

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)

APPEAL NO. 315 OF 2019

Dated: 14.11.2022

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

In the matter of:

GHATGE PATIL INDUSTRIES LIMITED

Uchagaon,

Kolhapur – 416005

Maharashtra, India

... Appellant(s)

*VERSUS*

1. MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

*[Through its Secretary]*

Wold Trade Centre,

Centre No. 1, 13<sup>th</sup> Floor, Cuffe Parade

Colaba,

Mumbai – 400 005

2. MAHARASHTRA STATE ELECTRICITY DISTRIBUTION  
COMPANY LIMITED

*[Through its Managing Director]*

5<sup>th</sup> Floor, Prakashgad,

Bandra (East)

Mumbai – 400 051

... Respondent(s)

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

Counsel for the Respondent(s) : Mr. G. Umapathy, Sr. Adv.  
Mr. Anup Jain  
Mr. Vyom Chaturvedi  
Ms. Prachi Gupta for R-2

J U D G E M E N T

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

1. The appellant, *Ghatge Patil Industries Limited* (for short, "Ghatge"), by the present appeal, challenges the Order dated 09.04.2019 of the first respondent *Maharashtra Electricity Regulatory Commission* ("State

Commission”) in Case no. 20 of 2019 rejecting its case for grant of generation credit notes for energy injected by it into the grid for the period 03.07.2018 to 31.07.2018 for adjustment of such units in the ensuing billing cycle.

2. The appellant is a public limited company engaged in the business of foundry, manufacturing graded grey iron and nodular iron castings and wind power generation and had set up *Wind Power Projects* (“WPPs”) at four locations in district Dhule in the State of Maharashtra with total capacity of 15 MW and entered *Wind Energy Purchase Agreements* (“WEPAs”) on various dates (31.12.2005, 18.02.2006, 02.05.2006 & 13.12.2006 respectively) with the second respondent, *Maharashtra State Electricity Distribution Company Limited* (“MSEDCL”) for sale and supply of electricity thereby generated, each WEPA being for a term ending with thirteenth anniversary of *Commercial Operation Date* (“COD”) “*unless renewed or extended... subjected to any early termination*”, the renewal or extension being “*only by mutual written agreement*”, the COD of the WPPs having occurred during FY 2005-06.

3. It is not in dispute that MSEDCL made defaults in timely payments of the charges for the electricity supplied by Ghatge (“the generator”), this having led to filing of a petition (Case no. 68 of 2016) by the generator before the first respondent (“the State Commission”). The said petition was allowed by the State Commission, by Order dated 16.03.2017, with a direction to MSEDCL to pay the outstanding dues to the generator expeditiously and *Delayed Payment Charges* (“DPC”) within thirty days from the date of the said order.

It appears that the said order not having been complied with, Ghatge again approached the State Commission by another petition (Case no. 77 of 2017) on which a *Show Cause Notice* was issued in relation to the non-compliance with Order dated 16.03.2017. The delays in payments continued and Ghatge decided to terminate the WEPAs dated 01.02.2018 and instead utilize the electricity generated by it for “self-use”. A notice to this effect was issued by Ghatge on 02.01.2018. While proceeding to terminate the WEPAs, the appellant required *Short Term Open Access* (“STOA”) for availing the generated capacity for self-use and had moved applications to such effect with MSEDCL. The applications were rejected on 30.01.2018 by MSEDCL on the ground that STOA could not be allowed since parties were bound by WEPAs.

4. Against the above backdrop, the generator approached the State Commission with another petition (Case no. 83 of 2018) seeking the following reliefs:

- a) *Direct the Respondent No. 1 to grant STOA permission to the Petitioner for self-use from the wind turbines for the period commencing from February 1, 2018 onwards;*
- b) *Direct the Respondent No. 1 to adjust the units supplied to Respondent No. 1 against the Petitioner's power bills until the disposal of the present Petition;*
- c) *Award costs of these proceedings against the Respondent No. 1 and in favour of the Petitioner; and*
- d) *Pass such other order(s) as the Hon'ble Commission may deem just in the facts of the present case”*

5. It also moved an interim application on 26.03.2018 for appropriate directions regarding OA permission to be granted w.e.f. 01.02.2018. The petition and the application were resisted. The Commission ruled thereupon, the directions given by the final order passed by it on 02.07.2018 being as under:

*“12. In view of the forgoing, the Commission notes that MSEDCL has continuously failed to pay for the energy supplied under WEPAs even after filing of various Petitions for payment of dues with the Commission. The Commission further notes that the payment for the energy supplied, along with payment of DPC for late payments, is a basic and express obligation of MSEDCL under the EPAs, and the failure to discharge it or to cure such failure within the stipulated time is an event of ‘immediate default’ and would, therefore, entitle the Seller to terminate the EPAs. However, it would not be proper to treat the WEPAs terminated until so determined by the Commission. Based on the facts brought out in the petition, the Commission rules that WEPAs of GPIL stand terminated with immediate effect.”*

*[Emphasis supplied]*

6. MSEDCL, by a communication dated 30.07.2018, informed the generator that pursuant to the Order dated 02.07.2018 of the State Commission, the WEPAs stood terminated from the midnight of 02.07.2018. After the decision had been rendered to above effect, by Order dated 02.07.2018, by the State Commission bringing an end to the WEPAs w.e.f. the date of said decision (i.e. 02.07.2018), the appellant submitted another request on 03.07.2018 for grant of OA for the month of July, 2018. The appellant made another request on 11.08.2018 to Chief Engineer (Commercial) of MSEDCL for grant of OA for the remaining period of July, 2018 and issuance of generation credit notes for the energy injected in the month of July, 2018 and for adjustment of the corresponding units in the

ensuing billing cycle. This request was not accepted as MSEDCL informed the appellant, by a formal communication of 14.08.2018, that STOA could not be granted for July, 2018 since such application for the month of July, 2018 had already been scrutinized and disposed of prior to the Order dated 02.07.2018. The request for issuance of generation credit notes was reiterated and invoices raised in September and December, 2018 but not accepted.

**7.** On the basis of the above facts, the appellant approached the State Commission in January, 2019 with another petition (Case no. 22 of 2019), seeking the following reliefs:

- “(a) Direct MSEDCL to issue GCN for the 41,79,414 units injected into the grid from July 03, 2018 to July 31, 2018 within specified time and adjust in immediately ensuing bills of the Petitioner;*
- (b) Direct MSEDCL to pay the outstanding amount of Rs.43,05,539/- (Rupees Forty Three Lakh Five Thousand Five Hundred Thirty Nine only) towards DPC within specified time;*
- (c) Direct MSEDCL to pay carrying cost at the rate of 15% per annum on the delay in payment of DPC by MSEDCL as per Order dated March 16, 2017 passed in Case No. 68 of 2016;*
- (d) Award cost of these proceedings against MSEDCL and in favour of the Petitioner.”*

**8.** The above said petition was decided by Order dated 09.04.2019, the State Commission having upheld the refusal on the part of the MSEDCL to grant OA for the period 03.07.2018 to 31.07.2018 for issuance of generation credit notes for the electricity injected into the grid during that period. The petition before the State Commission had also raised the issue of

miscalculation of delayed payment charges on which directions were issued to the parties to sit together and resolve the issue amicably and submit a compliance report within the specified time.

9. The appeal at hand was filed restricted to the claim of the appellant pertaining to denial of STOA for the month of July, 2018 and rejection of the prayer for direction for issuance of generation credit notes of 41,79,414 units injected into the grid during the corresponding period by the appellant.

10. The following three clauses of the WEPAs are relevant:

*“ARTICLE 4 - TERM*

*Section 4.01: Term and Termination:*

*This Agreement shall remain effective as of the date first written above, and shall remain in full force and effect until the 13<sup>th</sup> anniversary of the Commercial Operations Date unless renewed or extended under section 4.02 unless subjected to any early termination. Applicable provisions of the Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.*

*Section 4.02: Option to Renew:*

*Prior to the expiration of the Term then in effect, the Term may be renewed or extended only by mutual written agreement of the Parties hereto on terms and conditions mutually agreeable to the Parties.*

...

*ARTICLE 13 – EVENTS OF DEFAULTS AND REMEDIES*

*Section 13.01: Events of Default:*

*An “Event of Default” shall mean in respect to a Party (“Defaulting Party”), the occurrence of any one of the following, subject to the applicable opportunity to cure.*

...

*(b) Thirty (30) Day Opportunity to Cure: Unless otherwise excused or permitted under the terms of this Agreement, any of the following shall constitute an immediate Event of Default, unless the Party shall have cured the same after thirty (30) days of receipt of notice from the other Party:*

...

(ii) *Failure or refusal by either Party to perform its material obligations under this Agreement.*

...”

(Emphasis supplied)

**11.** It is an admitted position of the appellant that so long as WEPAs were valid and subsisting it (generator) could not apply for, or be granted, OA for wheeling or transmission of electricity for self-use, the entire capacity having been committed for supply to MSEDCL. Though the appellant had invoked Article 13.01 to opt for premature termination of the agreement, the failure on the part of the procurer “*to perform its material obligations*” constituting an “*immediate event of default*”, such termination notices issued on 02.01.2018 did not result in termination of the contracts till the Commission had rendered its order on 02.07.2018 in Case no. 83 of 2018. Against the backdrop of the defaults leading to such termination, there was no occasion for any renewal or extension of the period. The WEPAs envisaged “*early termination*”, there being no clarity as to whether the termination opted by the party alleging failure of the other side to perform its material obligations was subject to approval by the State Commission.

**12.** Be that as it may, the Commission held, by its Order dated 02.07.2018, that “*it would not be proper to treat the WEPAs terminated until so determined by the Commission*”. Concededly, the generator did not challenge the said conclusion of the State Commission recorded by its Order dated 02.07.2018

or directions to the effect that the termination would come into effect from the date of the said order (i.e. 02.07.2018). In that view, the Order dated 02.07.2018 has since become final and binding. At this distance in time, we are not inclined to reopen the said issue or to consider the contention of the appellant that the termination was intended to and ought to be treated as having come into effect from 01.02.2018 in terms of the notices of termination issued on 02.01.2018.

**13.** It is in above view of the matter that the appellant cannot succeed in the appeal at hand. The WEPAs bound the parties till 02.07.2018. The applications for STOA for the month of July, 2018 had admittedly been rejected by MSEDCL by communication dated 15.06.2018. The request made on 03.07.2018 for grant of STOA during the month of July, 2018 was belated, the time prescribed by DOA Regulations for submission and processing of the same having already lapsed. In these circumstances, the rejection of the STOA application for July, 2018 by MSEDCL cannot be faulted. It naturally follows that the claim of the appellant for credit notes for the energy injected during the corresponding period cannot be granted.

**14.** For the forgoing reasons, the appeal is dismissed.

PRONOUNCED IN THE OPEN COURT ON THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2022.

(Sandesh Kumar Sharma)  
Technical Member

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(Justice R.K. Gauba)  
Officiating Chairperson