

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

**APPEAL NO.303 OF 2021  
&IA NOS. 1706 & 1625 OF 2021**

**Dated:** 22.11.2021

**Present:** Hon'ble Mr. Ravindra Kumar Verma, Officiating Chairperson  
Hon'ble Mr. Justice R.K. Gauba, Judicial Member

**In the matter of:**

**SAI WARDHA POWER GENERATION PVT LTD.**

8-2-293/82/A/90

Road No. 9, Jubilee Hills,

Hyderabad – 500 033

Email : [office@msapartners.in](mailto:office@msapartners.in)

..... Appellant(s)

**VERSUS**

**1. MAHARASHTRA STATE ELECTRICITY  
DISTRIBUTION COMPANY LIMITED (MSEDCL)**

*[Through its Chairman & MD]*

Prakashgadh, 5<sup>th</sup> Floor, Plot No. G-9,

Anant Kanekar Marg, Bandra (East), Mumbai

Maharashtra – 400 051

Email: [ceppmsedcl@gmail.com](mailto:ceppmsedcl@gmail.com)

**2. SINNAR THERMAL POWER LIMITED**

*[Erstwhile Rattan India Power Limited-Nashik]*

*[Through its Authorized Signatory]*

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South West Delhi

New Delhi-110 037

Email: [rahul.mutreja@rattaninda.com](mailto:rahul.mutreja@rattaninda.com)

**3. MAHARASHTRA ELECTRICITY REGULATORY  
COMMISSION**

*[Through its Secretary]*

World Trade Centre, Centre No.1,

13<sup>th</sup> Floor, Cuffe Parade, Colaba,

Mumbai- 400 005

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..... Respondent(s)

Counsel for the Appellant (s) : **Mr. Sajan Poovayya, Sr. Adv.**  
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Mr. Samir Malik  
Ms. Nikita Choukse for R-1

Mr. S. Venkatesh  
Mr. Ashutosh Kr. Srivastava  
Mr. Jayant Bajaj for R-2

**Mr. Ramji Srinivasan, Sr. Adv.**  
Ms. PratitiRungta  
Ms. Rajshree Chaudhary for R-3

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

### **PER HON'BLE MR. JUSTICE R.K. GAUBA, JUDICIAL MEMBER(ORAL)**

- 1.** This matter has been taken up by video conference mode on account of pandemic conditions, it being not advisable to hold physical hearing.
  
- 2.** This appeal under Section 111 of Electricity Act, 2003, is directed against the Order dated 03.05.2021 passed by Maharashtra Electricity Regularity Commission ("*MERC*" or "*State Commission*") in Case no.228/2020 which had been filed by the appellant on 09.12.2020 seeking directions to the respondent *Maharashtra State Electricity Distribution Company Limited ("MSEDCL")* for procurement of additional power, fulfilling the shortfall created by the second respondent, *Sinnar Thermal Power Limited ("STPL")* – erstwhile *Rattan India Power Limited, Nasik* (for short, "*Rattan India*"), in terms of Order dated 10.02.2015 in Appeal no.72 of 2013 rendered by this Tribunal.
  
- 3.** It is necessary to take note of, *albeit* briefly, the history of this litigation.

**4.** The first respondent MSEDCL had issued, on 18.05.2009 a request for proposal (“RfP”) for procurement of 2000 MW (+30%/-20%) of power for a period of 25 years on long term basis. The process undertaken, in terms of Section 63 of the Electricity Act, resulted in bids being submitted, the qualified bidders being inclusive of (i) *Emco Energy Ltd.*, (ii) *Rattan India Power Ltd. (Amravati)*, (iii) *Adani Power Maharashtra Ltd. (“APML”)*, (iv) *Rattan India Power Ltd. (Nasik)*- now *Sinnar Thermal Power Limited (“STPL”)*, and (v) the appellant *Wardha Power Company Ltd. - now Sai Wardha Power Generation Limited (“SWPGL”)*, the quantum offered by them being 200 MW, 1200 MW, 1200 MW, 950 MW, and 675 MW, at the tariff of Rs.2.879, Rs.3.260, Rs.3.280, Rs.3.450, and Rs.3.620 kWh respectively.

**5.** The process concerning the procurement, as proposed in the RfP of 18.05.2009, stood completed with the *Power Purchase Agreements (PPAs)* having been executed with *Emco Energy Ltd.*, *APML*, and *Rattan India Power Ltd. (Amravati)* respectively. The levelized tariff for procurement of power was adopted by MERC, by its Order dated 28.12.2010, in case no.22/2010 which had been presented by MSEDCL in the wake of the above-mentioned bidding process, the tariff determined in the case of L-3 (“*APML*”) being Rs.3.280 per kWh.

**6.** The dispute which has persisted, leading to present appeal coming up before this Tribunal, relates to the proposal that was floated by MSEDCL, in 2011, seeking procurement of *additional 1090 MW* of power from certain generators, the Government of Maharashtra having approved the said proposal on 01.12.2011. The MSEDCL initiated certain proposals for procurement of additional quantum of 440 MW from APML and 650 MW from STPL as part of the long-term intended procurement of additional quantum of 1090 MW and adoption of tariff for the same, by petition registered as Case no.53/2012, before MERC on 15.05.2012. MERC, by its Order dated 27.12.2012, in the said Case no.53/2012, adopted the tariff and approved procurement of 1090 MW of power from APML and STPL.

**7.** The above said order, dated 27.12.2012, was challenged by the appellant (“SWPGL”) before this Tribunal by appeal No.70 OF 2013 on the ground that MSEDCL had approached only certain generators, without approaching the others, for the additional quantum of 1090 MW. Before the matter could be heard, the MSEDCL executed a PPA with APML for the procurement of 440 MW of power, from out of the additional quantum of 1090 MW on 26.02.2013. The process initiated for similar PPA with STPL, however, had got stuck because the latter (“STPL”) was seeking amendment of tariff stream, it having filed Case no.79/2013 in such regard before MERC.

**8.** The Appeal no.70 OF 2013, challenging the Order dated 27.12.2012, was disposed of by this Tribunal by judgment dated 10.02.2015. It is essential to take note of the following part of the said judgment to understand the circumstances in which this Tribunal felt it proper to approve the procurement of additional quantum of 1090 MW by negotiation with such parties as had submitted bids in the earlier process, instead of by a fresh round of bidding:

*“49. The State Commission under Section 86(1)(b) of the Act has powers to regulate the procurement of power by the distribution licensee. The approval for procurement of additional quantum of power of 1090 MW for meeting the anticipated shortfall in supply due to some exigencies as indicated in the impugned order by the State Commission is, therefore, in order. The Appellant here is mainly aggrieved by the process in selecting the bidders for additional power without providing him an opportunity even though it was a qualified bidder in the earlier bidding process. Therefore, in the present context we are only concerned about the process followed by the State Commission in selecting the successful bidders for supply of additional power of 1090 MW. In the circumstances of the present case, we do not want to interfere with the decision of the State Commission for procurement of additional 1090 MW against the competitive bidding process for 2600 MW power conducted in FY 2009-10 and approved by the order dated 28.12.2010, to meet the projected shortfall in power supply in the State in the interest of consumers. However, we have to examine the procedure adopted in selecting the bidders for supply of additional power and the tariff approved for the same. We also want to make it clear that the findings in the present Appeal is specific to the circumstances of the present case and should not be treated as a precedent.”*

(Emphasis supplied)

**9.** It is clear that the departure from the norm of Section 63 was allowed as a one-time exception, not to be treated as a precedent, appreciating the exigencies against the backdrop of which MSEDCL had been permitted by MERC to proceed for procurement of additional 1090 MW of power at that point of time.

**10.** This Tribunal, in the judgment dated 10.02.2015, noted the procedure adopted by MSEDCL *vis-à-vis* the quantum and price for procurement of additional power as under:

*“50. Let us examine the procedure adopted by the MSEDCL in deciding the quantum and price of power for procurement of additional power from the qualified bidders. MSEDCL approached the bidders in the ascending order of their quoted tariff in the bids. M/s. GMR, erstwhile M/s. EMCO Energy Ltd., the lowest bidder (L1) and Indiabulls Power Ltd. (Amravati), the second lowest bidder (L2) expressed inability to offer any additional quantum of power. M/s. AMPL, the third lowest bidder (L3) offered 440 MW power at Rs. 3.28 per kWh i.e. the same tariff at which the State Commission had approved procurement of 1200 MW vide its order dated 28.12.2010. M/s. IBRL-Nashik, the fourth lowest bidder (L4) offered balance 650 MW of power. It is seen that the State Government/MSEDCL negotiated the price of electricity with M/s. IBRL-Nashik, the Respondent no.3, and they agreed to reduce the levelled tariff to Rs. 3.42 per kWh from the earlier bid price of Rs. 3.450 per kWh which was approved by the State Commission by the impugned order. It is seen that the Appellant was not approached by MSEDCL to offer power on long term basis even though the Appellant was a qualified bidder (L5).*

*51. We find that the State Commission by order 28.12.2010 had approved the adoption of tariff for procurement of 2600 MW power as under:*

<i>Sl.</i>	<i>Name of Bidding Company</i>	<i>Successful Bidders</i>	<i>Capacity Offered (MW)</i>	<i>Levelised Tariff (Rs./kWh)</i>
1.	Emco Energy Ltd	L1	200	2.879
2.	Indiabulls Power Ltd. (Amravati)	L2	450	3.260
3.	Indiabulls Ltd. (Amravati)	L2	750	3.260
4.	Adani Power Maharashtra Ltd.	L3	1200	3.280

*The State Commission in its order dated 28.12.2010 has also analysed the levelled tariff rates discovered through the competitive bidding and compared these rates with the levelled tariffs calculated through MoU route with same assumptions and after analysis of the data it observed that tariffs discovered through both the routes were comparable. With the adoption of the above tariffs, the highest being Rs. 3.280 per kWh, the competitive bidding process was completed.*

*52. Thus, the highest tariff which was adopted by the State Commission by its order dated 28.12.2010 was Rs. 3.280 per kWh. The other two lower bidders whose tariff was adopted by the State Commission had declined to offer additional power. We find that the additional procurement of 440 MW*

approved by the State Commission from M/s. AMPL is also at Rs. 3.280 per kWh i.e. the same rate at which the approval was granted by the State Commission by order dated 28.12.2010. We feel that the State Commission should have directed MSEDCL to give opportunity to all other qualified bidders viz. M/s. IBRL-Nashik and the Appellant to match the price of Rs. 3.280 per kWh at which procurement of power was approved by the State Commission in its earlier approval dated 28.12.2010. Allowing procurement of power at any rate higher than the rate of Rs. 3.280 (levellised) which was adopted and approved by order dated 28.12.2010 after following the competitive bidding process under Section 63 would not be permissible. It was not open to the State Commission to accept the negotiated tariff with IBRL-Nashik at a tariff which was higher than the tariff approved after completion of the competitive bidding under Section 63 of the Act. The competitive bidding process conducted in the year 2009-10 was completed with the approval of procurement of 2600 MW at the price discovered in the bidding process. If some additional procurement has to be made after approval of the State Commission it has to be at the price which was earlier discovered in the competitive bidding and approved by the State Commission by order dated 28.12.2010. Admittedly M/s. Emco Energy Ltd. (L1) and M/s. IBPL-Amravati (L2) had expressed inability to supply additional power. M/s. APML (L3) have offered to supply 440 MW at Rs. 3.280 per kWh (levellised) i.e. the same tariff which was approved by the State Commission by the order dated 28.12.2010. Therefore, IBRL-Nashik and the Appellant, the other successful bidders (L4 and L5 respectively) should have been given an opportunity to match the price of Rs. 3.280 per kWh (levellised) offered by APML which was earlier approved by the State Commission by its order dated 28.12.2010. It was not correct for the State Commission to have adopted a tariff of Rs. 3.420 per kWh for procurement from the Respondent no.3 which was agreed after negotiations without giving an opportunity to the Appellant to match the tariff with the lowest offer."

(Emphasis supplied)

**11.** This Tribunal by judgment dated 10.02.2015 in appeal no.70 of 2013 decided as under:

"53. Accordingly, we direct MSEDCL to approach IBRL- Nasik and the Appellant who were the qualified bidders to give their offers for long term supply matching the levelized tariff of Rs. 3.280 per kwh. In case both IBRL-Nasik and the Appellant are able to offer matching the tariff of Rs.3.280 (levelized), additional procurement of power (1090 MW) shall be approved by the State Commission amongst M/s APML, IBRL-Nasik and the Appellant on pro-rata basis on the quantum offered by them i.e., in the ratio of 440 MW, 650 MW and the quantum offered by the Appellant on long term basis respectively. If the Appellant is not prepared to offer any power at Rs.3.280 per kWh and IBRL-Nasik is prepared to offer power at Rs.3.280 per kWh levelized than the power of procurement shall be approved from APML and IBRL-Nasik for 440 MW and 650 MW respectively. If IBRL-Nasik offers less than 650 MW at the tariff of Rs.3.28 per kWh (levelized)

then the power will be allocated amongst APML, IBRL-Nasik and the Appellant in the ratio of 440 MW and the quantum in MW offered by IBRL- Nasik and the Appellant respectively and for balance power, if any, fresh procurement process shall be initiated by MSEDCL. In case IBRL-Nasik and the Appellant do not agree to offer power on long term basis at levelized tariff of Rs.3.280 per kWh, MSEDCL would take action for procurement of balance 650 MW (over and above 440 MW already approved in the impugned order for procurement from M/s. APML at Rs. 3.28 per kWh – levelized) through a fresh competitive bidding process."

(Emphasis supplied)

**12.** There is no contest to the facts that both the appellant SWPGL and respondent *Rattan Power* (then IBRL-Nashik) did submit offers for supply of quantity at the levelized tariff of Rs. 3.280 per kWh in terms of the directions in Para 53 of judgment dated 10.02.2015 (as quoted above). Though *Rattan India* ("STPL") had sought a review of the judgment dated 10.02.2015, it having been dismissed, the matter was carried to Hon'ble Supreme Court by Civil Appeal nos.5478 and 5431 of 2015 which were eventually dismissed by judgment dated 10.05.2018. There is no quarrel with the proposition that with the dismissal of the civil appeals by the Supreme Court on 10.05.2018, the judgment dated 10.02.2015 of this Tribunal in Appeal no.70 of 2013 attained finality.

**13.** The appellant then took out fresh proceedings by an application in Case no.53/2012 praying for consequential directions to MSEDCL in case of judgment dated 10.02.2015, the said application resulting in order being passed by MERC, on 19.01.2019, reallocating the power from out of the additional quantum of 1090 MW as under:

Seller	Earlier Allocation (MW)	Quantum offer subsequent to ATE Judgment		Revised quantum on pro-rate basis
		MW	%	
APML	440	440	31	343
RPL-Nashik	650	650	46	507
SWPGL	--	310	22	240
Total	1090	1400	100	1090

**14.** For completion of facts, it may be noted that APML was aggrieved on account of reduction of its allocation from 440 MW to 343 MW by virtue of aforesaid Order dated 19.01.2019. It challenged that part of the said decision of MERC by Appeal no.50/2019 which resulted in virtually a consent order whereby additional power requirement of MSEDCL for supply of 440 MW from APML Tiroda in terms of PPA already in existence was approved, thereby restoring the original additional allocation.

**15.** It appears that for various reasons, no PPA for the additional quantum allocated to STPL could be executed in terms of the Letter of Intent (“LoI”) issued pursuant to reallocation by Order dated 19.01.2019. The LoI was eventually terminated by MSEDCL on 19.05.2020.

**16.** Meanwhile, MSEDCL had filed Case no.91/2020 seeking approval of adoption of tariff for long term power procurement of 210 MW from the appellant. The said petition was approved by MERC by Order dated 15.6.2020 for procurement of 240 MW of power with the condition that the capacity shall stand reduced to 210 MW once STPL commenced the supply or if MSEDCL got approval for 97 MW of power. The parties – the

appellant and MSEDCL – executed a PPA on 02.07.2020 for the capacity of 240 MW and the appellant commenced supply of such quantum w.e.f. 04.07.2020.

**17.** It is against the above backdrop that the appellant, by its letter of request dated 14.09.2020, called upon the MSEDCL to accept its offer of supply of the entire balance on the same terms and conditions as of the existing PPA on long-term basis stating that STPL had merely made an offer to supply 650 MW capacity without making any efforts to honor the same. The offer of the appellant was rejected by MSEDCL, by its response dated 13.11.2020, stating that it was not obliged to procure more than 240 MW from the appellant. Pleading this as the cause of action, the appellant filed Case no.228/2020 before the MERC on 09.12.2020 seeking directions to MSEDCL for procurement of additional power, fulfilling the shortfall created by STPL, in terms of the Order dated 10.02.2015.

**18.** While the said case No.228/2020 of the appellant was pending, STPL (*“Rattan India”*) had filed case No. 23/2021 questioning the termination notice dated 19.05.2020 seeking a direction for its withdrawal besides praying for directions to MSEDCL to execute a PPA to procure power from its project in line with the provisions of the Lol and to contract the remaining 733 MW net capacity (i.e. 1240 MW less 507 MW) from its project on long-term basis.

**19.** It may be mentioned here that the petition of STPL (Case no.23/2021) was withdrawn and dismissed accordingly by MERC on 12.08.2021 though with liberty having been granted to the said party to approach the Commission afresh. It may be added here that, during the hearing, it was explained that STPL was unable to proceed with the requisite steps for execution of the PPA on account of inability to furnish performance bank guarantee at that point of time. We do not express opinion on the rights of STPL vis-à-vis reallocation save and except to wonder if the liberty to approach the Commission afresh could be open-ended.

**20.** The petition of the appellant (Case no.228/2020) seeking directions to MSEDCL for procurement of additional power from its project to fulfil the shortfall created by STPL, however, was dismissed by MERC, by Order dated 03.05.2021, holding *inter alia*, that MERC had already implemented the judgment dated 19.01.2019 of this Tribunal allocating the additional quantum of 1090 MW amongst the bidders.

**21.** It is the above decision which is challenged by the appeal at hand.

**22.** Though an application for directions (IA no.1706 of 2021) for interim arrangement was also moved, it was fairly agreed by the learned counsel on all sides that the prayer in the main appeal being for same relief, the questions of law being common, the appeal be taken up for final hearing

and disposal. We have heard learned counsel on all sides at length on the main appeal.

**23.** The MERC has, *inter-alia*, noted and observed as under:

*“14.7 It is important to note that except APML (whose share has been reduced from 440 MW to 343 MW) no other generators have appealed against such allocation of 1090 MW. Thus, both RPL and SWPGL have accepted above allocation. APTEL vide its Judgment in appeal filed by APML has restored PPA quantum of APML to 440 MW. Based on such allocation MSEDCL has already signed PPAs with APML (440 MW) and with SWPGL (240 MW).”*

*14.8 PPA with RPL Nashik (507 MW) is yet to be signed and hence SWPGL is arguing that under this circumstance, the scenario in which RPL Nashik offering less than 650 MW of power as stipulated in APTEL judgment dated 10 February 2015 needs to be operated and accordingly SWPGL needs to be allowed to supply more power to MSEDCL. In the opinion of the Commission such request cannot be allowed as this Commission has already acted upon APTEL judgment and allocated quantum as explained above. Said APTEL judgment had limited scope of allocating power amongst the generators based on their offers at that point of time, which has been complied with by Commission's Order dated 19 January, 2019.*

*14.9 Present request of SWPGL is similar to situation wherein if one of the bidders amongst multiple bidders selected through competitive bidding process for supply of power failed to execute the project then other bidders are eligible to get an increase in their allotted quantum to fill up the gap created due to non-performing bidder. However, none of the competitive bidding guidelines notified by the Government under Section 63 of the EA, 2003 allows such revision in quantum of other bidders due to failure of other bidders. Bidding guidelines prescribe penalty for default which buyer has to invoke and for its unfulfilled power requirement it has to initiate fresh bidding process.*

*14.10 SWPGL has relied upon Supreme Court judgment in Civil Appeal No. 3481-3482 of 2018 dated 25 April, 2018 wherein it has upheld the APTEL decision that the capacity once approved and having gone through the process of procurement cannot be subsequently reduced. Accordingly, it is contended by SWPGL that MSEDCL cannot be permitted to resile from procuring the capacity of 1090 MW in aggregate from the three generators. In this regard, the Commission notes that facts and circumstances in above referred Supreme Court judgment are completely different from those of the present case. In that case post competitive bidding process and execution of PPA with successful bidders for the bided capacity, on request of buyer distribution licensee, that State Commission had allowed reduction in quantum of PPA to be signed and therefore*

*APTEL/Supreme Court held that Commission cannot reduced quantum as its role under competitive bidding process is limited to adoption of the tariff which has been discovered through transparent process of bidding. Whereas in the present matter, competitive bidding process was not conducted for 1090 MW and the Commission through its Order dated 19 January 2019 has already allowed allocation of 1090 MW amongst generators. The said decision of the Commission (upheld by APTEL) were case specific based on the then existing exigencies of Demand-Supply gap. The same cannot be generalised in the manner prayed by SWPGL. Also, the Commission u/s 86 (1) (b) of the Electricity Act, 2003 has the responsibility of regulating the power procurement of the Distribution Licencees which necessarily binds it to consider the Demand-Supply scenario and ensure that the avoidable costs are not loaded on the consumers. Thus, Supreme Court judgment relied upon by SWPGL is not applicable in present matter.*

14.11 *In view of the above, the Commission is of the opinion that SWPGL cannot rely upon APTEL Judgment dated 10 February 2015 for requesting additional quantum of PPA for supplying power to MSEDCL.”*  
(Emphasis supplied)

**24.** We endorse the above views recorded by MERC to hold that the process of reallocation which stood concluded by Order dated 19.01.2019 in Case no. 53/2012 cannot be reopened yet again because one of the parties in whose favor the allocation of certain quantity was made has not been able to follow up on the offer. In terms of the operative part of the judgment dated 10.02.2015 of this Tribunal in Appeal no. 70 of 2013, MSEDCL is left with no option but to take action for procurement of the remainder of the additional capacity “*through a fresh competitive bidding process*”.

**25.** On careful perusal of the material on record, particularly the judgment dated 10.02.2015 of this Tribunal in Appeal no. 70 of 2013, and Order dated 19.01.2019 of MERC in Case no. 53/2012, we are of the considered

view that the impugned order declining the request of the appellant for additional allocation over and above what was granted by Order dated 19.01.2019 does not suffer from any error or infirmity.

**26.** As noted earlier, the approval of additional procurement over and above the quantum for which the process had been initiated by RfP issued on 18.05.2009 was by way of an exception, in appreciation of the exigencies of the time. It was a departure from the normal route of procurement by bidding under Section 63 of the Electricity Act which this Tribunal did not intend to be treated as a precedent. Since certain new equities had already been created by execution of PPA with APML for procurement of 400 MW of power, from out of additional 1090 MW, it was deemed proper that the balance of the said additional capacity be also allocated in similar manner amongst the qualified bidders, the parties that had shown interest to such effect being inclusive of the appellant and Rattan India (IBRL-Nasik). It was in that view of the matter that this Tribunal, by judgment dated 10.02.2015, considered it just and proper to direct approval to be accorded for additional procurement by allocation of the quantum “*on pro-rata basis*” bearing in mind the quantum that had been offered by the said two parties and APML. The parties in question, as noted earlier, submitted offers pursuant to the said directions and this resulted in the fresh allocation by Order dated 19.01.2019. There is no contest to the correctness of the reallocation made by Order dated 19.01.2019. The

pie, as is the expression used by the learned counsel during the hearing, stood distributed on pro-rata basis by Order dated 19.01.2019, the offers having been made and allocated accordingly. The further directions in para 53 of the Order dated 10.02.2015 about IBRL-Nasik offering less than 650 MW or the appellant not being prepared to offer any power at the levelized tariff not having come into play.

**27.** This Tribunal by concluding part of the directions in para 53 of the judgment dated 10.02.2015, however, had made it clear that if the parties in question – the appellant and IBRL-Nasik – were not to agree to offer power on long term basis at the levelized tariff, MSEDCL would be obliged to take action “*for procurement of balance 650 MW*” by “*a fresh competitive bidding process*”. It is clear from the above quoted directions that the dispensation by judgment dated 10.02.2015 stood complied with, and the process exhausted, since offers were made for supply of capacity as per the allocation directed. If the offers made did not materialize, the balance power will have to be procured through fresh process of the competitive bidding rather than being reallocated all over again. The left over cannot be claimed as windfall by those who had received the allocation due to them in terms of decision dated 10.02.2015.

**28.** Though MSEDCL, by its reply, has set up other defenses to the impugned decision including by arguments based on comparison of power

supply scenario as it exists today with the one prevailing at the time of judgment dated 10.02.2015, the plea being of surplus and availability of cheaper power, some of such reasoning having been adopted by MERC as well, we need not go into the propriety of such considerations in the matter at hand, in view of the observations recorded above vis-à-vis the import and effect of operative part (para 53) of the judgment dated 10.02.2015.

**29.** On the available facts and circumstances, and for the forgoing reasons, we find no merit in the appeal which, along with the pending applications, is consequently dismissed.

**PRONOUNCED IN THE VIRTUAL COURT THROUGH VIDEO CONFERENCING  
ON THIS 22<sup>nd</sup> DAY OF NOVEMBER, 2021.**

**(Justice R.K. Gauba)**  
**Judicial Member**

*vt*

**(Ravindra Kumar Verma)**  
**Officiating Chairperson**