

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

APPEAL NO. 13 OF 2019

Dated: **06.10.2022**

Present: **Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member**

In the matter of:

Sahyadri Industries Limited **Appellant (s)**
39/D, Gultekdi, J. N. Marg,
Pune – 411037.

Versus

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

2. Maharashtra State Electricity Distribution **Respondent(s)**
Company Ltd.
Through its Managing Director,
5th Floor, Prakashgarh,
Bandra (East)
Mumbai – 400051.

Counsel for the Appellant (s) : Ms. Dipali Sheth

Counsel for the Respondent (s) : Mr. G. Umopathy, Sr. Adv.
Mr. Anup Jain
Mr. Akshay Goel

J U D G E M E N T (Oral)

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. The appeal at hand presents before us a scenario similar to the one noticed earlier in Appeal No.56 of 2020 - *D.B. Power Ltd. Vs. Central Electricity Regulatory Commission & Anr.* and another in Appeal No. 386 of 2019 - *Maharashtra State Electricity Distribution Company Ltd. Vs. Maharashtra Electricity Regulatory Commission & Anr.* which

were decided by judgments dated 04.02.2021 and 20.09.2021 respectively, the order under challenge rendered on 28.09.2018 being also rendered by *Maharashtra Electricity Regulatory Commission* (the State Commission), in the claim of the appellant herein for recovery of its dues from the respondent - *Maharashtra State Electricity Distribution Company Ltd.* (by Petition No.199 of 2018).

2. The prayers pressed for consideration by the appellant (generator) before the State Commission read as under:-

“ ...

- i. *Direct the respondent to make payment for the wind energy generated by the petitioner regularly and in timely manner as per all the WEPAs:*
- ii. *Direct MSEDCL to make payment of all the outstanding amount towards sales Invoices due within seven (7) days [a sum of Rs.6,01,38,697.57/- (Rupees Six Crores One Lakh Thirty Eight Thousand six Hundred Ninety Seven and Fifty Seven paise only) is due for period from April 1, 2017 till March 30, 2018 as detailed in Annex K]:*
- iii. *Direct MSEDCL to make payment of the outstanding amount towards DPC dues as per the WEPAs [a sum of Rs.2,10,06,248.87/- (Rupees Two Crores Ten Lakhs Six Thousand Two Hundred Forty Eight and Eighty Seven Paise only) is due as on April 30, 2018 as detailed in Annex K]:*
- iv. *Direct MSEDCL to pay the Petitioner an amount of Rs.82,98,069.48/- (Rupees Eighty Two Lakh Ninety Eight Thousand Sixty Nine and Forty Eight Paise only) towards the invoices raised for the sale of power to MSEDCL for the period from March, 2017 to August, 2017 as detailed in Annex R along with interest @ 15% per annum from due date till payment or realization thereof:*
- v. *Direct MSEDCL to pay the Petitioner interest an amount towards banked and over injected units and wind power sold to MSEDCL amounting to Rs.8,47,499/- (Rupees Eight Lakh Forty Seven Thousand Four Hundred Ninety Nine Only) [as per Annex S]:*
- vi. *Direct the Respondent to pay carrying cost at the rate of 15% per annum for the delay in payment of the DPC as well as interest an*

amount towards banked units over injected units and sale of power to the Respondent:

- vii. Award costs of these proceedings against MSEDCL and in favour of the Petitioner and*
- viii. Pass such other order(s) as the Hon'ble Commission may deem just in the facts of the present case”.*

3. The impugned order reveals (particularly in Para 28) that MSEDCL against whom the claim of the appellant (as indeed claims of seven other similarly placed entities) was directed, did not file a reply to put in a formal contest to the quantification of the amount claimed due by the petitioners that had approached the State Commission. Having regard to the basic principles of law on pleadings, the non-filing of reply constituted implied admission of the liability. MSEDCL instead seems to have pleaded certain financial constraints and presented some plan for satisfying the various claims including that of the appellant. On the basis of such submissions, the State Commission proceeded to dispose of the petitions by the order operative part whereof reads thus:-

“1. MSEDCL is directed to release the agreed/admitted payments to the Petitioners on account of the principal amount and towards interest on the principal amount (i.e. DPC) as per the plan submitted to the Commission. Reconciliation shall be completed within two weeks from the date of this Order and a reconciled Report of outstanding dues shall be submitted to the Commission within two days thereafter. Further, MSEDCL should note that if it deviated from its commitment given in the plan, penal interest will accrue thereafter (beyond the date committed in the plan) at 1.25% per month on any DPC. MSEDCL is directed to submit its Compliance Report as cited earlier in this Order to the Office of the Commission.

2. Petitioners request regarding waiver of Petition fee is rejected. Parties to bear own cost of Petitioners.

(emphasis supplied)

4. In a similar fact situation, concerning an order passed by Central Electricity Regulatory Commission in the case of *DB Power Ltd. (supra)*, this Tribunal by judgment dated 04.02.2021 observed thus:-

“13. The proceedings before the Central Commission, in the matter brought before it by the Appellant, if we may use such analogy, was in the nature of civil suit for recovery of money claimed as due. The party against whom such claim had been pressed was expected to render all assistance to the adjudicatory forum so that, if any issues required to be determined, necessary inquiry could be made and clear decision thereupon was rendered. The Central Commission, while dealing with a matter of this nature, was expected to reach a decision that was clear, unambiguous, executable and led to finality. In such adjudicatory proceedings, the liability, if it exists, requires to be found and enforced. If there was any amount found due from the Respondent TANGEDCO unto the Appellant, in absence of any provision to the contrary in the contract or law, there was no occasion for the Commission to give any extended time for payment unless, of course, the party claiming had given consent for such enlargement of period for payment to be granted on request.

14. Concededly, there was neither any contest to correctness of the claim nor any specific request for three months to be given to TANGEDCO for satisfaction of the claim. Be that as it may, the three months period offered by the Central Commission also passed by with no effective compliance being attempted by the Respondent TANGEDCO.

15. What we are unable to understand is the justification for the inclusion of qualifying clause that was added by the Central Commission as tailpiece to the operative portion of the Impugned Order requiring payment to be made of the amount thereby determined it being made conditional upon “reconciliation of bills with the Petitioner”. If in the opinion of the Central Commission there was a need for reconciliation, questions of fact had arisen. If so, it was the responsibility of the Commission itself to ask the parties to present or discover their respective accounts and on such basis and with their assistance, on the basis of evidence gathered, determine the liability which was to be directed to be discharged. The decree, if we may borrow that expression from the civil jurisprudence, that the Central Commission was intending to pass could not have been made conditional or subject to reconciliation since that would relegate the parties to the same stage as they were prior to the adjudicatory process being initiated. It has to be remembered that such disputes end up before adjudicatory authorities because the parties are unable to reconcile or resolve on their own. Rendering the

enforcement of legitimate claim of a creditor subject to reconciliation by the debtor at its own convenience is throwing the former into a vicious circle, virtually denying the relief indefinitely. Such condition added to the direction to pay the lawful dues is in fact taking back by one hand what has been given by the other. The parties to the case are left in uncertainty as to what is the extent to which the claim has been allowed and what is the roadmap ahead for the liability to be discharged. If we may add, this smacks of abdication of responsibility vested by law in the adjudicatory forum.

16. *We hope and expect that while dealing with matters of such nature in future the Regulatory Commission will bear in mind that there is a need for clear findings to be returned on the liabilities which are subject matter of the lis. Coming back to the matter at hand, the parties are now reconciled to the fact that after adjusting the amounts which have been paid/received during the pendency of the proceedings before the Central Commission and during the pendency of the appeal at hand, the Respondent TANGEDCO owes to the Appellant an amount of Rs.87.78 Crores towards Late Payment Surcharge for the period 01.12.2015 to 30.04.2020, this being without prejudice to claim that might arise out of the result of the litigation pending before the High Court of Delhi particulars whereof have been noted above and also the claim on account of change of law mentioned earlier.*

5. As noted earlier, a similar dispensation by the State Commission had come up before us in Appeal No.386 of 2019 of MSEDCL itself and by judgment dated 20.09.2021 (*supra*), we had observed as under:-

40. *The impugned direction that in the event the procurer (appellant) "deviates from its commitment given in the payment plan, penal interest will accrue thereafter (beyond the date committed in the plan) at 1.25% per month on any LPS/DPC" does not fall foul of Section 3 of the Interest Act, 1978 for the simple reason that it is not "interest upon interest", the levy also being not over the amount of debt (arrears) after it has been repaid. Instead, it is in accord with what was accepted in Central Bank of India v. Ravindra (*supra*) as long-established practice of awarding future interest on the "principal sum adjudged". We fully agree with the submission of the Seller resisting the appeal that the contention of the procurer would lead to a patently unfair and absurd situation wherein defaulting parties could simply avoid meeting their payment commitments to generating companies by providing committed dates for payment for calculation of LPS / DPC, and thereafter not paying interest if the said amounts are not paid in a timely manner. The present case is a perfect illustration of the importance of awarding interest on LPS / DPC, as the*

appellant has, year after year, caused massive delay in payments and compelled the respondent to Appeal No. 386 of 2019. Page 33 of 34 initiate legal proceedings before the State Commission for recovery of its legitimate dues.

...

43. We direct the State Commission to determine the amount payable by the appellant to the second respondent in terms of directions in the impugned para 3 of the operative part of the order dated 26.03.2019 and take measures in accordance with law to ensure that the appellant discharges the liability on that score within three months of the date of this judgment.

44. We are deeply disturbed over the manner in which the appellant has been warding off its creditors depriving them of timely payments of their legitimate dues. This is reflective of financial mis-management on the part of the appellant but, more gravely, a conduct not expected of a distribution licensee. The MERC seems to have been playing along believing the promises held out through payment-plans without insisting on scrupulous adherence thereto. This has been leading to unnecessary litigation adding to the cost for all stake-holders. The Commission, as the sector regulator, equipped as it is with the requisite powers, can do better. If the reasons for the mess indicated in the additional affidavit dated 29.07.2021 (mentioned earlier) are any pointer, it is the duty of the regulator to effectively deal with some of the issues that staledly plague the food chain and are attributable to actions (or inaction) of the regulatory authority including certain disallowances, delayed implementation of the tariff orders, approvals of gains and losses in MYT Order instead of True up; belated approval of the final true up etc. It is the obligation of the State Commission to ensure, by Appeal No. 386 of 2019. Page 34 of 34 issuing appropriate directions and enforcement thereof to the logical end, that the Distribution licensee conducts itself in such a manner that it lives up to the objectives of the Electricity Act by maintaining financial discipline, adopting efficient systems, aiding in recovery of the cost of electricity in a reasonable manner and conduct of its business of distribution and supply on commercial principles which only would safeguard the consumers' interest.

6. The judgment dated 20.09.2021 in MSEDCL (supra) was carried to Hon'ble Supreme Court by Civil Appeal No.6440 of 2021. While vacating the directions given by this tribunal (by Para 45) for financial affairs of MSEDCL to be examined and for appropriate measures to be

taken in such regard by the State Commission, Hon'ble Supreme Court disposed of the appeal declining to interfere with the above said decision on its merits, by order dated 02.03.2022.

7. While this appeal has been pending, the parties did undertake some exercise of reconciliation in terms of which certain payments were made over the period, the last payment statedly being on 16.09.2022. We are informed by the learned counsel for the appellant that the appellant's claim towards Delayed Payment Charges (DPC) for the period May, 2018 till 16.09.2022 along with carrying cost at 1.25 % remains outstanding.

8. For the reasons already set out in the previous decisions quoted above, we do not approve of the approach adopted by the State Commission. In a dispute of such nature, it is the responsibility of the adjudicatory forum sitting in judgment to return clear findings on the amount due, if any, and issue proper enforceable directions for discharge of such liability by the opposite party. Since this has not been done, the proceedings before the State Commission, arising out of the petition of the appellant, are found to be inchoate. For complete adjudication, the Commission will have to undertake further exercise, by hearing both sides, to clearly determine the amount due, of course, taking into account the payments which have been made over the period, giving clear decision on the liability which has to be discharged

by MSEDCL including on account of DPC and carrying cost, having resort, at the same time, to appropriate measures for enforcement of such liability in a time bound manner. We order accordingly.

9. The parties are directed to appear before the State Commission on 01.11.2022. The Commission shall be obliged to pass the necessary order, in terms of the above remit, in accordance with law, expeditiously, not later than one month of the date fixed by us.

10. The appeal is disposed of in above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 06TH DAY OF
OCTOBER, 2022

(Sandesh Kumar Sharma)
Technical Member

pr/mkj

(Justice R.K. Gauba)
Officiating Chairperson