the Commission within thirty days of receipt of application an account of fixed cost paid by such open access user which the licensee is incurring towards his obligation to supply and demonstrate if any part of the fixed cost has become stranded.

(d) The Commission shall scrutinize the statement of accounts submitted by the licensee and obtain objections, if any, of the consumer and determine the amount of additional surcharge, if any, payable by the consumer.

(e) The additional surcharge shall be levied for such period not normally exceeding one year as the Commission may determine.

44. In the Impugned Order dated 24.03.2025, for calculation of Additional Surcharge, total power purchase cost is bifurcated into fixed cost and energy cost components and this after accounting for fixed cost recovery from sale of surplus power, the balance fixed cost is divided by

the total energy for the year to work out the adjusted cost of Rs 2.49/ Kwh. After reducing the demand charges for Ferro Alloy Industries @ Rs 1.14 /kwh for HT Consumers and Rs 1.12/Kwh for EHT consumers, the additional Surcharge for Ferro Alloy category has been worked out as Rs 1.35/kWh for HT and Rs 1.38 /Kwh at EHT level.

45. In our considered view, adopting such an approach would mean that even availing of a single unit of Open Access by the Ferro Alloy consumer would lead to stranding of equal amount of energy and therefore, they would be liable to pay additional surcharge as so determined. It has been contended by the State Commission that about 66% of the sales of Discom is projected to be attributable to HT and EHT Consumers including Ferro alloy consumers and if such consumers avail open Access, it will lead to under recovery. The total energy projected to be attributable to Ferro Alloy consumers is about 600 MUs out of a total 1963 MUs i.e. about 30%. Even if it is assumed that such a quantum of energy for Ferro Alloys Consumers is based on the past experiences, by adopting the methodology as per Impugned Order, any open Access availed by these consumers whether out of projected energy of 600 MUs or even beyond the projected energy, they shall be liable to pay additional surcharge without the Distribution Company conclusively demonstrating whether any fixed charge liability is stranded or not as required under “MSERC OA Regulations”.

46. Availing of Open Access by a Consumers is statutorily provided as per Electricity Act and for protecting the interest of Distribution licensee, to mitigate the risk of fixed cost under recovery, such open access consumers shall be liable to pay an additional surcharges as decided by

the State Commission. In terms of para 8.5 of the National Tariff Policy 2016, following is provided:

“8.5 Cross-subsidy surcharge and additional surcharge for open access

*8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access **should not be so onerous that it eliminates competition which is intended to be fostered in generation and supply of power directly to the consumers through open access.** A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. A consumer would avail of open access only if the payment of all the charges leads to a benefit to him. While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers. SERCs may calculate the cost of supply of electricity by the distribution licensee to consumers of the applicable class as aggregate of (a) per unit weighted average cost of power purchase including meeting the Renewable Purchase Obligation; (b) transmission and distribution losses applicable to the relevant voltage level and commercial losses allowed by the SERC; (c) transmission, distribution and wheeling charges up to the relevant voltage level; and (d) per unit cost of carrying regulatory assets, if applicable.*

Surcharge formula: $S = T - [C / (1 - L / 100) + D + R]$

Where

S is the surcharge

T is the tariff payable by the relevant category of consumers, including reflecting the Renewable Purchase Obligation

C is the per unit weighted average cost of power purchase by the Licensee, including meeting the Renewable Purchase Obligation

D is the aggregate of transmission, distribution and wheeling charge applicable to the relevant voltage level

L is the aggregate of transmission, distribution and commercial losses, expressed as a percentage applicable to the relevant voltage level

R is the per unit cost of carrying regulatory assets.

Above formula may not work for all distribution licensees, particularly for those having power deficit, the State Regulatory Commissions, while keeping the overall objectives of the Electricity Act in view, may review and vary the same taking into consideration the different circumstances prevailing in the area of distribution licensee.

Provided that the surcharge shall not exceed 20% of the tariff applicable to the category of the consumers seeking open access.

Provided further that the Appropriate Commission, in consultation with the Appropriate Government, shall exempt levy of cross subsidy charge on the Railways, as defined in Indian Railways Act, 1989 being a deemed licensee, on electricity purchased for its own consumption.

8.5.2 *No surcharge would be required to be paid in terms of sub-section (2) of Section 42 of the Act on the electricity being sold by the generating companies with consent of the competent government under Section 43(A)(1)(c) of the Electricity Act, 1948 (now repealed) and on the electricity being supplied by the distribution licensee on the authorisation by the State Government under Section 27 of the Indian Electricity Act, 1910 (now repealed), till the current validity of such consent or authorisation.*

8.5.3 *The surcharge may be collected either by the distribution licensee, the transmission licensee, the STU or the CTU, depending on whose facilities are used by the consumer for availing electricity supplies. In all cases the amounts collected from a particular consumer should be given to the distribution licensee in whose area the consumer is located. In case of two licensees supplying in the same area, the licensee from whom the consumer was availing supply shall be paid the amounts collected.*

8.5.4 *The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.*

8.5.5 *Wheeling charges should be determined on the basis of same principles as laid down for intra-state transmission charges and in addition would include average loss compensation of the relevant voltage level.*

8.5.6 *In case of outages of generator supplying to a consumer on open access, standby arrangements should be provided by the licensee on the payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission. Provided that such charges shall not be more than 125 percent of the normal tariff of that category.”*

47. MSERC OA Regulations has also included obligation on distribution licensee of conclusively demonstrating the stranded fixed cost liability on account of Consumers availing open Access. However, it is also important to note that the clause 8.51 of the National Tariff Policy obligates

that levy of additional surcharge ought not to be so onerous that it discourages or eliminates completion.

48. In this context it is important to note the following observations of this Tribunal in judgement dated 28.8.2025 in Appeal No.282/2016, **“M/s Lord Chloro Alkali Ltd. Vs. Rajasthan Electricity Regulatory Commission & Ors.,”**

“23. In our considered opinion, in order to be entitled to levy additional surcharge from the open access consumers under Section 42(4) of the Electricity Act, 2003, it would be obligatory upon the distribution licensee to demonstrate that they are unable to schedule power under the Power Purchase Agreements for the reason that the open access consumers have been procuring power from other sources due to which the power procured by the distribution licensee gets stranded. In saying so, we are fortified by the following observations of this Tribunal in judgment dated 15.09.2022 in Appeal Nos.260/2018 & 43/2021 titled Renew Power Limited & Ors. v Bangalore Electricity Supply Company Limited & Ors.:

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“6. We agree that the basic rationale for imposition of additional surcharge is that the distribution licensees having entered into Power Purchase Agreements (PPAs) based on the demand in the State, under which there is an obligation to pay fixed charges, are entitled to the compensatory relief in the nature of additional surcharge. But, for this it is necessary for the distribution licensee demonstrates that they are unable to schedule power under the PPAs on account of open access customer taking power from other sources, the power procured by the licensees consequently getting stranded, this resulting in obligation on their part to pay fixed charges, the relief in the nature of additional surcharge being compensatory [SESA Sterlite v. OERC reported in (2014) 8 SCC 444 and

*Maharashtra State Electricity Distribution Company Limited v
JSW Steel Limited & Ors. (2022) 2 SCC 742J”*

49. In the Impugned Order, references to the National Tariff Policy and the MSERC OA Regulations have been made and stated that charges have been worked out according to the provisions contained therein. However, in terms of the MSERC OA Regulations, the additional surcharge is liable to be paid only if it is conclusively demonstrated that the obligation of the Distribution licensee in terms of existing power purchase commitments including transmission charges etc, has been and continues to be stranded. In the present case, it is observed from the Impugned Order, that such a requirement has been altogether ignored and Ferro Alloy consumer are held liable to pay Additional surcharge even without demonstration of stranded fixed charge liability by the Distribution licensee.

50. Appellants have also contended that Distribution Licensee has made profit by selling about 842 MUs of surplus power @ Rs 8.19/Kwh, on the other hand State Commission has submitted the cost of sale of surplus power is to be compared with average cost of supply i.e. Rs 8.48/Kwh and accordingly, no profit arises. We do not find merit in these contentions of State Commission; as though, the credit of fixed cost on account of sale of surplus power has been accounted while working out balance Fixed cost recovery, however the fact remains that the surplus power is sold at a rate, which is higher than the energy cost payable by Ferro Alloys industries, which is sought to be compensated through additional surcharge in the event of these consumers availing Open Access and fixed cost recovered through energy charge remaining stranded; thus sale of surplus power @ Rs 8.19/kWh cannot be construed

as loss while comparing it with energy cost of Ferro Alloy Industries which is computed at an average of Rs 6.95/Kwh. Further, it is not discernible from the Impugned Order that sale of such quantum of surplus power is estimated on account of power proposed to be availed by open Access consumers or on other unavoidable reasons. In our considered view, without analysing the past trend of open Access quantum availed out of the total energy considered for Ferro Alloys consumers in the ARR calculations as well as in the absence of conclusive demonstration of stranded capacity by Distribution Licensee, the computation of Additional surcharge calculation in the Impugned Order is not in accordance with the MSERC OA Regulations and National Tariff Policy, 2016 and need to be interfered with. In view of provisions of National Tariff Policy, 2016 and MSERC (Terms and Conditions of Open Access) Regulations, reliance placed by Respondent No. 2 on the decision of the Supreme Court in “***The Star Co. Ltd. v. Commissioner of Income Tax (1970) 3 SCC 864***” clarifying the interpretation of the term “or.” is not relevant in the present lis.

Issue No 3 : Levy of Inter-State transmission charges

APPELLANTS SUBMISSION

51. Learned counsel contended that the imposition of Inter-State Transmission Charges (CTU Charges) under the Impugned Order is prima facie erroneous for several reasons. First, there exists a clear regulatory prescription that inter-State transmission charges are determined under the CERC Open Access Regulations, wherein, for undertaking STOA transactions by an intra-State entity, the Nodal Agency is the RLDC to whom the applications for such grant are made and the open access charges for bilateral transactions are paid. Such charges are

to be determined not by the MERC, as has been done under the Impugned Order, but strictly in accordance with the Sharing Regulations framed by the CERC. The determination of ISTS charges by the MERC is, therefore, wholly without jurisdiction. It is well settled that statutory bodies must act strictly within the four corners of the statute under which they are constituted and not travel beyond their jurisdiction, as held in ***“PTC India Ltd. v. PSPCL & Ors.”, Judgment dated 05.12.2024, Appeal No. 267 of 2019***, Secondly, while procuring power through open access, the Appellants already pay ISTS charges as per the CERC Regulations (billed via the Exchange) and, therefore, the imposition of such charges again under the Impugned Order amounts to double recovery and results in unjust enrichment of Respondent No.2. The State Commission has sought to justify the levy of CTU charges on the ground that *“MePDCL is liable to pay the CTU charges on account of GNA”* is misconceived, as the GNA charges referred to are payable by MePDCL-Respondent No2. While procuring power to meet the supply obligations of its consumers and are already included in the power purchase cost claimed by MePDCL-Respondent No2 in its ARR. Further, the modified power purchase cost submitted by MePDCL -Respondent No2 as part of its tariff proposal for FY 2025-26 and approved by the MERC includes PGCIL transmission charges of Rs. 112.14 Cr. and POSOCO charges of Rs. 2.04 Cr., which have been duly accounted for in the approved ARR projection for FY 2025-26. CTU charges are thus recoverable by MePDCL-Respondent No2 as part of its approved ARR, and any further recovery under the present exercise amounts to an impermissible double recovery. In any case, the Appellants, irrespective of procuring power under open access, are paying fixed charges to MePDCL-Respondent No2, thereby allowing recovery of its fixed costs, rendering the additional levy unjustified.

Respondent No 1 – State Commission Submission

52. Regarding the contention of the Appellants that MSERC lacks jurisdiction to levy CTU charges, which falls exclusively within the purview of CERC; learned Counsel submitted that State Commission, after examining Respondent No.2's projections, duly approved inter-State transmission charges payable to PGCIL (including POSOCO charges) at Rs. 114.17 crores for FY 2025-26, in addition to intra-State transmission charges payable to Respondent No.2, noting that these represent committed fixed charges which cannot be avoided by the distribution licensee.

53. Further, by way of the Corrigendum Order dated 18.06.2025, MSERC clarified that since Respondent No.2 is paying CTU charges under the GNA mechanism, Open Access consumers are also liable to bear such charges. Under the GNA framework, Respondent No 2 is mandatorily liable to pay inter-State transmission charges to the CTU irrespective of whether power is drawn for its own consumers or for open access transactions facilitated through its network, thereby establishing that CTU charges are a fixed cost which must be recovered.

54. It is further submitted that MSERC has not included CTU charges within the Additional Surcharge as part of its tariff design; rather, it has correctly approved and allowed recovery of CTU charges separately from open access consumers, which is lawful. In other words, MSERC has neither determined CTU charges, which remains within CERC's jurisdiction, nor exceeded its authority; it has only facilitated recovery of such fixed costs. Thus MSERC has determined the tariff order in accordance with the Electricity Act and the applicable regulations.

Respondent No. 2 Submission

55. Regarding the contention of the Appellants that MSERC has gone beyond its jurisdiction to determine inter-State transmission charges; learned counsel submitted that MSERC has merely bifurcated the Additional Surcharge under two heads, and the relevant Regulations (Regulation 25 of the MSERC Open Access Charges) clearly demonstrate that MePDCL is entitled to recover all fixed obligations arising from generation and transmission. For the purpose of calculation of Additional Surcharge, an amount of INR 1403.91 was considered, which excluded transmission charges, and the detailed calculation and justification thereof can be found at Table No. 58 of the Order and Table No. 71 of the Corrigendum Order. It is further submitted that Appellants, have not challenged the calculation of CTU charges but has merely contended that MSERC does not have jurisdiction to determine CTU charges, whereas it is evident from the order that MSERC has only passed on the burden of unrecovered fixed charges on open access consumers. The reliance placed by the Appellant on the Judgment in Appeal No. 282 of 2016 is misplaced and is not applicable, as in that case this Tribunal had analysed only one method for determination of Additional Surcharge, whereas in the instant case, MSERC has adopted the fixed cost recovery method. Furthermore, the case in Appeal No. 282 of 2016 related to a distribution licensee procuring mainly from thermal power plants where stranded capacity could be demonstrated, which is not comparable to the case of Meghalaya, where the Commission has analysed each aspect of the procurement, including the open access consumption pattern, which was not the case in Appeal No. 282 of 2016.

Consideration and Our View

56. Heard the contentions put forth by learned counsels on both sides and noted from the submissions of State Commission that MSERC has not determined the CTU charges, which falls within the exclusive jurisdiction of CERC, it has only acknowledged the fixed cost liability of Distribution licensee with respect to CTU charges and POSOCO charges, has apportioned the same over the total number of energy units and the resultant Rs 0.58/Kwh charges has been levied on open Access Consumers. We take note, that as per Regulation 25 of MSERC OA Regulations, for determination of Additional Surcharge, the stranded cost relating to transmission in addition to power purchase commitments, subject to conclusive demonstration, can be included and in the calculation of Additional surcharge in the Impugned order only power purchase cost was considered. Detailed observations have been made with regard to methodology adopted in the Impugned order for calculation of Additional surcharge, which are also applicable for the CTU charges determination in the Impugned order as in this also entire CTU charges are divided by total energy and per unit cost so arrived has been made applicable on Open Access Consumers, without undertaking the exercise of demonstration of stranded fixed charges; which is not as per the provisions of MSERC OA Regulations and National Tariff Policy, 2016.

57. In view of above observations, the issue of determination of Additional charges as well as CTU charges as per Impugned Order & Impugned Corrigendum Order is hereby set aside, and the issue is remanded back to State Commission for determination afresh in line with the provisions of extent Regulations with a direction that such an exercise be completed expeditiously within next three months from the date of receipt of this order. We are also aware that levy of additional surcharge

are statutorily provided in terms of the MSERC OA Regulations and National Tariff Policy and considering that Ferro alloy Consumers constitutes about total 30% sales of the Distribution Licensee and stranded fixed cost liability of distribution licensee cannot be *prima facie* assumed to be NIL, till the exercise of fresh determination of additional Surcharge including stranded transmission be completed on remand by State Commission, and the open Access Customers be allowed to avail Open Access with no levy of any open Access Charges, while in the previous years, CSS was paid by open Access Consumers. In these circumstances, in order to balance the interests of the Distribution Licensee and the Appellants in the interregnum, the Appellants shall pay 50% of total Additional Surcharge & CTU charges as computed in Impugned Orders, which shall be subject to the adjustment based on the determination of these charges, including CSS by State Commission afresh on remand.

Conclusion

58. In view of above deliberation, we are unable to sustain the Impugned Order and Corrigendum Order with regard to calculation of CSS, Additional Surcharge as well as CTU Charges for the Appellants and same are hereby set aside. The afore-said issues, are remanded to the State Commission with the direction to determine these charges afresh for the Appellants in terms of the extant Regulations, after ascertaining the quantum of stranded fixed cost obligations of Distribution licensee, which is solely on account of Open Access Consumers availing power from other sources and computation of 'D' in the CSS formula. Needless to state that we have not examined these issues in the Impugned Order and Corrigendum Order on merits, State Commission, shall provide reasonable opportunity to both the parties to put forth their

contentions and after considering the issues involved, pass orders afresh in accordance with Law with regard to CSS and Additional Surcharge including stranded transmission cost expeditiously preferably within three months. As noted above, in the inter-regnum, there shall be complete stay on the levy of CSS, however, Appellants shall pay (50%) of total Additional Surcharge & CTU charges as computed in Impugned Order, which shall be subject to the adjustment based on the determination of such charges including CSS by State Commission afresh on remand.

59. As the Appellants have raised several other grounds in challenge to the Impugned Order, and as those issues are not examined in the present order, instead of keeping the Appeal pending on the file of this Tribunal to deliberate other issues, we consider it appropriate to set aside the Impugned Orders to the limited extent as deliberated above. The Appellant is granted liberty to challenge the other grounds raised in the present Appeal to challenge by way of a separate Appeal.

60. The subject Appeal and associated IAs, if any are hereby disposed in the above mentioned terms.

Pronounced in open court on this 31st Day of October, 2025

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

Reportable / ~~Non-Reportable~~

pr/ag/dk