

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL NO. 144 OF 2019
AND
APPEAL NO. 199 OF 2019 &
IA NO. 1879 OF 2019

Date : 17.10.2022

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

APPEAL NO. 144 OF 2019

In the matter of:

SHAH PROMOTERS AND DEVELOPERS
AST-1, Success Chambers, 1232,
Apte Road, Deccan Gymkhana,
Pune – 411004.

Appellant(s)

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 COMPANY LIMITED
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400051.

Respondent(s)

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

Counsel for the Respondent(s) : Mr. Anup Jain
Mr. Akshay Goel
Mr. Vyom Chaturvedi for R-2

APPEAL NO. 199 OF 2019 &
IA NO. 1879 OF 2019

In the matter of:

MAHANAGAR DEVELOPERS
Sanmahu Complex,
5 Bundgarden Road, Opp. Poona Club,
Pune – 411001.

Appellant(s)

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 COMPANY LIMITED
Through its Managing Director,
5th Floor, Prakashgad,
Bandra (East),
Mumbai – 400 051.

Respondent(s)

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

Counsel for the Respondent(s) : Mr. Anup Jain
Mr. Akshay Goel
Mr. Vyom Chaturvedi for R-2

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

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

1. By a common order passed on 17.01.2019 on three different similarly placed petitions including the petition (Case No. 245 of 2018) of first Appellant herein and the petition (Case No. 273 of 2018) of the second Appellant, each seeking adjudication of dispute arising out of non-payment of dues by second respondent *Maharashtra State Electricity Distribution*

Company Limited (“MSEDCL”), the first Respondent *Maharashtra Electricity Regulatory Commission* (“the State Commission”) were directed as under:

- “1. *The Case Nos. 223, 245 and 273 of 2018 are allowed.*
 2. *Maharashtra State Electricity Distribution Co. Ltd. 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. LPS/DPC) as per the plan submitted to the Commission. Reconciliation, wherever necessary, shall be completed within two weeks from the date of this Order and a reconciled Report of outstanding dues along with exact time limit by which the payment would be made in chronological order shall be submitted to the Commission within two working days thereafter.*
 3. *Further, Maharashtra State Electricity Distribution Co. Ltd. Should note that if it deviates from its commitment given, penal interest will accrue thereafter (beyond the date committed in the plan) at 1.25% per month on any LPS/DPC.”*
2. Feeling aggrieved, the appeals at hand was filed, it being pointed out that the MSEDCL had not filed any pleadings taking objection to the calculation of dues, the entire decision being based on the assurances held out by a plan submitted by MSEDCL to discharge the liability unto to the Appellant(s) in a time-bound manner, the Commission having failed to either determine or issue time-bound directions or enforce the liability by appropriate measures, the plan submitted by MSEDCL also being vague, there being no clarity as to the timelines within which the payments would be made for full discharge of the liability including on account of *Delay Payment Charges* (DPC) and carrying cost.

3. We have come across similar orders passed by the State Commission in other similarly placed cases in several appeals earlier, one of similar improper dispensation rendered by *Central Electricity Regulatory Commission* (CERC) having been noticed in the case of *DB Power Limited* (Appeal No. 56 of 2020 decided by judgment dated 04.02.2021).

4. The approach of CERC of issuing directions of such nature (payments to be made to the extent of admitted liability on the basis of plan submitted by the procurer and both parties to reconcile on their own) having been adopted by the State Commission in other cases, illustratively including the case of *MSEDCL* (Appeal No. 386 of 2019 decided by this Tribunal by judgment dated 20.09.2021) and in the case of *Sahyadri Industries Limited* (subject matter of Appeal No. 13 of 2019 decided by judgment dated 06.10.2022).

5. The learned counsel for MSEDCL fairly conceded that the impugned order deserves to be set aside and the matter remitted to the State Commission following the *dicta* in judgments of this Tribunal rendered on 04.02.2021, 20.09.2021 and 06.10.2022 in cases of *DB Power Limited* (supra), *MSEDCL* (supra) and *Sahyadri Industries Limited* (supra). In view of this concession, we do not wish to load this judgment with detailed reasons for the conclusion we reach as set out in the previous said judgments, duly

taken note of at length lastly in the judgment in the case of *Sahyadri Industries Limited* (supra).

6. For the above reasons we set aside the impugned order to the extent it relates to the appellants herein. For complete adjudication, we direct the Commission 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.
7. The parties are directed to appear before the State Commission on 01.11.2022. The Commission shall be obliged to pass the necessary orders, in terms of the above remit, in accordance with law, expeditiously, not later than one month of the date fixed by us.
8. The appeals are disposed of in above terms.

PRONOUNCED IN THE OPEN COURT ON THIS 17th DAY OF OCTOBER, 2022

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Officiating Chairperson

tp/mk