APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI

(APPELLATE JURISDICTION)

APL No. 358 OF 2022 &
IA No. 1310 OF 2022

Dated: **30th May, 2023**

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

Punjab State Power Corporation Limited
Through CMD/Director (finance)
The Mall, PSEB Head Office, Baradari
Patiala, Punjab 147001 …Appellant

VERSUS

1. **Rajasthan Rajya Vidyut Prasaran Nigam Ltd.**
   Through its Authorised Signatory
   Vidyut Bhawan, Jyoti Nagar,
   Jaipur, Rajasthan, 302005

2. **Central Electricity Regulatory Commission**
   3rd and 4th Chanderlok Building 36,
   Janpath Road, New Delhi 110001 …Respondents

Counsel for the Appellant(s) : Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Ms. Kritika Khanna
Mr. Amal Nair

Counsel for the Respondent(s) : Mr. Puneet Jain
Mr. Abhinav Gupta
Mr. Harsh Jain
Mr. Umang Mehta For R-1

JUDGMENT

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

1. The present Appeal is filed by the Appellant - Punjab State Power Corporation Limited aggrieved by the Order passed by the Central Electricity Regulatory Commission (the "CERC" for short) in Petition No. 76/MP/2019 dated 20/07/2022 whereby they were held liable to pay Rs. 5.05 Crores to the first Respondent; they were directed to mutually resolve, payment of Rs. 2.09 Crores, with the first respondent; and to pay them Rs. 5 lakhs as cost/ compensation.

2. The Appellant – PSPCL, a company incorporated under provisions of the Companies Act, is an unbundled entity of the erstwhile Punjab State Electricity Board and has been vested with the functions of generation and distribution of electricity in the State of Punjab. The 1st Respondent - Rajasthan Rajya Vidyut Prasaran Nigam Limited, a company registered under the Companies Act, 1956, was established under the provisions of the Rajasthan Power Sector Reforms Act, 1999 as the successor company of the Rajasthan State Electricity Board. The Appellant and the 1st Respondent were involved in three forms of inter-se transactions namely *'Sale of Energy', 'O&M Charges for 66kV Mukatsar-Ganganagar Line'* and *'O&M Charges for 132 kV Moga-Mukatsar-Ludhiana Line'.*

3. In its letter dated 16/10/2003, the 1st Respondent claimed Rs.8.37 Crores as payable to it, for the period October, 1996 to March, 1999, under inter-state energy exchange on account of revised booking from Salal I & **II** for the period from October,1996 to March,1999; the invoice was stated to be due and payable within 10 days i.e., by 25/10/2003.

I. CASE OF THE APPELLANT:

4. It is the appellant's case that the petition filed by the first respondent, before the CERC on 14/02/2019, arose out of a cause of action which accrued in the year 2003; no claims are maintainable except for the period of three years before the date of filing of the petition before the CERC i.e., prior to 15/02/2016; any claims prior thereto are barred by limitation; in **AP Power Coordination Committee and Ors. v. M/s Lanco Kondapalli Power Ltd and Ors**: **(2016) 3 SCC 468**, the Supreme Court held that the limitation period of three (3) years would apply in adjudication proceedings initiated under Section 86 (1)(f) of the Electricity Act, 2003, which is identical to Section 79 (1)(f); the Appellant's office memo dated 13/11/2009 is not an acknowledgement of debt; under Section 18 of the Limitation Act, 2003, acknowledgment of debt must be unqualified and unambiguous, and in any case must be made before the expiry of the limitation period for filing the suit; and, as has been held by this Tribunal, in **GUVNL vs. Essar Power Limited (Order in Appeal Nos. 77 and 86 of 2009 dated 22/02/2010)**, mere writing of letters does not extend the period of limitation.

5. The Appellant submits that the case relates to a period so long ago, that the records of the case are not available; and they are in no position to decide on the claims of the first respondent; even presuming tht the entire case of the first respondent is correct, the CERC erred in ignoring the fact that the Petition was filed before them, by the first respondent on 14/02/2019, with respect to claims arising out of an invoice dated 16/10/2003 which is barred by limitation; the first respondent has relied on the Appellant's letter dated 13/11/2009 which is not an admission of liability as erroneously claimed by them; even otherwise, the said letter dated 13/11/2009 does not extend limitation under Section 18 of the Limitation Act; for the said provision to apply, acknowledgement should be within the

period of limitation; and acknowledgement if any, after the period of limitation has expired, would not extend the period of limitation; even counting from 13/11/2009, the period of limitation expired on 29/11/2012; the petition, filed only in the year 2019, is hopelessly time barred; the CERC erred in holding that the period from 2005 to 2010 should be excluded while calculating limitation on the ground that, since 2005, both parties were involved in a reconciliation process through exchange of letters; and mere writing of letters cannot extend the period of limitation.

6. The Appellant submits that their case before the CERC was that the very purpose of limitation is to not permit a party to agitate very old and stale claims and to avoid a situation as in the present case which relates to a period long ago; they have no records of the case and are not in a position to decide on the claims of the 1st Respondent; the cause of action having arisen on 25/10/2003, the period of limitation would expire on 24/10/2006; the 1st Respondent belatedly filed Petition No. 76/MP/2019 under Section 79(1)(f) of the Electricity Act before the CERC on 14/02/2019, seeking adjudication of disputes and praying for a direction against the Appellant for payment of Rs. 7.14 Crores towards the alleged outstanding dues; the Petition was filed by the 1st Respondent after a period of about 13 years post expiry of limitation; vide Record of Proceedings dated 30/05/2019, the CERC admitted the Petition and directed the 1st Respondent to file certain information, and the parties to convene a meeting and mutually resolve the issue of pending payments; on 03/07/2019, the Appellant filed its Reply to the Petition pointing out that the claims as being sought to be raised by the 1st Respondent were barred by limitation; in compliance with the Order dated 05/04/2021, the Appellant on 22/11/2021 apprised the CERC of the fact that the records pertaining to

the disputed period, on account of vintage, were not available with the Appellant and, in the absence of any documentary evidence, any kind of bilateral meeting could not have resulted in any positive outcome; vide Record of Proceedings dated 22/02/2022, the CERC directed the 1st Respondent to implead the Northern Regional Power Committee (NRPC) as a party to the petition, and directed the Appellant to file an affidavit regarding certain communications of the year 2008 and 2009; on 14/03/2022 the Appellant filed an affidavit in compliance with the directions of the CERC clarifying that the documents, as sought for by the CERC, pertained to the erstwhile Punjab State Electricity Board Limited which, after unbundling, had culminated in the formation of the Appellant; they were not in possession of the documents sought for as they were very old, and the record was not traceable, and it was not possible for them to consider the case put forth by the 1st Respondent; and on 26/05/2022 the matter was finally heard by the CERC and Orders were reserved.

7. The Appellant submits that, in support of their claim, the 1st Respondent had relied on the Appellant's letter dated 13/11/2009 purportedly admitted its liability; the said letter dated 13/11/2009 does not amount to an admission of liability on the part of the Appellant, and would not have any impact on the petition which is otherwise barred by limitation; the 1st Respondent claims that the said acknowledgment would extend the period of limitation in terms of Section 18 of the Limitation Act; for the applicability of Section 18, the purported acknowledgement should be within the period of limitation; therefore, the question of extension of the period of limitation would not arise; even counting from 13/11/2009, the period of limitation would expire on 12/11/2012; the petition, filed only in the year 2019, is therefore hopelessly time barred; however, on 20/07/2022,

the CERC passed the impugned Order allowing the claim of the 1st Respondent.

8. The Appellant submits that, in terms of Section 18 of the Limitation Act, for a correspondence to be an acknowledgement of debt it must fulfil the following conditions: (i) That the acknowledgement of liability must be made before expiry of limitation period for filing the suit. If limitation has already expired, it would not revive under Section 18 of the Limitation Act; and (ii) that the acknowledgement of liability must be unqualified and must be in unambiguous, clear terms; acknowledgement of liability must be made before expiry of the limitation period for filing the suit and, if limitation has already expired, it would not revive under Section 18 of the Limitation Act. In the present case, the cause of action arose on 25/10/2003 (considering the 10 days for payment) and the office memo dated 13/11/2009, even if it can be termed an acknowledgement, was made three (3) years after expiry of limitation.

9. In their rejoinder, the Appellant submits that for a cause of action which had accrued in the year 2003, the petition the alleged acknowledgement of debt i.e., the office memo dated 13/11/2009, fails to pass the muster of being an “Acknowledgement of Debt” in terms of Section 18 of the Limitation Act, 2003, which is that the acknowledgement of debt must be unqualified and unambiguous in nature and, in any case, must be made before the expiry of limitation period for filing of the suit; any communication which, even if considered as an acknowledgement of debt in the present set of facts, ought to have been made before 25/10/2006 i.e., the date on which the limitation qua the invoice in question expired; the proceedings before the NRPC Commercial Sub-Committee since 2008 cannot be termed as an acknowledgment/admission or that the same would extend the period of limitation; the first respondent contends that the parties

were in discussions to resolve the issue before the NRPC Commercial Sub–Committee since 2008' firstly, the said exercise is also beyond the prescribed period of limitation and cannot extend the period of limitation; even otherwise the 2008 minutes does not record any acknowledgement/admission on the part of the appellant; similarly, the minutes of the 11th Sub-Committee meeting dated 08/04/2009 fail to record any acknowledgement; it is only much belatedly, in the minutes of meeting of the 25th Sub-Committee in December of 2013, that the alleged acknowledgement of debt dated 13/11/2009 is recorded and discussed; even this discussion is after four (4) years of the communication; in any event, the letter dated 13/11/2009 cannot be termed to be an acknowledgement of debt; in terms of Section 18 of the Limitation Act, 2003, the acknowledgment of debt must be unqualified and unambiguous, and in any case must be made before the expiry of limitation period for filing the suit; to further the case of limitation having been extended on account of NRPC Sub-Committee meetings, the first respondent has relied on the minutes of the meeting held in 2018 when the last minutes of meeting being relied upon was held in 2013; and even the two consequent Sub-Committee being held 5 years apart do not qualify under the Limitation Act, 2003.

II. CASE OF THE RESPONDENT:

10. It is submitted, on behalf of the first respondent, that, in the impugned order, the CERC held that the Petition as filed was not barred by Limitation as, at no point of time prior to the filing of the petition, the appellant had ever denied or disputed their liability; on the contrary, the Appellant had, in writing, admitted the liability, and the issue was only regarding payment of the amount after reconciling the accounts; the CERC had also noticed that the Respondent had been pursuing their case before the NRPC since 2008-09 itself, and the NRPC, by mutual agreement between the parties, was

competent to adjudicate and resolve commercial issues between its members; the Appellant never denied their liability to the extent of 5.05 Crores; despite being a state entity, their conduct was only to dilly dally release of payment on the ground of reconciliation of accounts, and now contending that the Respondent's Claim was barred by time; in their reply before the CERC, as well as in the present appeal, the appellant has admitted liability but has put forth the defence of denial of remedy as being barred by limitation; the Respondent was pursuing their remedies before the NRPC Commercial Sub-Committee since 2008 itself; both the Appellant and the Respondent are members of the Northern Regional Power Committee (NRPC), which was formulated vide gazette notification dated 25.05.2005; the important functions of the NRPC, amongst others, include "To evolve consensus on all issues relating to economy and efficiency in the operation of power system in the region"; this is in order to ensure that members may first try to resolve their disputes among themselves before the NRPC itself; and the same has been explained and referred to by the CERC in the impugned order **(Para 27 of the impugned order).**

11. The Respondent would further submit that, even before the Sub-Committee, the Appellant had never denied their liability, in fact every time it was requested by the Appellant that the matter will be resolved mutually between the parties; the issue regarding the same was raised several times by the respondent; in the Agenda of the 25th Meeting of the Commercial Sub - Committee the Respondent raised the issue that, as per their accounts an amount of RS.7.14 crores was receivable from PSEB, and despite regular pursuance PSEB had not responded; the matter was taken to the Commercial Committee of NRPC; in the IXth meeting of NRPC held on 5th September, 2008 at Delhi, the NRPC had directed both the organizations (PSEB and RVPN) to reconcile the accounts and get the

same settled; in response to their letter dated 9TH July & 17th Aug., 2009, PSEB had, vide letter dt 13.11.2009, agreed that the amount outstanding was of Rs. 5.05 crores, and had suggested that a meeting be held of officers from both sides at their convenience for full reconciliation of all the bills/outstanding amount raised by either organization; they had clarified vide letter dated 29.12.2009, and had requested to send their team for final settlement and arrange / release of agreed amount i.e. Rs. 5.05 crores; the CMD of the Respondent had issued letter dt.2.8.2013; a reminder was issued by their office on 4.10.2013, but no response was received; this issue was taken up in the sub-committee's meeting held on 24.12.2013, wherein the Appellant's had responded stating that the issue was under consideration and they would resolve the issue mutually; similarly, in 2018 in the 36th Meeting of the Commercial Sub-Committee the issue was again added to the agenda referring to the respondent's request for payment of the undisputed amount of 5.05 Crores, and for reconciliation of 2.09 Crores; in that meeting as well the Appellant's assured to take up the issue with their finance department and discuss mutually with the Respondent; and, as no payment or communication was thereafter received, the Respondent filed a Miscellaneous Petition No.76/MP/2019, and the CERC directed the Appellant - PSPCL to pay the undisputed amount of Rs. 5.05. Crores, and to conduct a meeting to resolve the issue regarding the remaining amount of 2.09 Crores; the Respondent has been pursuing its remedies before the Commercial Sub-Committee wherein both the Appellant and Respondent are members, since 2008-09 itself; thereafter, seeing the conduct of the Appellant, the Respondent had pursued its remedies before the CERC; and, therefore, the contention that the claim was barred by limitation is misconceived and was rightly rejected by the CERC.

12. It is stated, on behalf of the Respondent, that the Appellant had, on several occasions, specifically admitted their liability to pay including in the letter dated 13.11.2009; their plea, qua limitation, is misconceived considering Section 18 of the Limitation Act; by their letter dated 23.02.2004 the appellant had acknowledged the entire liability mentioned in the invoice i.e. 8,37,03,224/-; however the Chief Engineer had stated that liability of Rs. 4,23,74,579/- stood adjusted against the invoices raised by the Respondent which were pending payment from the Respondent, and the remaining amount would be adjusted against future bills; the Respondent has been prompt in making payment raised against them, and has cleared all the dues till 1996 mentioned in the letter dated 23.02.2004 were settled; thereafter the amount claimed in the present petition i.e. 7,14,38,022 remained due to be paid by the Respondent; thereafter several reminders were sent on behalf of the Respondent to the Appellant following up for the payment; in reply the Appellant had also sent several letters wherein, without denying their liability to pay, they stated, vide letter dated 13.11.2009, that the bills and accounts be reconciled; the Appellant admitted the partial claim of the Respondent to the tune of 5.05 Crores, and the remaining amount was made subject to tallying with the records; and, in the previous letters, the Appellant had always mentioned the undisputed amount to be of 4.77 Crores

13. It is submitted, on behalf of the Respondent, that the CERC, in the impugned order, has formulated the following table of communication between the parties, which reads thus:

"1	*16.10.2003*	*RVPNL*	*Revised Energy Charges bill for Rs 8.37 crore for the month of October, 1996 to March, 1999*
2.	*6.4.2004*	*PSEB*	*Requested to charge the 66 kV Mukatsar-Sriganganagar line from 132 kV S/stn end for safety of the equipment/material (if required) and PSEB will not be responsible for any loss, etc.*
2.	*19.10.2005*	*RVPNL*	*The net amount receivable from PSEB is Rs 7.25 crore, after adjustment of the undisputed dues payable by RRVPNL to PSEB*
3.	*17.02.2006*	*PSEB*	*An amount of Rs. 4.24 Crore is also receivable by PSEB from RRVPNL. Request to depute an officer for reconciliation of outstanding dues as on 23.2.2006.*
4.	*9.3.2006*	*RVPNL*	*After reconciliation, an amount of Rs 7.19 crore is payable by PSEB to RVPNL. Kindly reconcile and arrange for payment*
5.	*31.8.2006*	*PSEB*	*Requested to depute some officer to reconcile the outstanding dues, so that the matter can be decided once for all. The details of outstanding dues payable by RVPNL is 4.24 crore.*
6.	*19.9.2006*	*RVPNL*	*Requested to reconcile the details of each claim from your accounts and intimate difference, so that the same can be sorted out at the time of reconciliation.*
7.	*23.10.2006*	*PSEB*	*Request to reconcile the figures of our claim and intimate if there is any discrepancy, so that further action can be taken accordingly.*

8.	*30.12.2006*	*RVPNL*	*Requested to re-verify your accounts and arrange payments of our dues of Rs 7.19 crore at the earliest.*
9.	*6.10.2007*	*RVPNL*	*An amount of Rs 7.12 crore is receivable from PSEB as on 30.9.2007 (after taking into account the claims against overlay exchange of energy and pooled losses raised by both organizations)*
10.	*26.10.2007, 27.11.2007, 28.12.2007 & 22.1.2008*	*RVPNL*	*Request to make payment of Rs 7.12 crore by PSEB*
11.	*29.8.2008*	*RVPNL*	*Request for release of payment of dues amounting to Rs 7.14 crore at the earliest.*
12.	*12.11.2008*	*PSEB*	*Refer to letters dated 23.2.2004, 27.2.2006 and 23.10.2006. Copies of bills raised by PSEB for which payment is outstanding are enclosed. You are requested to send a team of concerned officials to Patiala to get details reconciled at the earliest, so that final position of accounts is arrived at.*
13.	*19.1.2009*	*RVPNL*	*Request to make the payment of Rs 4.77 crore, being the undisputed and reconciled amount as per PSEB accounts confirmed vide PSEB letter dated 12.11.2008 and also depute a team for reconciliation of the details still remaining unreconciled.*

14.	*30.1.2009*	*PSEB*	*As per your letter dated 29.8.2008, your office has calculated the outstanding amount against PSEB to be Rs 7.14 crores, while PSEB calculates this figure to be Rs 4.77 crores. It is desirable that full reconciliation of all bills/outstanding amounts raised by either organization is carried out before making any payments, so that no dispute arises afterwards. If you agree that the amount of Rs. 4.77 crores, as arrived at by PSEB as full and final payments of your outstanding amount, PSEB will make the payment accordingly. For further reconciliation, representatives of this office are likely to visit concerned RRVPN office at Jaipur in February at the convenience of both our offices.*
15.	*25.2.2009*	*PSEB*	*Er. Rajesh Kathpalia, Dy Director in this office will be, visiting your office on 3rd March, 2009 regarding issues of reconciliation of accounts between PSEB and RRVPN.*
16.	*4.3.2009*	*RVPN*	*As desired by Shri R. Kathpalia, Dy. Dir, PSEB (camp Jaipur), the details of payments made to PSEB against power purchase and O&M charges during the years 1994-95 to till date are enclosed herewith for further needful.*

16.	*6.4.2009*	*PSEB*	*As per your letter and subsequent correspondence, your office has calculated the outstanding amount against PSEB to be Rs 7.14 crore, while PSEB calculates this figure to be Rs 4.77 crore. To zero in on the difference in the amounts of pending payments, it is also necessary to tally the accounts/ pending payments bill wise and as per record available in this office, there are certain bills raised by PSEB which RRVPN seems not to have included in its accounts and there are payments pending since very long. It is requested that RRVNL may once again look at the above bills and incorporate them into their accounts so that accounts are reconciled by both sides.*
17.	*20.4.2009*	*RVPN*	*Request to expedite our dues besides reconciling the balance dues.*
18.	*19.5.2009*	*PSEB*	*Request that RRVPNL may once again look at the bills and incorporate them into their accounts so that accounts so that accounts are reconciled by both sides.*
19.	*9.7.2009*	*RVPN*	*Kindly recast your accounts and arrange for payment of dues verified and reconciled as per PSEB account. If required a team of RVPN can be deputed to Patiala for further reconciliation and clarification of points as clarified above.*
20.	*17.8.2009*	*RVPN*	*Kindly direct the concerned officer(s) to reconcile the remaining accounts and also arrange the payment of reconciled and undisputed amount of Rs 4.77 crore immediately.*

21.	*13.11.2009*	*PSEB*	*As per your letter dated 29.8.2008, your office has calculated the outstanding amount against PSEB to be Rs. 7.14 crore, while PSEB calculates this figure to be Rs 5.05 Crore. It is reiterated once again that full reconciliation of all the bills/outstanding amounts raised by either organization is carried out so that no dispute arises in future. If any clarification is required, a meeting can be arranged of the officers of both organizations at the convenience of both offices.*
22.	*29.12.2009*	*RVPN*	*In order to settle the accounts, we may sit together and verify the records which appears to be not completely available with PSEB. Therefore, it is requested to kindly depute your team to, RVPN on the date and time convenient to PSEB. In the meantime, kindly release the payments of undisputed and reconciled dues of Rs 5.05 crore immediately.*
23.	*10.6.2010*	*PSPCL*	*The issues of outstanding amount of RRVPN and PSEBI against each other, need further clarification/discussion on various accounts. The issues which need further discussions are…..A meeting can be arranged between officers/officials of our respective organizations to sort out the issue of pending payments by way of verification of records/reconciliation. Your office may also depute a team of concerned officials for the work of reconciliation on a mutually convenient date.*

24.	*21.6.2010*	*RVPN*	*As you are aware the accounts are very old and our auditors are making repeated comments on these receivables, it is requested to kindly direct the concerned officers to reconcile the remaining accounts. It is further requested to arrange payment of reconciled and undisputed/admitted dues of Rs 5.05 crore.*
25.	*19.7.2010 10.5.2011 & 30.9.2011*	*RVPN*	*Reminder-Request for payment towards undisputed/reconciled dues of Rs. 5.05 crore and for deputing team of officials to Patiala/Jaipur for reconciliation purpose."*

14. The Respondent submits that the CERC had, thereafter, opined that, since 2005, both the parties were involved in the reconciliation process through exchange of letters, deputing officials to each other's office for clarification/discussions for an amicable settlement of the disputes; in fact, the reconciliation process undertaken by the parties, resulted in the reduction of the Respondent's claim from Rs. 8.37 crore to Rs. 7.14 crore, after adjustment of the amounts; in response to the Respondent's letter dated 19.10.2005 seeking payment of outstanding dues, the Appellant, had, vide its letters dated 17.2.2006, 31.8.2006 and 23.10.2006, preferred a counter claim of Rs 4.24 crore, as receivable from the Respondent, with a request to depute an officer to reconcile the outstanding dues; thereafter, on a request made by the Respondent on 29.8.2008 to make payment of the outstanding amount of Rs 7.14 crore, the Appellant had, on 12.11.2008, informed the Respondent that only Rs 4.77 crores (as per its own calculation), was payable, and a team of concerned officials be sent to get the details reconciled to arrive at a final position; on 30.1.2009, the Appellant had expressed its willingness to pay Rs 4.77 crore, as full and

final payment, subject to the consent of the Respondent; this amount was confirmed by the Respondent vide its letter dated 6.4.2009, with a request for further reconciliation; though the Respondent had sought payment of the undisputed amount of Rs 4.77 crores and for reconciliation of the remaining amount, the Appellant, vide its letter dated 13.11.2009, worked out the outstanding dues as Rs 5.05 crores, with a request for full reconciliation of bills / outstanding amounts; even after the erstwhile PSEB was unbundled and the Appellant Company was formed in 2010, the Appellant, vide letter dated 10.6.2010, had pointed out that the issue of payment of outstanding amounts to the Respondent needed further clarification/ discussion, on various counts, and accordingly requested the Respondent to depute a team of officers for the said reconciliation work; thus, the submission of the Appellant that the claim of the Respondent, after 24.10.2006, is barred by limitation, is misconceived, as the documents placed on record, indicate that the parties had invested time in bonafide negotiations for settlement of disputes, during the period from 2005 to 2010; and this period of negotiation/reconciliation, between the parties, should be excluded from limitation.

15. It is submitted, on behalf of the Respondent, that, in the year 2010, the Appellant-PSPCL succeeded Punjab State Electricity Board; thereafter the Appellant's regular plea is that they do not have old documents as the same were destroyed due to fire, and they have asked the Respondent to provide them details of the dues; employees of the Respondent went to the office of the Appellant and delivered the documents against proper receipt; on several occasions, representatives of the Appellant also came and took the documents from the Respondent; however, on every occasion, it was informed by the Appellant that the matter is under consideration; even after filing of the petition before the CERC on 27.05.2019, representative-

employees of the Appellant also visited the office of the Respondent, and took copies of all the documents available with the Respondent; the judgments relied upon by the Appellant are inapplicable, in so far as the present factual scenario is concerned, in as much as in all the said cases the claim was either denied by the Respondent therein or the claim was in nature of damages and compensation under the contract; the Appellant has not denied their liability to pay, and in fact has admitted the debt on several occasions; further, the Respondent was pursuing their remedy before the NRPC since 2008, wherein the Appellant has always said the claim to be under consideration and has not denied the same; therefore, the question of limitation cannot arise; in any event, limitation, in cases like the one in hand, starts from the date of initial refusal to pay the debt, which, in the present case, has not been done by the Respondent till the Petition was filed by the Respondent before the CERC; and the present appeal is devoid of merits and deserves to be dismissed with exemplary costs.

III. ORDER OF THE CERC:

16. In the Order, impugned in this Appeal, the CERC held that, since 2005, both parties were involved in a reconciliation process through exchange of letters, deputing officials to each other's office for clarification/discussions for an amicable settlement of the disputes; in fact, the conciliation process undertaken by the parties, resulted in the reduction of the 1st Respondent's claim from Rs.8.37 crore to Rs. 7.14 crore, after adjustment of the amounts; in response to the 1st Respondent's letter dated 19.10.2005 seeking payment of outstanding dues, the Appellant had, vide its letters dated 7.2.2006, 31.8.2006 and 23.10.2006 preferred a counter claim of Rs 4.24 crores, as receivable from the 1st Respondent, with a request to depute an officer to reconcile outstanding dues; thereafter, on a request made by the 1st Respondent on 29.8.2008, to

make payment of the outstanding amount of Rs 7.14 crores, the Appellant had informed the 1st Respondent on 12.11.2008 that only an amount of Rs 4.77 crores (as per its own calculation), was payable; the 1st Respondent was requested to send a team of concerned officials to Patiala, to get the details reconciled to arrive at a final position; on 30.1.2009, the Appellant had expressed its willingness to pay Rs 4.77 crores, as full and final payment, subject to consent of the 1st Respondent; this amount was confirmed by the Appellant vide its letter dated 6.4.2009, with a request for further reconciliation; though the 1st Respondent had sought payment of the undisputed amount of Rs 4.77crores and for reconciliation of the remaining amount, they had, vide letter dated 13.11.2009, worked out the outstanding dues as Rs 5.05 crores, with a request for full reconciliation of bills/ outstanding amounts; even after the erstwhile PSEB was unbundled and the Appellant Company was formed in 2010, the Respondent vide letter dated 10.6.2010, pointed out that the issue of payment of outstanding amounts to the 1st Respondent needed further clarification/ discussion, on various counts; accordingly, the 1st Respondent was requested to depute a team of officers for the said reconciliation work; thus, the submission of the Appellant that the claim of the 1st Respondent, after 24.10.2006, was barred by limitation, was misconceived, as the documents placed on record, indicated that the parties had invested time in bonafide negotiations for settlement of disputes, during the period from 2005 to 2010; and this period of negotiation/reconciliation between the parties, was to be excluded from the period of limitation.

17. The CERC observed that the question, which arose for consideration in the present case, was the date from which the limitation period is said to have commenced; in order to examine this, the 'point' at which any of

the parties, abandoned its efforts to negotiate/arrive a settlement is required to be determined; the 1st Respondent had submitted that the Appellant on 13.11.2009 had acknowledged the dues of Rs 5.05 crore and had agreed to check its accounts and books for the remaining amount of Rs 2.09 crore; it had also submitted that, after requesting the Appellant to release the entire amount, including the undisputed amount of Rs 5.05 crores, the matter was followed up from the 1st Respondent's end, continuously through various letters and telephonic calls; the 1st Respondent had further submitted that, since no response was received, the matter was also brought in the 25th Commercial sub-Committee meeting of NRPC held on 24.12.2013,wherein the Appellant had informed that the matter was under consideration; it had also submitted that the matter was being pursued continuously through various official letters dated 7.10.2016, 18.10.2016, 7.3.2017, 23.3.2017, 21.11.2017, 14.3.2018, 13.6.2018 and 6.9.2018 and, getting no response from the Appellant, it had no option but to file the present petition for recovery of Rs 7.14 crore from them; the 1st Respondent had added that the judgment of the Supreme Court in 'Lanco case', was not applicable, as the Appellant had not denied its liability or refused to pay the amounts; and, therefore, the cause of action continued, every time the 1st Respondent sent notices/letters to the Appellant.

18. The CERC then noted that, per contra, the Appellant had submitted that the letter dated 13.11.2009, indicating the outstanding dues of Rs 5.05 crore, was in no manner an acknowledgement of debt; the records pertaining to the disputed period (October 1996 to March 1999), on account of being vintage, were not available with them and were not traceable; and, while denying that the amount of Rs 5.05 crore was undisputed, the

Appellant had stated that letters and meetings were effectuated well after the expiry of the limitation period, and cannot therefore be considered.

19. The CERC then held that the key word for discussion hinged around the term "acknowledgement" within the meaning of the Limitation Act; a fresh period of limitation was to be computed from the said acknowledgement; explanation (a) to Section 18 of the Law Limitation reads as follows: "an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to setoff or is addressed to a person other than a person entitled to the property or right"; the Appellant had been acknowledging the undisputed and unreconciled dues and amounted to acknowledgement within Explanation (a) of Article18 of the Limitation Act quoted above; both the parties of the case were Government Bodies and were expected to honour their commitments and behave in a reasonable manner; considering the matter alternatively as well, the 1st Respondent and the Appellant, shared three types of transactions which were sale of energy, O&M charges for 66 KV Mukatsar-Ganganagar Line and O&M charges for 132 KV Moga-Mukatsar-Ludhiana line; they were in long relationship for the same; their adjustment of accounts was a continuing process; their outstanding assets and liabilities and balance-sheet was always with them; though the balance-sheet of the Respondent had not been placed before them, but it had not been pleaded before them that the said liability was not being shown even in its balance-sheet; the burden was upon the Appellant to plead and prove the same; since the liability was admitted, the Appellant did not produce the same; it is to be mentioned that a balance-sheet is an acknowledgement of a subsisting liability, reliance placed. (1966, AL] page

388); in view of the above discussions, they found that the claim of the first respondent was not barred by Law of Limitation as consistently being acknowledged.

20. An order was accordingly passed directing the Appellant to pay the undisputed amount of Rs 5.05 crore along with interest at the rate as per their agreement pendent lite and future within four weeks of this order, and a mutual meeting may be held to resolve the disputed amount of Rs 2.09 crores within six weeks of the order. The Appellant was further directed to pay Rs Five lakhs as cost/ compensation to the 1st Respondent, since unnecessary litigation had been thrust upon them.

21. Elaborate submissions, both oral and written, have been made by Sri Anand. K. Ganeshan, Learned Counsel for the Appellant and Sri Puneet Jain, Learned Counsel for the first respondent. It is convenient to examine the rival submissions, urged by learned Counsel on either side, under different heads.

IV. HAS THE APPELLANT ACKNOWLEDGED THE DEBT RESULTING IN EXTENSION OF LIMITATION UNDER SECTION 18?

22. Sri Anand. K. Ganeshan, Learned Counsel for the Appellant, would submit that the claim of Respondent No. 1 was for payment of energy charges for the period October 1996 to March, 1999; the bill was raised on 16/10/2003; the CERC had proceeded on the basis that there was negotiation/reconciliation between the parties from 2005 to 2010, and therefore this period is to be excluded; the contention of Respondent No. 1, that there was an acknowledgement of liability by the Appellant on 13/11/2009, is not correct; without going into the issue whether the said communication amounts to an acknowledgement of debt or not, and going by the case put forth by Respondent No. 1 before the CERC, the said

communication does not fulfil the requirements of Section 18 of the Limitation Act, 1963; neither is the alleged acknowledgement on 13/11/2009 within the period of limitation from the bill dated 16/10/2003, nor would computing the period of limitation from 13/11/2009 support the case of Respondent No. 1 as they had filed the Petition before the CERC only on 14/02/2019, long after expiry of 3 years from 13.11.2009; reliance placed by Respondent No. 1 on the minutes of the meeting of the NRPC held on 11/06/2018 is also misconceived; item No. 10 merely records the representation of the Appellant that it will take up the issue with the finance department and discuss mutually with Respondent No. 1, and no acknowledgement of debt can be read into the same; even in the impugned Order, the CERC has not recorded anything to indicate that the period of limitation was extended between 2011 to 2018; and, viewed from any angle, the claim of Respondent No. 1 cannot be held to be within the prescribed period of limitation of 3 years under the Limitation Act, 1963. (Entry 26 of the Schedule to the Limitation Act).

23. On the other hand, Sri Puneet Jain, Learned Counsel for the first Respondent, would submit that the Bill dated 16.10.2003 was raised by the respondent based on the decision taken in the 111th meeting of the Commercial Sub-committee of the NREB held on 17.3.2003, and hence the respondent raised a bill of revised energy charges for Rs 8.37 crores for the period October, 1996 to March, 1999; and subsequent to the raising of the bill, while the same was never denied or disputed, the appellant sought adjustment of its own claims against the first respondent. Placing reliance on (1) letters dated 23.2.2004, 17.2.2006, 31.8.2006 and 23.10.2006; (2) after the direction in the 9th meeting of the CSC, in the letter dated 12.11.2008 and 30.1.2009, the appellant had accepted a "post adjustment" liability of Rs. 4.77crores; (3) after discussions in the 11th

meeting of the CSC, and the process of reconciliation in the letter dated 13.11.2009, the appellant had accepted a "post adjustment" liability of Rs. 5.05 crores; and (4) in the letter dated 10.6.2010, the dispute was limited to Rs. 1,61,81,641/- as against a claim of Rs 7.14 crores by the Respondent.

24. Sri Puneet Jain, Learned Counsel, would submit that right from 23.2.2004 till 10.6.2010, since there was no dispute qua the claim of the respondent for Rs 7.14 Crores, all the said letters would constitute acknowledgement of liability within the meaning of Section 18 of the Limitation Act, which would give rise to a fresh period of limitation.

25. It is useful in this context to refer to the correspondence, between the Appellant and the first respondent, regarding the amounts due and payable by the former to the latter.

A. DETAILS OF CORRESPONDENCE: COMMENCING FROM THE LETTER DATED 16.10.2003:

"RAJASTHAN RAJYA VIDYUT PRASARN NIGAM LTD.

OFFICE OF THE DY. CHIEF ENGINEER (COMMERCIAL)

NO. RRVPN/DY.CE(C)/ISP/F.6( )/D: 852 *Jaipur, dt. 16/10/03*

The Chief Engineer (SO & C),
Punjab State Electricity Board,
220 kV GSS Ablowal,
Patiala-147001.

Sub:- Revised energy booking from Salal I & II for the period Oct. 96 to March 99 and consequent Inter State Energy Exchange between RRVPN & PSEB.

Ref.:- 1. Superintending Engineer (Comml.), letter no. NREB /Comml./Salal Pool /96-99/02/ 1104-51 dtd. 21.8.2002.

2. This office letter no. 279 dtd, 4.6.03

Kindly refer to the above cited letter from NREB and decision taken on the subject matter in the 111th Comml. Committee Meeting of NREB held on dtd. 7.3.2003, the minutes of which have been circulated by NREB vide letter No. NREB / SE(Comml.) / Comml. Committee / 03 / 2051-85 dtd. 16.4.2003. Accordingly, we had raised a bill for Rs. 837.05142 Lacs for the energy transaction at BTPS rate for the period Oct. '96 to March'99 vide our letter under reference which has been returned back by you vide office memo no. 3062 / R - 2/ (sale) Dtd. 25.9.03, on the ground that there was minor inaccuracy in BTPS rates for the month of Oct. 98 & Nov. 98. It is surprising that instead of verifying the bill at the rates acceptable to PSEB, you chose to return the whole bill for a small difference of Rs. 1,918/- only.

However as desired, we are enclosing herewith a revised energy charges bill amounting to Rs. 8,37,03,224/- (Eight crore thirty seven lac three thousand two hundred twenty four) only for the energy sale by RRVPN to PSEB under Inter State Energy Exchange on account of revised booking from Salal I & II for the period Oct. 96 to March 99 after making necessary correction in the BPS rates for Oct. 98 & Nov. 98.

The payment may please be made in favour of Sr. Accounts Officer (CPC). RRVPN. Vidyut Bhawan, Jyoti Nagar, Jaipur within 10 days.

Encl:- As above.

s/d
(G.M.Agrawal)
Dy. Chief Engineer (Comml.)

Copy to the Chief Controller of Accounts, RRVPN. Jaipur for information and necessary action.

s/d
Dy. Chief Engineer (Comml)"

26. Thereafter the Appellant, by letter dated 23.02.2004, informed the first Respondent that the net outstanding payable by the first Respondent was Rs. 4,23,74,579/-; the amount claimed by the first Respondent, by letter dated 16.10.2003, for Rs. 8,37,03,224/- had been considered; out of this amount, Rs. 4,23,74,579/- had been adjusted, and the balance amount shall be adjusted in their future bills.

27. The first Respondent informed the Appellant, by letter dated 19.10.2005, that the net amount receivable from the Appellant was Rs. 7.25 Crores; though they had requested to make due payment but, even after a lapse of about one and half years, neither was payment made nor was any response received. The Appellant was requested to depute their representatives for reconciliation of accounts at the earliest.

28. The Appellant informed the first Respondent, by letter dated 31.08.2006, that they should depute an officer to reconcile the outstanding dues so that the matter can be decided once and for all; and the details of outstanding dues payable by the first Respondent for Rs. 4,23,74,579/- may be looked into while lodging their claim.

29. The Appellant informed the first Respondent, by letter dated 23.10.2006, that they had not made any comments on the reconciliation on their accounts regarding the Appellant's claim for Rs. 4,23,74,579/-; these figures be reconciled; and, if there was any discrepancy, the same may be intimated for further action.

30. The first Respondent informed the Appellant, vide letter dated 15.09.2008, that the Member Secretary, NRPC had directed the Appellant to reconcile the accounts with the first Respondent latest by the 3rd week of September 2008; the Appellant had assured to do the same; and a bill-wise details of claims of the Appellant and counter claims of the first Respondent were also being enclosed. The Appellant was requested to depute their representative for reconciliation of accounts.

31. Thereafter, by their letter dated 12.11.2008, the Appellant informed the first Respondent that the detailed position of bills and payments relating to the first Respondent, as per the record available with their office, was attached along with this letter; and copies of the bills raised by the

Appellant, for which payment was outstanding, were enclosed. The first Respondent was requested to send a team of concerned officials to get the details reconciled at the earliest.

32. The first Respondent requested the Appellant, by letter dated 19.01.2009, to make payment of the undisputed and reconciled dues of Rs. 4.77 crores as per their accounts and depute a team for reconciliation of the amounts remaining unreconciled. By letter dated 30.01.2009, the Appellant informed the first Respondent that, if they agreed to receive Rs. 4.77 Crores arrived at by the Appellant, as full and final payment of their outstanding amount, the Appellant would make the payment accordingly; and for further reconciliation their representatives were likely to visit the office of the first Respondent in February at the convenience of both sides.

33. The first Respondent informed the Appellant, by letter dated 04.03.2009, that the desired details of payment made to the Appellant, from 1994-95 till date, were enclosed for their information. The minutes of the 11th meeting of commercial Sub-committee, held on 9th March, 2009, records that reconciliation of accounts had been carried out on 3rd and 4th March, 2009; and due to discussions in the commercial sub-committee, the matter was expedited. The minutes also records the request of the first respondent that the issue may not dropped from the agenda of next meeting.

34. By letter dated 06.04.2009 the Appellant informed the first Respondent that, as per their letter dated 29.08.2008 and subsequent correspondence, their office had calculated the outstanding amount due from the Appellant as Rs. 7.14 Crores, while the Appellant had calculated the figure to be Rs. 4.77 Crores; to zero-in, on the difference in the amount of pending payment, it was necessary to tally the accounts/pending

payment bill-wise as per the records available in this office; and certain bills, raised by the Appellant on the first Respondent, did not seem to have been included in its accounts, and these payments were pending since very long. While furnishing details of the bills, the Appellant informed that there may be some other bills also, and that is why there was a difference in the pending amount as calculated by the Appellant and the first Respondent. The first Respondent was again requested to look into these bills and incorporate them in their accounts, so that the accounts can be reconciled by both sides.

35. The Appellant informed the first Respondent, by letter dated 19.05.2009, that a list of bills was enclosed along with their letter dated 06.04.2009; and non-inclusion of these bills in the accounts of the first Respondent may be one of the main reasons for the difference in pending amount as calculated by both sides. The first Respondent was again requested to look into the bills, and incorporate them in their accounts, so that the accounts were reconciled by both sides.

A. APPELLANT'S LETTER DATED 13.11.2009:

"PUNJAB STATE ELECTRICITY BOARD

From
The Chief Engineer/SO&C
SLDC Building,
220 KV S/Stn. Ablowal,
PSEB, Patiala.

To,

The Chief Controller of Accounts,
RRVPN, Jyoti Nagar, Janpath,
Jaipur
Fax No. 0141 – 2740066

***Memo. No**. 2404 /ISB-R-2* ***Date**: 13.11.09*

Sub**: **Position of pending payments relating to RRVPN.

Refer: *Please refer to your letter no. RVP/CCOA/ISM/D-552 dated 09.07.09 and CMD/RRVPN letter no. RVPN/CCOA/ISM/D 786 dated 17.08.09 on the subject cited above.*

The detailed position of bills and payments relating with RRVPN as per record available with this office was sent to your office vide our memo no. 3673 dated 12.11.08. As per your letter dated 29.08.08, your office has calculated the outstanding amount against PSEB to be Rs 7.14 crores, while PSEB calculates this figure to be Rs 5.05 crores.

Regarding point-wise clarification against your points raised in the letter under reference, the following may be seen:-

1. Sale of Energy in Jan, 02 (Amount Rs.9,06,252/-)

The amount of Rs 9, 06,252/- is balance against RRVPN for the sale of energy during Jan-02 as only Rs.62.05, lacs were received against various cheques issued by RSEB as mentioned in PSEB bill no.702 dt. 24.04.02 (copy of the same was again supplied to RSEB vide this office memo no.3673/75 dt. 12.11.08) and Rs.20, 93,748/- was received from RVPN vide cheque no.336347 dt. 15.01.02. In case any other cheque except 4 no. cheques mentioned above was issued by RVPN regarding payment for the energy supplied during Jan-02, the same may please be intimated, otherwise an amount of Rs.9,06,2521- is receivable by PSEB.

2. Balance O&M charges for 132 KV Moga-Mukatsar Line for 5/67 to 7/95 (Rs. 50,91,288/-)

Amount of Rs. 1, 41 93,802.51 raised by this office and intimated to RSEB vide PSEB memo no. 1965 dt. 11.10.95 is correct as amount of Rs.50, 91,288/- shown in RSEB Letter no. 1526 dt. 23.03.96 was not on account of O&M charges, as such is no deductible from PSEB bill pertaining to O&M charges payable by RSEB. It is intimated that balance amount of Rs.50,91,288/- pertaining to this point should be considered as payable by RSEB in their account and as such shall be adjusted from payable amount to RSEB.

3. Previous pending payments after incorporating adjustments (Rs.51,37,513/-)

The requisite details have already been supplied vide PSEB letter number 3673-75 dated 12.11.08 If any clarification in the matter is required the same will be supplied.

4. Outstanding ad-hoc payments as on 31.03.90 payable to PSEB as per CAO/Settlement claims PSEB (Rs.78,74,238, now Rs 50,46,558.17)

Out of Rs.78,74,238.28 outstanding against RRVPN only an amount of Rs.28,27,680.28 pertaining to maintenance of Muktsar-Sriganganagar line is deductible and balance amount Rs 50,46,558.17 is payable by RRVPN and is adjustable from the amount payable by PSEB to RRVPN. The balance amounts as per Sr. No. B, E-(i) & E-(iii) of Chief Accounts Officer Settlement Claim Section PSEB, Patiala letter no.342 dt. 22.02.91 has already been reduced from the amount recoverable from RRVPN by PSEB. As such an amount of Rs 50,46,558.17 is receivable from RRVPN. It is further, clarified that there is no provision for deduction of this amount in MOU signed on 06.10.95.

5. <u>O&M charges of 66 KV Muktsar-Ganganagar line (Rs. 26,84,747/-)</u>

As already clarified vide our letter no.798-80 dt. 06.04.09, the controlling breaker of 66 KV Muktsar-Ganganagar line was opened from PSEB, 132 KV Sub-Station Muktsar end on 18.03.04. This much was conveyed to the SE/RRVPNL (P&P) vide this office letter no. 1027/35 dt. 06.04.04 (copy was again sent to your office vide letter no. 798-80 dt. 06.04.09).

Even, the consumption of energy was jointly recorded with the representative of RRVPN at 132 KV Grid S/Stn., Ganganagar and at 132 kV Grid Sub-Stn., Muktsar PSEB. As such, the claims of O&M charges on 66 KV Muktsar- Ganganagar line for the period 2002-03 & 2003-04 are in order and as yet unpaid by RRVPN.

It is reiterated once again that full reconciliation of all the bills/outstanding amounts raised by either organization is carried out so that no dispute arises in future. If any clarification is required, a meeting can be arranged of the officers of both the organizations at the convenience of both our offices.

Sd/-
Director/ISB,
PSEB, Patiala."

36. Thereafter, by their letter dated 10.06.2010, the Appellant informed the first Respondent that the issue of outstanding amount needed further clarification and discussion on various counts; a meeting could be arranged between the officers/officials of their respective organizations to sort out the issue of pending payment by way of verification of records/reconciliation;

and their office may depute a team of concerned officials for the work of reconciliation at a mutually convenient date.

37. The minutes of the 25th meeting of commercial sub-committee, held on 24th December, 2013, records that the representative of RVPN had stated that an amount of Rs.7.14 crores was receivable from PSEB, and PSPCL was not making the payment despite highest level of pursuit; and the representative of PSPCL had stated that the issue was under consideration, and they would resolve the issue mutually.

38. The minutes of the 36th meeting of the commercial sub-committee, held on 11th June, 2018, records that the representative of RVPN had briefed about the correspondence among RVPN and PSPCL, and had raised the issue that the outstanding amount of Rs. 7.14 Crores was due from PSPCL to RVPN; the representative of PSPCL had assured to take up the issue with their finance department and discuss mutually with RVPNL; and the Member secretary, NRPC had requested RVPN and PSPCL to discuss and resolve the issue bilaterally and inform the status to NRPC Secretariat.

39. Several letters were addressed by the first Respondent to the Appellant on 18.10.2016, 07.03.2017, 21.11.2017 and 14.03.2018 requesting the Appellant to release the undisputed amount of Rs. 5.05 Crores at the earliest, and arrange to get the disputed amount reconciled. As the Appellant's reply, if any thereto, has not been placed on record, it does appear that the aforesaid letters of the first respondent did not elicit any reply from the Appellant.

B. LIMITATION ACT APPLIES TO REGULATORY COMMISSIONS CONSTITUTED UNDER THE ELECTRICITY ACT:

40. On the questions whether the Limitation Act, 1963, particularly Section 3 and the Schedule, would apply to any action instituted before the Commission under Section 86(1)(*f*) of the Electricity Act, 2003, the Supreme Court, in **A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd., (2016) 3 SCC 468**, concurred with the law laid down in **M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58,** and held that, by itself, the Limitation Act will not be applicable to the Commission under the Electricity Act, 2003 as the Commission is not a court stricto sensu and the Commission, being a statutory tribunal, cannot act beyond the four walls of the Electricity Act; however, the Electricity Act, 2003 required a further scrutiny to find out whether, by virtue of Section 175 of the Electricity Act or otherwise, it could be inferred that the provisions of the Limitation Act will govern or curtail the powers of the Commission in entertaining a claim under Section 86(1)(*f*) of the Electricity Act; a plain reading of Section 175 leads to the conclusion that, unless the provisions of the Electricity Act are in conflict with any other law- when the Electricity Act will have overriding effect as per Section 174, the provisions of the Electricity Act will not adversely affect any other law for the time being in force; in other words, as stated in Section 175, the provisions of the Electricity Act will be additional provisions without adversely affecting or subtracting anything from any other law which may be in force; such a provision cannot be stretched to infer adoption of the Limitation Act for the purpose of regulating the varied and numerous powers and functions of the authorities under the Electricity Act, 2003; pursuant to the judgment in ***Gujarat Urja Vikas Nigam Ltd.* v. *Essar Power Ltd.*, (2008) 4 SCC 755**, the Commission has been elevated to the status of a substitute for the civil court in respect of all disputes between the licensees; such disputes need not arise from the exercise of powers under the Electricity Act; even claims or disputes arising purely out of contract have to be adjudicated by the Commission; thus

Sections 174 and 175 of the Electricity Act assume relevance; since no separate limitation has been prescribed for exercise of power under Section 86(1)(*f*), nor this adjudicatory power of the Commission has been enlarged to entertain even time-barred claims, there is no conflict between the provisions of the Electricity Act and the Limitation Act to attract the provisions of Section 174 of the Electricity Act; in such a situation, on account of the provisions in Section 175 of the Electricity Act or even otherwise, the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law; in the light of the nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of the law of limitation; a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court; but, in an appropriate case, a specified period may be excluded on account of the principles underlying the salutary provisions like Section 5 or Section 14 of the Limitation Act; and such limitation upon the Commission would be only in respect of its judicial power under clause (*f*) of sub-section (1) of Section 86 of the Electricity Act, 2003, and not in respect of its other powers or functions which may be administrative or regulatory.

41. Section 175 of the Electricity Act should be read along with Section 174 and not in isolation. While Section 174 of the Electricity Act, 2003 should be held to be the principal provision, Section 175 is accessory or subordinate thereto. Section 174 would prevail over Section 175 in matters where there is any conflict (but no further), and the inconsistency, referred to in Section 174, may be express or implied. (***Gujarat Urja Vikas Nigam***

***Ltd. v. Essar Power Ltd.*, (2008) 4 SCC 755)**.The expression "*any other law for the time being in force*" in Section 175 would cover laws which were in operation when the Electricity Act was enacted as well as laws made after the enforcement of Electricity Act **(Pioneer Urban Land & Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416).** The term "*in derogation of*", used in Section 175, would mean "*in abrogation or repeal of*" (**KSL & Industries Ltd. v. Arihant Threads Ltd., (2015) 1 SCC 166**) ie the Electricity Act will not in any way nullify or annul or impair the effect of the provisions of the Limitation Act. The effect of Section 175 would be that in addition to the provisions of the ELECTRICITY ACT, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back on the provisions of, among others, the Limitation Act also **(Transcore v. Union of India, (2008) 1 SCC 125),** and the effect of Section 175 would ensure that the provisions of the Limitation Act are not ousted as a consequence of the operation of the Electricity Act. **(Pioneer Urban Land & Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416).**

42. The legislative intent is for the Electricity Act to co-exist along with the Limitation Act and, save inconsistency, not to annul or detract from its provisions. **(KSL & Industries Ltd. v. Arihant Threads Ltd., (2015) 1 SCC 166).** As long as the provisions of the Limitation Act are not inconsistent with the provisions of the ELECTRICITY Act, both the Acts, namely, the ELECTRICITY Act and the Limitation Act, would complement each other. **(Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610).** Both Sections 174 and 175 can be read harmoniously holding that when there is any express or implied conflict, between the provisions of the Electricity Act, 2003 and the Limitation Act, the provisions of the Electricity Act, 2003 will prevail, but when there is no conflict, express or implied, both the Acts should be read together. (***Gujarat Urja Vikas Nigam Ltd. v. Essar Power***

***Ltd.*, (2008) 4 SCC 755).** In the absence of anything inconsistent therewith in the Electricity Act, the provisions of the Limitation Act would, in view of Section 175 of the Electricity Act, apply to proceedings before the CERC also. We must therefore examine the contention urged on behalf of the Appellant, that the Petition filed by the first respondent before the CERC on 14.02.2019 is barred by limitation.

43. The payment, sought by the 1st Respondent from the Appellant, related to the sale of energy, O&M charges for 66kV Mukatsar-Ganaganagar Line and 132 KV Moga-Mukatsar-Ludhiana Line. By their letter dated 16.10.2002, the 1st Respondent informed the Appellant, on the subject of revised energy booking from Salal 1 & 2 for the period October, 1996 to March, 1999 and consequent inter-state energy exchange between the 1st Respondent and the Appellant, that they had raised a bill of Rs. 8,37,05,000 for the energy transactions at BTPS rate for period October, 1996 to March, 1999 by their letter dated 04.06.2003; this was returned back to them, vide memo dated 29.09.2003, on the ground that there was a minor inaccuracy in the BTPS rates; they were enclosing a revised energy charging bill to Rs.8,37,03,224/- for the energy sale by the 1st Respondent to the Appellant under Inter State Central exchange on account of revised bookings from Salal 1 & 2 for the period October, 1996 to March, 1999 after making necessary correction in the BTPS rates for October and November 1998. The 1st respondent requested the Appellant to make payment within 10 days. The 10 day period, computed from the letter dated 16.10.2003, expired on 26.10.2003.

C. RELEVANT ENTRY IN THE SCHEDULE TO THE LIMITATION ACT:

44. Reliance is placed on behalf of the Appellant on Entry 26 of the schedule to the Limitation Act, which stipulates that for money payable to

the plaintiff, for money found to be due from the defendant to the plaintiff on accounts stated between them, the period of limitation was three years and the time from which period begins to run is when the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless where the debt is by a simultaneous agreement in writing signed as aforesaid made payable at a future time , and then when that time arrives. Since the payment claimed by the 1st Respondent is towards sale of energy, and the period of credit is mentioned in the letter dated 16.10.2003 as 10 days, it does appear that it is Entry 15 of the Schedule to the Limitation Act which is attracted. Entry 15 provides that, for the price of goods sold and delivered to be paid for, after the expiry of a fixed period of credit, the period of limitation is 3 years, and the time from which the period begins to run is when the period expires. Consequently, on expiry of the 10 days credit period ie from 26.10.2003, the period of limitation is three years. Therefore, the 1st Respondent ought to have filed a petition before the Commission, for recovery of the amounts due from the Appellant, on or before 25.10.2006.

D. SECTION 9 OF THE LIMITATION ACT: ITS SCOPE:

45. Section 9 of the Limitation Act relates to continuous running of time where once time has begun to run, and provides that no subsequent disability or inability to institute a suit or make an application stops it. The proviso, which relates to letters of administration to the estate of a creditor, has no application to the case on hand. The principles of Section 9 of the Limitation Act is to be strictly adhered to, namely, that when time begins to run, it cannot be halted, except by a process known to law.(**Asset Reconstruction (India) Ltd, v. Bishal Jaiswal: (2021) 6 SCC 366**; **BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738).** In view of Section 9 of the Limitation Act, 1963, once time has begun to run, no subsequent

disability or inability to institute a suit or make an application stops it. Once time starts, it does not stop. Limitation is extended only when there is an acknowledgment of liability or part payment. Correspondence does not extend the period of limitation. (**State of Maharashtra v. Hindustan Construction Co. Ltd., 2013 SCC OnLine Bom 181**). Once time has started running, final rejection would not give any fresh start to a limitation period which has already begun running, following the mandate of Section 9 of the Limitation Act (**Secunderabad Cantonment Board v. B. Ramachandraiah & Sons, (2021) 5 SCC 705**), and correspondence does not extend the period o limitation. **(Aditya Birla Chemicals (India) Ltd. v. Tata Motors Ltd., 2012 SCC OnLine Bom 1509).**

46. Applying Section 9 of the Limitation Act, the petition filed by the 1st Respondent before the CERC on 14.02.2019, more than twelve years after the three year period of limitation, (computed from 26.10.2003 ie 10 days after the invoice dated 16.10.2003), expired on 25.10.2006, would be clearly time barred. The 1st Respondent, however, claims that, in view of Section 18 of the Limitation Act and in as much as the Appellant had acknowledged its liability in several letters, and in the minutes of the meetings of the sub-committee of NRPC, the period of limitation stands extended.

47. Reliance is also placed by the 1st Respondent on Section 14 of the Limitation Act to contend that the period spent before the Northern Regional Power Committee (NRPC), and the time taken by the Commercial Sub-Committee, to resolve the issue amicably between the Appellant and 1st Respondent should be excluded in computing the period of limitation. We shall examine the contentions, on whether or not Section 14 of the Limitation Act is attracted to the proceedings before the commercial sub-

committee of the NRPC, later in this Order. It is useful, at this stage, to take note of what Section 18 of the Limitation Act provides.

E. SECTION 18 OF THE LIMITATION ACT: ACKNOWLEDGEMENT OF DEBT: ITS EFFECT:

48. Section 18 of the Limitation Act relates to the effect of acknowledgement in writing and, under sub-section (1) thereof, where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing, signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. Explanation (a) thereto provides that, for the purpose of Section 18, an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right.

49. Section 18 of the Limitation Act lays down three conditions. The first is that the acknowledgment should have been made before expiry of the period of limitation for a Suit or Appeal in respect of the claim. The second condition is that it has to be an acknowledgment of liability, and the third and the last condition is that it has to be in writing and signed by the person liable or on his behalf. (**Rampur Engineering Company Ltd. v. Syed Raza Ali Khan Bahadur, 1966 SCC OnLine All 26).** To constitute an acknowledgment, there must, upon the fair construction of the letter- read in the light of the surrounding circumstances, be an admission that the

writer owes the debt. **(Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd., (1971) 1 SCC 67; Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria, (1962) 1 SCR 140; *Green* v. *Humphreys* [1884 26 Ch D 474 at p. 481).** However, in order to amount to an acknowledgement of liability within the meaning of Section 18, it need not be accompanied by a promise to pay either expressly or even by implication. **(Food Corpn. of India v. Assam State Coop. Marketing & Consumer Federation Ltd (2004) 12 SCC 360).**

F. ILLUSTRATIVE CASES:

50. In **Food Corpn. of India v. Assam State Coop. Marketing & Consumer Federation Ltd (2004) 12 SCC 360,** the two letters dated 29-3-1977 and 30-7-1977 (Exhibits 8 and 9) clearly acknowledged Rs 2 crores having been received by the Federation from the Food Corporation of India, whether by way of advance or by way of deposit; the letters also indicated that the amount of two crores was by way of advance or deposit against paddy procurement. This, the Supreme Court held, is admission of a jural relationship of buyer and seller which stood converted into a relationship of creditor and debtor on the failure of the principal transaction. After noting that the acknowledged liability was sought to be disowned by submitting that, on accounts being taken, nothing would be found due and payable by the plaintiff to the Federation, the Supreme Court held that disputing the liability, to repay the amount acknowledged to have been received, does not dilute the fact of acknowledgement insofar as Section 18 of the Limitation Act is concerned; the two letters had the effect of extending the period of limitation prescribed for filing the suit; and, calculated from the date of the latter of the two letters i.e. 30-7-1977, the suit filed on 30-5-1980 was well within the period of limitation.

51. In **J.C. Budhraja v. Chairman, Orissa Mining Corpn. Ltd., (2008) 2 SCC 444**, the Supreme Court held that, if a defendant writes to the plaintiff requesting him to send his claim for verification and payment, it amounts to an acknowledgment, but if the defendant merely says, without admitting liability, that it would like to examine the claim or the accounts, it may not amount to an acknowledgment; in other words, a writing, to be treated as an acknowledgment of liability should consciously admit the writer's liability to pay or admit his intention to pay the debt; if a creditor sends a demand notice demanding payment of Rs 1 lakh due under a promissory note executed by the debtor and the debtor sends a reply stating that he would pay the amount due, without mentioning the amount, it will still be an acknowledgment of liability; if a writing is relied on as an acknowledgment for extending the period of limitation in respect of the amount or right claimed in the suit, the acknowledgment should necessarily be in respect of the subject-matter of the suit; if a person executes a work and issues a demand letter making a claim for the amount due as per the final bill, and the defendant agrees to verify the bill and pay the amount, the acknowledgment will save limitation for a suit for recovery of only such bill amount, but will not extend the limitation in regard to any fresh or additional claim for damages made in the suit, which was not a part of the bill or the demand letter; if a house is constructed under the item rate contract and the amount due in regard to work executed is Rs two lakhs and certain part-payments say aggregating to Rs 1,25,000 have been made and the contractor demands payment of the balance of Rs 75,000 due towards the bill and the employer acknowledges liability, that acknowledgment will only be in regard to the sum of Rs 75,000, which is due; if the contractor files a suit for recovery of the said Rs 75,000 due in regard to work done and also for recovery of Rs 50,000 as damages for breach by the employer and the said suit is filed beyond three years from completion of work and

submission of the bill but within three years from the date of acknowledgment, the suit will be saved from the bar of limitation only in regard to the liability that was acknowledged, namely, Rs 75,000, and not in regard to the fresh or additional claim of Rs 50,000 which was not the subject-matter of acknowledgment.

52. In **Standing Conference of Public Enterprises v. BSES Rajdhani Power Limited, 2013 SCC OnLine Del 224,** the excess payment, for which a suit for recovery was filed, was alleged to have been made between June,1999 to May, 2001; Article 113 of the Limitation Act applied to a suit for recovery of excess duty paid and was to be filed within three years from the date of payment; and the prescribed period of limitation, therefore, expired by May, 2004. The case of the appellant, before the Delhi High Court, was that the letter dated 25.9.2004, written by BSES to Delhi Transco, constituted 'acknowledgment' within the meaning of Section 18 of the Limitation Act.

53. Following the judgement of the Supreme Court in **J.C. Budhraja v. Chairman, Orissa Mining Corpn. Ltd: (2008) 2 SCC 444**, the Delhi High Court held that a fresh period of limitation, from the date of the acknowledgment of debt or liability, starts only in case the said acknowledgment is made before the expiry of the period of limitation prescribed prescribed in the statute; this would be evident from a bare perusal of the Section itself which opens with the words "Where the expiration of the prescribed period for a suit or an application in respect of any property or right an acknowledgment of liability in respect of such property or right has been made in writing".

G. TO CONSTITUTE ACKNOWLEDGEMENT OF DEBT THERE MUST ALTLEAST BE AN ADMISSION OF AN EXISTING JURAL RELATIONSHIP:

54. A writing, to be an acknowledgment of liability, must involve an admission of a subsisting jural relationship between the parties, and a conscious affirmation of an intention of continuing such relationship in regard to an existing liability. The admission need not be in regard to any precise amount nor be expressed in words. **(J.C. Budhraja v. Chairman, Orissa Mining Corpn. Ltd., (2008) 2 SCC 444).** So long as the statement amounts to an admission, acknowledging the jural relationship and existence of liability, it is immaterial that the admission is accompanied by an assertion that nothing would be found due from the person making the admission or that, on an account being taken, something may be found due and payable to the person making the acknowledgement by the person to whom the statement is made. **(Food Corpn. of India v. Assam State Coop. Marketing & Consumer Federation Ltd (2004) 12 SCC 360).**

55. The acknowledgement need not amount to a promise to pay. The statement need not indicate the exact nature or the specific character of the liability. The words used in the statement in question, however, must indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances. If the statement is fairly clear, then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statements made in writing, on which a plea of acknowledgment rests, surrounding circumstances can always be considered. (***Khan Bahadur Shapoor Fredoom Mazda* v. *Durga Prasad***

***Chamaria*:1962 (1) SCR 140; *Tilak Ram* v. *Nathu*: AIR 1967 SC 935; Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd., (1971) 1 SCC 67).**

56. That does not mean that where no admission is made one should be inferred, or where a statement is made without intending to admit the existence of a jural relationship, such intention should be fastened on the person making the statement by an involved and far-fetched reasoning. (***Khan Bahadur Shapoor Fredoom Mazda* v. *Durga Prasad Chamaria*:1962 (1) SCR 140; *Tilak Ram* v. *Nathu*: AIR 1967 SC 935; Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd., (1971) 1 SCC 67).**

H. APPLICATION OF SECTION 18, OF THE LIMITATION ACT, TO THE PRESENT CASE: ITS EFFECT:

57. In terms of Section 18 in cases where the person, from whom recovery of money is sought by another, acknowledges his liability in writing, a fresh period of limitation is required to be computed from the date on which the acknowledgement is so signed. As noted herein above, the period of limitation, in the present case, is three years and consequently, in terms of Section 18, the period of limitation would stand extended for a further period of three years from the date of acknowledgment of the debt, provided, of course, that the said acknowledgement is made within the period of limitation and not beyond.

58. As noted hereinabove, the three year period of limitation, for recovery of the amount due from the Appellant, would have, ordinarily, expired on 25.10.2006. The fact, however, remains that, even prior thereto, the Appellant had, by letter dated 23.02.2004, acknowledged that, as against the 1st Respondent's claims of Rs.8,37,03,224/-, the amount due from them to the Appellant was Rs.4,23,745,79; and, after adjusting this amount, the

balance amount would be adjusted in their future bills. Since this acknowledgement by letter dated 23.02.2004 is within the period of limitation, which would have otherwise expired later on 25.10.2006, a fresh period of limitation of three years is required to be computed from 23.02.2004, which would then have expired on 25.02.2007.

59. Before expiry of this period of limitation, the Appellant had, by their letters dated 31.08.2006 and 23.10.2006, acknowledged existence of a jural relationship between them and the 1st Respondent, though they had not specifically stated that, after adjustment of Rs.4,23,7579./-, the balance amount would be paid. Well within three years from 31.08.2006/23.10.2006, the Appellant again, by letter dated 12.11.2008, informed the 1st respondent that they were attaching the detailed position of the bills for which payment was to be received from the 1st Respondent. Thereafter, by letter dated 30.01.2009, the Appellant informed the 1st respondent that, if they agreed to receive Rs.4.77 crores, as arrived at by the Appellant, as full and final payment of their outstanding amount, the Appellant would make payment accordingly, and for further reconciliation their representatives were likely to visit the office of the 1st Respondent soon. It is evident from this letter dated 30.01.2009 that the Appellant had acknowledged its liability at least for payment of Rs.4.77 crores, and non-payment on their part was only because the 1st Respondent did not agree that payment of Rs.4.77 crores would be in full and final settlement of the outstanding liability.

60. A similar letter was addressed by the Appellant to the 1st Respondent on 6.4.2009 wherein they acknowledged that, as per their calculations, the amount due to the 1st Respondent was Rs.4.77 crores, and not Rs.7.14 Crores as claimed by the 1st Respondent. Thereafter, by their letter dated 13.11.2009, the Appellant stated that, while the 1st Respondent had

calculated the outstanding amount due from the Appellant as Rs.7.14 crores, as per the appellant's calculation, the amount due was Rs.5.05 crores. As a result of the letter dated 13.11.2009, whereby the Appellant admitted its liability to pay Rs. 5.05 crores to the first respondent, a fresh period of limitation of 3 years is required to be computed from then, which period would have expired only on 12.11.2012. By their letter dated 10.06.2010, the Appellant informed the 1st Respondent that the issue of outstanding amount needed clarification, thereby admitting the existence of a jural relationship between them and the first respondent.

61. While it is debatable whether what is recorded in the minutes of the meeting of the Commercial Sub-Committee of the NRPC would constitute an acknowledgement of debt by the Appellant, attracting Section 18 of the Limitation Act, it would suffice to note that the said minutes of the meeting dated 24.12.2013 records the representative of the Appellant having stated that the issue was under consideration, and they would resolve the issue mutually. Even if what is recorded in the said minutes is presumed to be an admission of the existence of a jural relationship attracting Section 18 of the Limitation Act, the three years period of limitation from then, would have expired on 23.12.2016, on or before which date the 1st Respondent ought to have filed the petition before the CERC under Section 79(1)(f) of the Electricity Act. The fact, however, remains that they filed the said petition before the CERC only on 14.02.2019, more than five years after the NRPC sub-committee meeting held on 24.12.2013.

I. ACKNOWLEDGEMENT SHOULD RELATE TO A PRESENT SUBSISTING LIABILITY:

62. The contention, urged on behalf of the first respondent, is that the claims of the 1st Respondent are not barred by limitation, since the petition filed before the CERC on 14.02.2019, was just around eight months from

11.06.2018, on which date the minutes, of the 36th meeting of the Commercial Sub-committee, records that the representative of RVPN (1st respondent) had raised the issue that the outstanding amount of Rs. 7.14 Crores was due from PSPCL (the appellant) to RVPN, and the representative of PSPCL had assured to take up the issue with their finance department and discuss mutually with RVPNL.

63. It is well settled that acknowledgment merely renews the debt. It does not create a new right of action. It is a mere acknowledgment of the liability in respect of the right in question. **(Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria, (1962) 1 SCR 140; *Tilak Ram* v. *Nathu*: AIR 1967 SC 935; Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd., (1971) 1 SCC 67).**The statement, on which a plea of acknowledgment is based, must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words **(Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria, (1962) 1 SCR 140),** as Section 18 requires that it must be made before expiration of the period prescribed under the Act. (***Tilak Ram* v. *Nathu*: AIR 1967 SC 935; *Shapoor Freedom Mazda* v. *Durga Prosad Chamaria*: AIR 1961 SC 1236; *Lakshmirattan Cotton Mills Co. Ltd.* v. *Aluminium Corpn. of India Ltd:* (1971) 1 SCC 67; Food Corpn. of India v. Assam State Coop. Marketing & Consumer Federation Ltd: (2004) 12 SCC 360).** Since, what can be acknowledged is a present subsisting liability, an acknowledgment made with reference to a liability, cannot extend limitation for a time-barred liability or a claim that was not made at the time of acknowledgment or some other liability relating to other transactions. **(J.C. Budhraja v. Chairman, Orissa Mining Corpn. Ltd., (2008) 2 SCC 444).**

64. As noted hereinabove, even if what is recorded in the minutes of the meeting of the Commercial Sub-Committee of the NRPC dated 24.12.2013 is held to constitute an admission of the existence of a jural relationship attracting Section 18 of the Limitation Act, the three years period of limitation from then, would have expired on 23.12.2016. It is only till 23.12.2016 was there a subsisting liability, and it is only if the Appellant had either acknowledged liability or admitted the existence of a jural relationship, between 24.12.2013 to 23.12.2016, would the period of limitation have stood extended from such a date of acknowledgement or admission. Even if the minutes of the 36th meeting of the Commercial Sub-committee dated 11.06.2018, which records the representative of the appellant having assured to take up the issue with their finance department and discuss mutually with the first respondent, is presumed to amount to an admission of a jural relationship by the appellant, such an admission made on 11.0.2018, nearly one and half years after the limitation period of three years expired on 23.12.2016 would not extend the period of limitation. Consequently, the petition filed by the first respondent, before the CERC on 14.02.2019, is barred by limitation.

V. DOES THE STARTING POINT FOR LIMITATION COMMENCE ONLY ON BREAK DOWN OF NEGOTIATIONS?

65. Sri Puneet Jain, Learned Counsel for the first Respondent, would submit that the appellant had all along accepted and acknowledged its liability to pay the outstanding dues to the first respondent; the issue in dispute was qua the "adjustment" that the appellant was seeking against amounts/claims due/claimed by it from the first respondent, and for which it was seeking a reconciliation; the issue regarding outstanding dues was taken up mutually by the parties; the parties were thus undertaking good faith negotiations/discussions in order to resolve the dispute amicably; the

starting point of limitation would thus be the breaking point of such negotiations; at all times since the first respondent raised the bill, the communications exchanged, thereafter in the 9th Meeting of the CSC held on 5.9.2008, the 10th Meeting held on 12.12.2008, the 11th meeting held on 9.3.2009, the 25th meeting held on 24.12.2013 and the 36th Meeting held on 11.6.2018, the appellant had assured that it would resolve the issue mutually and amicably; neither was there any refusal by the appellant nor a breakdown of the mutual negotiation process for resolution of the issues; in the impugned order, the CERC has held that the starting point was "…the `point' at which any of the parties abandoned its efforts to negotiate/arrive at a settlement which was required to be determined..."; the reasoning of the CERC, which essentially follows the decision of the Supreme Court in **Geo Miller** (Supra), cannot therefore be faulted; on facts, the detailed factual narration would make it amply clear that the parties, which are both public sector state government owned entities, were in good faith mutually negotiating to resolve the dispute amicably; in all communications, by either parties, it was reiterated that they were willing to resolve the issue by reconciliation of accounts; in all the meetings before the CSC, it was assured by the representative of the appellant that they were willing to resolve the issue amicably and mutually; thus, prior to the reply being filed before the CERC, where a plea of limitation was taken for the first time, neither was there a denial of liability nor was there any dispute qua the claims raised by the first respondent; and hence, on the date of filing of the petition before CERC, the period of limitation did not even begin to run.

66. After placing reliance on the decision of this Tribunal, in **Uttar Pradesh Power Corporation Ltd. Vs Uttar Pradesh Electricity Regulatory Commission and Anr (Order in Appeal No. 259 and 295 of 2019 dated 14.07.2021)**, Sri Puneet Jain, Learned Counsel for the first

Respondent, would submit that the aforesaid Order of this Tribunal is the subject matter of challenge in Civil Appeal No.5983-5984 of 2021, and is pending consideration before the Supreme Court; vide order dated 14.12.2021 the Supreme Court was pleased to pass an interim order staying the operation of the order of this Tribunal; and the aforesaid judgement of this Tribunal, follows the view taken by the Supreme Court in **Geo Miller and Co. Pvt. Ltd. Vs Chairman, Rajasthan Vidyut Utpadan Nigam Ltd. (2020) 14 SCC 643.**

67. On the other hand, Sri Anand K. Ganeshan, Learned Counsel for the Appellant, would submit that reliance placed by the first Respondent on the decision of this Tribunal, in ***Uttar Pradesh Power Corporation Limited and Ors. v. Uttar Pradesh Electricity Regulatory Commission and Anr*** **(Order in Appeal Nos. 259 and 295 of 2019 dated 14.07.2021),** is misconceived; paragraph 172 of the said decision, on which reliance is placed, appears to be a submission, and not the decision of this Tribunal; the decision appears to be at Page 110, wherein it has been held that the date of performance of the contract can be extended by an act of forbearance or non-insistence of performance, which can be proved by oral evidence, and it was, therefore, held that the claim was not barred by limitation; there is no finding that mere negotiations or discussions or exchange of communication can extend the prescribed period of limitation; and this Tribunal, in ***Gujarat Urja Vikas Nigam Limited v. Essar Power Limited*** **(Order in Appeal No. 77 and 86 of 2009 dated 22.02.2010**) has held that mere correspondence with the parties would not extend the cause of action or suspend the period of limitation, and the discussions and negotiations held between the parties for a possible settlement even by way of conciliation as a prelude to arbitration, will not stop the cause of action accruing to the party by reason of denial of a claim, nor such cause of action

once accrued gets extended or suspended by the period during which the efforts for an amicable settlement were in progress.

68. In the order, impugned in this appeal, the CERC held that, since 2005, the parties were involved in the reconciliation process through exchange of letters, deputing officials to each other's office for clarification/discussions for an amicable settlement of the dispute; reconciliation process undertaken by the parties resulted in reduction of the first respondent's claim from Rs.8.37 Crores to Rs. 7.14 Crores, after adjustment; in response to the first Respondent's claim for payment of the outstanding dues, the Appellant had raised a counter claim for Rs 4.24 Crores as receivable from the first Respondent; thereafter, though the first Respondent had sought payment of the undisputed sum of Rs.4.77 crores, and for reconciliation of the remaining amount, the Appellant had, by its letter dated 13.11.2009, worked out the outstanding dues as Rs 5.05 Crores; the documents placed on record indicated that the parties had invested time in bonafide negotiations for settlement of disputes during the period from 2005 to 2010; and this period of negotiation/reconciliation between the parties was required to be excluded from the period of limitation.

69. The CERC was of the view that the questions which necessitated determination were the date from which the limitation period is said to have commenced, and the point at which any of the parties abandoned its efforts to negotiate/arrive a settlement. After referring to the correspondence including the letters of the Appellant dated 13.11.2009 and the minutes of the commercial sub-committee dated 24.12.2013, the CERC noted that the matter was being pursued continuously by various letters of the first Respondent, to which the Appellant had not responded, resulting in the former being left with no option but to file the petition before the CERC for recovery of Rs. 7.14 Crores.

70. It is on these observations of the CERC, that it is contended that, since the first Respondent was bonafide negotiating with the Appellant for payment of the amount firstly by way of letters and thereafter before the NRPC sub-committee, and as these negotiations continued till they filed the petition before the CERC on 14.02.2019, the entire period, from the date of the invoice till they filed the petition before the CERC, must be held to be the period spent in bonafide negotiations, and should be excluded in computing the period of limitation.

71. Before examining the rival submissions under this head, it is useful to refer to the judgements relied on by Learned Counsel on either side.

A. JUDGEMENTS RELIED, ON BEHALF OF THE FIRST RESPONDENT AND THE APPELLANT, UNDER THIS HEAD:

72. In **Uttar Pradesh Power Corporation Limited Vs. Uttar Pradesh Electricity Regulatory Commission (**Order in **Appeal No. 259 of 2019 and Appeal No. 295 of 2019 dated 14.07.2021),** on which reliance is placed on behalf of the first respondent, this Tribunal held that it was the case of the Respondent SPGCL that UPPCL had acknowledged the claims, raised by SPGCL against UPPCL, for which a settlement committee was constituted wherein all claims and counter claims were discussed; confirmation of the said meeting was communicated to SPGCL by letter dated 02.05.2015; even if 20.11.2012 is considered to be the start date for the purposes of limitation, then the constitution of the committee for settlement on 07.04.2015 was within time from the said date being within three years; however, since UPPCL did not consider 20.11.2012 as the start date, and kept on requesting SPGCL to perform its obligation under the agreement, the start date should be 11.06.2014 when SPGCL issued the formal notice in terms of the PPA; since the committee for amicable

settlement was constituted within three years of either of the two dates, the question of limitation will have to be considered only from the date on which the settlement talks finally broke down; UPPCL issued the Preliminary Default Notice claiming liquidated damages on 05.03.2019, and issued the final claim pursuant to this Preliminary Default Notice on 23.04.2019, clearly acknowledging the fact that UPPCL expected SPGCL to perform the contract up to the said date; it was only after the Termination Notice was issued on 23.04.2019, could it be said that UPPCL took the stand that, from the said date, the contract could not be performed; and Section 18 of the Limitation Act, 1963 makes it clear that a fresh period of limitation shall be computed when there is acknowledgment of a claim.

73. This Tribunal further held that it was the case of the Respondent SPGCL that the cause of action to file the petition arose on 13.03.2018 when SPGCL withdrew from the settlement (as no settlement was reached during which SPGCL was forced to enter into a Settlement Agreement with L&T), and issued a final breakdown notice with a claim of Rs.1157.22 crores which was based on the expenditure up to 28.02.2018; within five months thereafter, the Petition was filed before the State Commission; since the settlement talks were on till 13.03.2018, there was no question of limitation either raised before the State Commission or such question arising for consideration by the State Commission; the Respondent had further submitted that the issue of limitation was not raised by UPPCL throughout the proceedings before the State Commission; they agreed with the submission of the Respondent SGPCL that, even though a contract may have a fixed date for performance, the same could be extended by an act of forbearance or non-insistence on performance; the same may be proved by oral evidence or even by conduct of the parties; and they were,

therefore, of the opinion that this case filed by Respondent SGPCL could not be dismissed on the ground of limitation.

74. Against the order passed by this Tribunal, in **Uttar Pradesh Power Corporation Limited vs. Uttar Pradesh Electricity Regulatory Commission** (order in Appeal Nos. 259 & 295 of 2019 dated 14.07.2021), the Appellant, before this Tribunal, carried the matter in Appeal to the Supreme Court. By its interim order dated 14.12.2021, in **Uttar Pradesh Power Corporation Limited vs. Sangam Power Generation Company Limited** (Civil Appeal Nos. 5983-5984/2021), the Supreme Court granting interim relief in terms of Para 8 (a), (b) and (c) of the application for stay, ie (*a)* stay the effect and operation of the Impugned Order dated 14.07.2021 passed by the Hon'ble Appellate Tribunal for Electricity in Appeal Nos. 259 of 2019 and 295 of 2019; (b) direct the Respondent No.2 to keep alive the performance bank guarantees dated 30.01.2020 (bearing numbers 006571120000016, 006571120000017, 006571120000018, 006571120000019 and 006571120000020) for an amount of INR 99 crores during the pendency of the present proceedings; and (c)stay the proceedings before the learned Uttar Pradesh Electricity Regulatory Commission in Petition dated 19.08.2021 instituted by the Respondent No.1 seeking verification of the Respondent No.1's claims in terms of the Impugned Order.

75. What has been laid down by this Tribunal, in its judgement in **Uttar Pradesh Power Corporation Limited**, is only that, even though a contract may have a fixed date for performance, the same could be extended by an act of forbearance or non-insistence on performance, and the same may be proved by oral evidence or even by conduct of the parties. These observations cannot either be read out of context, or be understood as requiring the entire period of more than fifteen years from 2003 till 2019,

during which the parties were either in correspondence or holding discussions under the aegis of the commercial sub-committee of the NRPC, should be excluded in computing the period of limitation prescribed in the Limitation Act for recovery of moneys due, notwithstanding Section 9 and 18 thereof stipulating to the contrary. In any event, the said judgement of this Tribunal has been stayed, and the Civil Appeal is still pending consideration of the Supreme Court.

76. In **Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd., (2020) 14 SCC 643,** on which also reliance is placed on behalf of the first respondent, the appeals arose out of the common judgment of the Rajasthan High Court dismissing three Arbitration Applications filed by the appellant under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator for adjudication of the disputes between the appellant and the respondent. The respondent had floated tenders for execution of work on a water treatment plant. The three notices inviting tender ("NIT") documents, in respect of the work orders issued to the appellant, constituted the terms and conditions of the three separate contracts between the parties. The three contracts had a common arbitration clause which stipulated that, if at any time any question/dispute/difference arose between the purchaser and the supplier, upon or in relation to the contract, either party may forthwith give notice to the other, and the same shall be referred to the Chairman, Rajasthan State Electricity Board, or any person appointed by him for the purpose (hereinafter referred to as arbitrator); and such a reference to the arbitrator/arbitrators shall be deemed to be a submission to the arbitrator within the meaning of the Arbitration Act, 1940 and statutory modifications thereof.

77. The appellant's case was that the respondent had failed to make the payments due to them under the three contracts; till 1997, the appellant was involved in discussions with the respondents in respect of the outstanding payments, and the respondent kept delaying their decision; on 4-10-1997 the appellant approached the Settlement Committee, constituted by the respondent Board, for release of the outstanding payment; it was the appellant's case that they were required to pursue the matter with the Settlement Committee prior to initiating arbitration; however the Settlement Committee also failed to respond to their representations; the respondent, vide internal communication dated 20-11-1997, acknowledged that the matter was pending consideration with them; thereafter, by letters dated 17-12-1999/18-12-1999, the respondent replied to the appellant partly allowing one claim to the extent of Rs 1,34,359.12, and requesting details of bills/invoices of certain other claims for verification; the appellant on 6-1-2000 replied stating that the bills had already been processed for payment and sent photocopies of the bills submitted earlier to the respondents; on 5-10-2002 and 10-10-2002 the appellant sent a final communication to the respondent seeking payment of all the outstanding amounts; when the payment was still not made, the appellant sent a communication dated 22-11-2002 to the respondent seeking appointment of an arbitrator for adjudication of disputes relating to payment, as provided under the arbitration clause; however the respondent did not appoint an arbitrator within the period of 30 days as stipulated under the agreement between the parties; hence the appellant filed the aforementioned arbitration applications for appointment of an arbitrator; per contra, the respondent contended that, as per the appellant's own admission, the final bills for the work orders were raised in 1983; and, since the request for arbitration was invoked only in 2002, the appellant's claim is barred by limitation. The Rajasthan High Court, in the impugned

judgment, held that the appellant had failed to make out any case of hardship or injustice justifying condonation of delay in filing the applications under Section 43(3) of the 1996 Act, and the arbitration applications were hopelessly barred by limitation. Hence this appeal.

78. It is in this context that the Supreme Court, in **Geo Miller & Co. (P) Ltd**, held that ***Panchu Gopal Bose* v. *Port of Calcutta*, (1993) 4 SCC 338** was a case similar to the present set of facts, where the petitioner sent bills to the respondent in 1979, but payment was not made; after an interval of a decade, he sent a notice to the respondent in 1989 for reference to arbitration; in ***Panchu Gopal Bose*** it was observed that a claim for breach of contract containing a reference clause could be brought at any time, it might be 20 or 30 years after the cause of action had arisen, although the legislature has prescribed a limit of three years for the enforcement of such a claim in any application that might be made to the law courts; therefore, the period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued; just as in the case of civil actions, the claim is not to be brought after the expiration of a specified number of years from the date on which the cause of action accrued; and so, in the case of arbitrations, the claim is not to be put forward after the expiration of the specified number of years from the date when the claim accrued.

79. In **Geo Miller & Co. (P) Ltd**,, the Supreme Court found itself in agreement with the finding of the Rajasthan High Court that the appellant's cause of action, in respect of Arbitration Applications relating to the work orders dated 7-10-1979 and 4-4-1980, arose on 8-2-1983, which was when the final bill, handed over to the respondent, became due; mere correspondence of the appellant, by way of writing letters/reminders to the respondent subsequent to this date, would not extend the time of limitation;

hence the maximum period during which the Court could have allowed the appellant's application for appointment of an arbitrator was 3 years from the date on which cause of action arose i.e. 8-2-1986; and, since the appellant served notice for appointment of arbitrator in 2002, and requested for the appointment of an arbitrator before a court only by the end of 2003, his claim was clearly barred by limitation.

80. In **Geo Miller & Co. (P) Ltd**, the Supreme Court further held that the findings in **Hari Shankar Singhania (2) v. Gaur Hari Singhania, (2006) 4 SCC 658** were made in the specific context of a family settlement; the Supreme Court had specifically observed that, such a settlement is to be treated differently from a formal commercial settlement, and that efforts should be made to promote family settlements without the obstruction of technicalities of limitation, etc; in **Hari Shankar Singhania**, the Supreme Court was not dealing with a mercantile dispute such as in the present case; in ***Shree Ram Mills Ltd.* v. *Utility Premises (P) Ltd.*, (2007) 4 SCC 599**, the Supreme Court found that the parties were continuously at loggerheads over joint development of certain land; they had entered into a memorandum of understanding to settle their dispute, however the respondent cancelled this memorandum; hence the dispute was referred to arbitration under Section 11(6) of the 1996 Act; and the Supreme Court, in ***Shree Ram Mills Ltd,*** upon considering the complete history of negotiation between the parties which was placed before it, on the facts of that case, concluded that the claim would not be barred by limitation as there was a continuing cause of action between the parties.

81. It is in this context that the Supreme Court, in **Geo Miller & Co. (P) Ltd**, expressed its agreement that, on a certain set of facts and circumstances, the period during which the parties were bona fide negotiating towards an amicable settlement may be excluded for the

purpose of computing the period of limitation for reference to arbitration under the 1996 Act; however, in such cases, the entire negotiation history between the parties must be specifically pleaded and placed on record; the Court, upon careful consideration of such history, must find out what was the “breaking point” at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration; this “breaking point” would then be treated as the date on which the cause of action arises, for the purpose of limitation; the threshold for determining when such a point arises will be lower in the case of commercial disputes, where the party's primary interest is in securing the payment due to them, than in family disputes where it may be said that the parties have a greater stake in settling the dispute amicably, and therefore delaying formal adjudication of the claim; moreover in a commercial dispute, while mere failure to pay may not give rise to a cause of action, once the applicant has asserted their claim and the respondent fails to respond to such claim, such failure will be treated as a denial of the applicant's claim giving rise to a dispute, and therefore the cause of action for reference to arbitration; it did not lie to the applicant to plead that it waited for an unreasonably long period to refer the dispute to arbitration merely on account of the respondent's failure to settle their claim, and because they were writing representations and reminders to the respondent in the meanwhile; hence, in the absence of specific pleadings and evidence placed on record by the appellant with respect to the parties' negotiation history, they could not accept the appellant's contention that it was only after the respondent's letter dated 18-12-1999 that the appellant could have contemplated arbitration in relation to the outstanding amounts; even if they were to include the time spent in the proceedings before the Settlement Committee, the limitation period, at the latest, would have started running from 4-10-1997 which is when the appellant made a

representation to the Settlement Committee, and the Committee failed to respond to the same.

82. The Supreme Court concluded holding that the appellant's own default, in sleeping over his right for 14 years, would not constitute a case of "undue hardship" justifying extension of time under Section 43(3) of the 1996 Act or show "sufficient cause" for condonation of delay under Section 5 of the Limitation Act; and the appellant should have approached the court for appointment of an arbitrator under Section 8(2) of the 1940 Act within the appropriate limitation period.

83. The law declared by the Supreme Court, in **Geo Miller & Co. (P) Ltd**, is that the maximum period during which the Court could have allowed the application for appointment of an arbitrator was 3 years from the date on which the cause of action arose; the cause of action in money claims arises when the payment becomes due; mere correspondence, by way of writing letters/reminders subsequent to this date, would not extend the time of limitation; it was not open to the applicant to plead that it waited for an unreasonably long period to refer the dispute to arbitration, merely on account of the respondent's failure to settle their claim, and because they were writing representations and reminders to the respondent in the meanwhile; and the applicant's default, in sleeping over their right for a long period, would not constitute a case of "undue hardship" justifying extension of time under Section 43(3) of the 1996 Act.

84. It is in the context of its earlier judgements, in **Hari Shankar Singhania (2) v. Gaur Hari Singhania, (2006) 4 SCC 658** and ***Shree Ram Mills Ltd.* v. *Utility Premises (P) Ltd.*, (2007) 4 SCC 599,** that the Supreme Court, in **Geo Miller & Co. (P) Ltd**, held that, on a certain set of facts and circumstances, the period during which the parties were bona fide

negotiating towards an amicable settlement may be excluded for the purpose of computing the period of limitation for reference to arbitration under the 1996 Act; however, in such cases, the entire negotiation history between the parties must be specifically pleaded and placed on record; the Court, upon careful consideration of such history, must find out what was the "breaking point" at which any reasonable party would have abandoned efforts at arriving at a settlement and contemplated referral of the dispute for arbitration; and this "breaking point" would then be treated as the date on which the cause of action arises, for the purpose of limitation.

85. The Supreme Court, in **Geo Miller & Co. (P) Ltd**, however made it clear that the threshold for determining when such a breaking point arises will be lower in the case of commercial disputes, where the party's primary interest is in securing the payment due to them, than in family disputes where it may be said that the parties have a greater stake in settling the dispute amicably, and therefore in delaying formal adjudication of the claim; while mere failure to pay may not give rise to a cause of action in a commercial dispute, once the claim is asserted and there is failure to respond to such a claim, such failure will be treated as a denial of the claim giving rise to a dispute, and therefore the cause of action for reference to arbitration.

86. Unlike the present case, the judgements of the Supreme Court in **Hari Shankar Singhania, *Shree Ram Mills Ltd,*** and **Geo Miller & Co. (P) Ltd**, arose under the Arbitration & Conciliation Act, 1996. We shall refer to these and other judgements arising under the said Act, later in this Order.

87. In **Gujarat Urja Vikas Nigam Ltd Vs Essar Power Limited (Order in Appeal No. 77 of 2009 dated 22nd February 2010),** on which reliance is placed on behalf of the Appellant, both the judgements of the Supreme

Court, in **Hari Shankar Singhania** and ***Shree Ram Mills Ltd***, were considered. In this judgement, this Tribunal held that the provisions of the Limitation Act 1963 applied to the present case; Article 55 provides for filing of the suit for compensation for the breach of any contract, express or implied; according to this Article the period of limitation was 3 years; the said Article further stated that, when the contract was broken or where there were successive breaches, then the breach in respect of which the suit is instituted occurs; under these circumstances, the said Article applied to the present case, and the period of limitation, for compensation for breach of contract, was 3 years from the date when the contract was broken or where there were successive breaches; it is settled law that, once a period of limitation prescribed for a suit begins to run, it is not stopped; it was also settled law that mere correspondence with the parties would not extend the cause of action or suspend the period of limitation; and the discussions and negotiations held between the parties for a possible settlement, even by way of conciliation as a prelude to arbitration, would not stop the cause of action accruing to the party by reason of denial of a claim, nor would such cause of action once accrued get extended or suspended by the period during which the efforts for an amicable settlement were in progress.

88. After noting the principles laid down by the Supreme Court, in **Hari Shanker Singhania v. Gaur Hari Singhania (2006) Vol-4 SCC 658** and **Shree Ram Mills v. Utility Premises Ltd. (2007) Vol-IV SCC 599** wherein it was held that where the negotiations were still on there would be no question of starting of the limitation period, this Tribunal, in **Gujarat Urja Vikas Nigam Ltd**, observed that these decisions, relied upon by the Appellant, did not deal with a case in which the cause of action to file the suit had already accrued to a person before negotiations were held; limitation, once it commences to run, does not stop; the cause of action

once accrued is neither extended nor suspended due to such negotiations or conciliation; such cause of action occurs when a claim is made by one party against another and the same is denied or refuted by the other; further, the decisions cited by the Counsel for the Appellant, under Article 137 of the Limitation Act, would apply only to Applications and not to Suits; the petition in question filed before the State Commission, being one in the nature of a suit, would attract Article 55; and, in terms thereof, the petition is barred by time with respect to the claims made by the Appellant, with regard to the period 3 years prior to the filing of the petition on the alleged wrong allocation of power and deemed generation incentive.

B. JUDGEMENTS UNDER ARBITRATION ENACTMENTS:

(I) ARBITRATION ACT, 1940:

89. Entry 137 of the Schedule to the Limitation Act prescribes the period of limitation for any other application for which no period of limitation is provided elsewhere in this division, as three years; and the time from which the period begins to run as when the right to apply accrues.

90. In **Hari Shankar Singhania (2) v. Gaur Hari Singhania, (2006) 4 SCC 658,** a plaint under Section 20 of the Arbitration Act, 1940 was filed by the appellants; thereafter the first Respondent filed an affidavit in opposition stating that the suit filed by the appellant in the High Court was barred by limitation. It is in this context that the Supreme Court held that, as Article 137 of the Limitation Act, 1963 applies to an application under Section 20 of the Arbitration Act, 1940, the application, for filing the arbitration agreement in court and for reference of disputes to arbitration, was required to be filed within three years from when the right to apply accrued; the right to apply accrued when difference or dispute arises between the parties to the arbitration agreement; another fact that assumed

importance was that a family settlement is treated differently from any other formal commercial settlement, as such a settlement in the eye of the law ensures peace and goodwill among the family members; such family settlements generally meet with approval of the courts; such settlements are governed by a special equity principle where the terms are fair and bona fide, taking into account the well-being of a family; and, therefore, technical considerations should give way to peace and harmony in the enforcement of family arrangements or settlements.

91. The afore-said judgement in **Hari Shankar Singhania,** was distinguished by the Supreme Court, in **Geo Miller & Co. (P) Ltd**, holding that the findings in the said judgement were made in the specific context of a family settlement; such a settlement is to be treated differently from a formal commercial settlement, and that efforts should be made to promote family settlements without the obstruction of technicalities of limitation, etc; and, in **Hari Shankar Singhania**, the Supreme Court was not dealing with a mercantile dispute such as in the present case. It is relevant to note that the dispute in the present case, just as in **Geo Miller & Co. (P) Ltd**, is also a purely commercial or a mercantile dispute.

92. Unlike Entry 137 of the Schedule to the Limitation Act, in terms of which the time from which the period begins to run, for the purposes of limitation of three years, is when the right to apply accrues, Entry 15 provides that the time from which the period begins to run, for the purposes of limitation, is when the period of credit expires. While the period spent in communication, correspondence or negotiation may, possibly, delay the date on which the right to apply accrues, the period which begins to run, in terms of Entry 15, is far more certain. The period of limitation of three years begins on the date when the period of credit expires, and no amount of correspondence, discussions or negotiations can result in postponement of

this date, save an acknowledgement of debt falling within the ambit of Section 18 of the Limitation Act.

(II) ARBITRATION & CONCILIATION ACT, 1996:

93. Section 43 of the Arbitration and Conciliation Act, 1996 relates to Limitations. Section 43 (1) provides that the Limitation Act, 1963, shall apply to arbitrations as it applies to proceedings in Court. Section 43 (2) stipulates that, for the purposes of Section 43 and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in Section 21. Section 21 relates to commencement of arbitral proceedings and there under, unless otherwise agreed by the parties, the arbitral proceedings, in respect of a particular dispute, commences on the date on which a request, for that dispute to be referred to arbitration, is received by the respondent.

94. Section 43 (3) stipulates that, where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within the time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of the opinion that, in the circumstances of the case, undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

95. Section 43 (3) confers power on the court to extend the time, fixed by the agreement to commence arbitral proceedings, if it is of the opinion that undue hardship would otherwise be caused, and justice of the case so requires. Section 43 (3) confers power on the Court to extend the time for such period as the court thinks proper. It is evident therefore that,

notwithstanding the period of Limitation stipulated in Limitation Act, power is conferred on the Court, with respect to any matter falling within the ambit of the Arbitration and Conciliation Act, 1996, to extend time in such circumstances as is stipulated in Section 43 (3) of the Act.

96. Bearing in mind that, in cases arising under Section 11 of the Arbitration & Conciliation Act, 1996, the provisions of Section 43 of the said Act are also attracted, let us take note of the judgements of the Supreme Court in this regard.

97. In **Shree Ram Mills Ltd. v. Utility Premises (P) Ltd., (2007) 4 SCC 599,** an order under Section 11(6) of the Arbitration and Conciliation Act, 1996, appointing arbitrators, passed by the designated Judge of the Bombay High Court, was questioned in the appeal before the Supreme Court mainly on two grounds, firstly, that there was no live issue in existence in between the parties, and secondly, that the claim had become barred by limitation between the parties. As against this, the respondent had supported the order pointing out that, pursuant to the order, not only had the arbitrator been appointed but they had also chosen the third arbitrator to preside over the Arbitral Tribunal; the Arbitral Tribunal had commenced its proceedings; and presently the proceedings before the Arbitral Tribunal were stayed. The question which fell for consideration was whether the order passed under Section 11(6) of the Act, appointing the arbitrators, was valid.

98. The appellant, a sick industrial unit under the Sick Industrial Companies (Special Provisions) Act, 1985, was ordered to be wound up in the year 1994 and, on approaching the BIFR, a rehabilitation scheme was worked out whereby IDBI was appointed as an operating agency under the scheme. The Asset Sale Committee approved the sale of 1.20 lakh sq ft

FSI owned by the appellant to the respondent for a total sale consideration of Rs 21.60 crores; after the first agreement dated 27-4-1994 ie the basic agreement, which covered the issue regarding 1,20,000 sq ft of FSI, the parties then entered into a second agreement dated 18-7-1994 which was necessitated because the appellant could make available only 86,725 sq ft of FSI; under this agreement, the appellant agreed that further land measuring 2500 sq m would be allowed to be developed by the respondents which land was reserved by the Bombay Municipal Corporation for municipal primary school and playground; by that agreement, the appellant undertook to shift the said reservation to some other property; this agreement was followed by a tripartite agreement dated 9-11-1994 where a third party joined; on 22-6-1996 the agreement dated 18-7-1994 was cancelled by mutual consent as the parties were unable to agree regarding the cost of shifting the reservation further, thereby the third party was excluded; thereafter, the respondents moved an application under Section 9 of the Act on 4-5-2001 in respect of 2500 sq m of land to safeguard their interest in the 1,20,000 sq ft of FSI which was linked with the aforementioned land measuring 2500 sq m; after they failed in their attempt to get an injunction, the respondent served a notice dated 11-6-2002 invoking the arbitration clause, and then filed a writ petition before the Delhi High Court wherein the appellants were made to give an undertaking that they would not sell the property covered under the agreement dated 27-4-1994 which included the 1,20,000 sq ft of FSI; during the subsistence of this undertaking, the parties agreed on 19-1-2005 to an MoU whereby the respondent agreed to leave their claim regarding the 1,20,000 sq ft of FSI; and thereafter the respondent wriggled out of the MoU, cancelled it, and served the arbitration notice for appointment of the arbitrators.

99. The Supreme Court held that, in its opinion, the very fact that the parties chose to create the MoU dated 19-1-2005 suggested that the order regarding 1,20,000 sq ft of FSI was never closed or at least was never treated to have been closed and, in that sense, it was still a live issue; the present case did not suggest that there was a full and final settlement between the parties in respect of the issue regarding 1,20,000 sq ft of FSI; there was no reference to any consideration as regards the 1,20,000 sq ft of FSI, much less to the figure of Rs 1.20 crores in this MoU; while the effect of this MoU, on the rights of the respondent, was not for them to examine, it was certain that the issue had not been settled completely; in the present case, the parties and more particularly the respondents were seriously disputing that the issue regarding 1,20,000 sq ft of FSI was finally settled in between the parties; it was for the Arbitral Tribunal to decide the effect of the respondent having signed the MoU, which cannot be said to be in the nature of a contract; the cloud on 2500 sq m of land, which is inextricably connected with FSI of 1,20,000 sq ft, created by the undertaking given before the Delhi High Court still loomed large and remained so even on the date of the MoU; it is for this reason that they were of the opinion that there was no final settlement of the issue regarding 1,20,000 sq ft of FSI even by the MoU dated 19-1-2005; if that was so, it was clear that there was a live issue in between the parties and the parties were at loggerheads on that issue; and, once they came to the conclusion that the designated Judge was right in holding that there was a live issue, the question of limitation automatically gets resolved.

100. After referring to its earlier judgement in ***Hari Shanker Singhania case*****: (2006) 4 SCC 658,** the Supreme Court, in **Shree Ram Mills Ltd,** held that till such time as the settlement talks are going on directly or by way of correspondence no issue arises and with the result the clock of limitation

does not start ticking; where the negotiations were still on, there would be no question of starting of the limitation period; they had given the complete history of the negotiations in between the parties; things did not seem to have settled even by 19-1-2005 but that would be for the Arbitral Tribunal to decide; at this stage, the claim of the respondent cannot be said to have become dead firstly because of the settlement or because of lapse of limitation; what is the effect of the MoU dated 19-1-2005, was the respondent justified in repudiating the said MoU, and what is the effect of repudiation thereof on the earlier agreement dated 27-4-1994, would be for the Arbitral Tribunal to decide; in ***Groupe Chimique Tunisien SA* v. *Southern Petrochemicals Industries Corpn. Ltd :* (2006) 5 SCC 275,** it was held that the Arbitral Tribunal can also go into the question of limitation for the claims in between the parties; they had discussed this subject only to hold that, since the issue between the parties was still alive, there would be no question of stifling the arbitration proceedings by holding that the issue had become dead by limitation; and they left the question of limitation also to be decided by the Arbitral Tribunal.

101. The observations in the judgement of the Supreme Court, in **Shree Ram Mills Ltd,** made in the context of an application made under Section 11(6) of the Arbitration and Conciliation Act, 1996, cannot be read out of context, and be held to apply to all cases where a defence is taken that the petition is barred by limitation, for it is well settled that a judgement is only an authority for what it actually decides, and cannot be quoted for a proposition that may seem to follow logically from it. It is not a profitable task to extract a sentence here and there from a judgment and to build up on it. What is of the essence in a decision is its ratio. (**State of Orissa v. Sudhansu Sekhar Misra; Quinn v. Leathem, AIR 1968 SC 647**). Judgments ought not to be read as statutes. (**Sri. Konaseema**

Cooperative Central Bank Ltd. v. N. Seetharama Raju, AIR 1990 AP 171)(**Kanwar Amninder Singh v. High Court of Uttarakhand and another, 2018 SCC OnLine UTT 1026).**

102. It must also be borne in mind that the Rules of limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. A lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. **(N Balakrishnan v M Krishnamurthy, (1998) 7 SCC 123)**. Excluding the period spent in correspondence/negotiations, in computing the period of limitation would render the Limitation Act,1963 redundant and otiose.

103. In any event the Supreme Court, in **Shree Ram Mills Ltd**, did not conclusively decide the question whether the claim was barred by limitation, holding that the Arbitral Tribunal can go into the question of limitation regarding the claims between the parties; they had discussed this subject only to hold that, since the issue between the parties was still alive, there would be no question of stifling the arbitration proceedings by holding that the issue had become dead by limitation; and they left the question of limitation also to be decided by the Arbitral Tribunal.

104. The appeals, in **BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738,** raised two issues: (*i*) the period of limitation for filing an

application under Section 11 of the Arbitration and Conciliation Act, 1996 ("the 1996 Act"); and (*ii*) whether the Court may refuse to make the reference under Section 11 where the claims are ex facie time-barred? BSNL had issued a notification inviting bids for planning, engineering, supply, insulation, testing and commissioning of GSM-based cellular mobile network in South India, and the respondent (hereinafter referred to as "Nortel") was awarded the purchase order. On completion of the works under the purchase order, BSNL deducted/withheld Rs 99,70,93,031 towards liquidated damages, and other levies. Nortel, vide communication dated 13-5-2014, raised a claim for payment of the said amount. BSNL, vide letter dated 4-8-2014, rejected the claim of Nortel. After a period of over 5½ years, Nortel, vide letter dated 29-4-2020, invoked the arbitration clause, and sought appointment of an independent arbitrator, contending that the dispute, of withholding the aforesaid amounts, would fall within the ambit of arbitrable disputes under the agreement. BSNL contended that the request for appointment of an arbitrator could not be entertained, since the case had already been closed on 4-8-2014, and as per Section 43 of the 1996 Act, the notice invoking arbitration was time-barred. Nortel filed an application under Section 11 of the 1996 Act before the Kerala High Court for appointment of an arbitrator, and the High Court referred the disputes to arbitration. BSNL filed a review petition before the High Court, which was dismissed.

105. It is in this context that the Supreme Court held that the limitation for filing an application under Section 11 would arise upon the failure to make the appointment of the arbitrator within a period of 30 days from issuance of the notice invoking arbitration; in other words, an application under Section 11 can be filed only after a notice of arbitration in respect of the particular claim(s)/dispute(s) to be referred to arbitration (as contemplated

by Section 21 of the Act) is made, and there is failure to make the appointment; the period of limitation for filing a petition seeking appointment of an arbitrator(s) cannot be confused or conflated with the period of limitation applicable to the substantive claims made in the underlying commercial contract; the period of limitation for such claims is prescribed under various Articles of the Limitation Act, 1963; the limitation for deciding the underlying substantive disputes is necessarily distinct from that of filing an application for appointment of an arbitrator; this position was recognised even under Section 20 of the Arbitration Act, 1940 in ***J.C. Budhraja* v. *Orissa Mining Corpn. Ltd.*, (2008) 2 SCC 444,** wherein it was held that Section 37(3) of the 1940 Act provides that, for the purpose of the Limitation Act, an arbitration is deemed to have commenced when one party to the arbitration agreement serves on the other party, a notice requiring the appointment of an arbitrator; in **Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd., (2020) 14 SCC 643**, a three-Judge Bench held that, on a reading of sub-sections (1) and (3) of Section 43 of the 1996 Act, the provisions of the Limitation Act, 1963 would be applicable to the Arbitration Act, and the limitation period, for reference of a dispute to arbitration or for seeking appointment of an arbitrator before a court under the 1940 Act as well as the 1996 Act, is three years from the date on which the cause of action or the claim which is sought to be arbitrated first arises; and given the vacuum in the law to provide a period of limitation under Section 11 of the Arbitration and Conciliation Act, 1996, courts have taken recourse to the position that the limitation period would be governed by Article 137, which provides a period of 3 years from the date when the right to apply accrues.

106. The Supreme Court further held that applying the aforesaid law to the facts of the present case, the application under Section 11 was filed within

the limitation period prescribed under Article 137 of the Limitation Act; Nortel had issued the notice of arbitration vide letter dated 29-4-2020, which was rejected by BSNL vide its reply dated 9-6-2020; and the application under Section 11 was filed before the High Court on 24-7-2020 i.e. within the period of 3 years of rejection of the request for appointment of the arbitrator.

107. On the issue, whether the Court while exercising jurisdiction under Section 11 is obligated to appoint an arbitrator even in a case where the claims are ex facie time-barred, the Supreme Court held that limitation is normally a mixed question of fact and law, and would lie within the domain of the Arbitral Tribunal; the issue of limitation, in essence, goes to the maintainability or admissibility of the claim, which is to be decided by the Arbitral Tribunal; the period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, **(*S.S. Rathore* v. *State of M.P.*, (1989) 4 SCC 582 : 1990 SCC (L&S) 50; *Union of India* v. *Har Dayal*, (2010) 1 SCC 394; *CLP (India) (P) Ltd.* v. *Gujarat Urja Vikas Nigam Ltd.*, (2020) 5 SCC 185)** or mere settlement discussions, where a final bill is rejected by making deductions or otherwise; Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions; there must be a clear notice invoking arbitration setting out the "particular dispute" [Section 21 of the Arbitration and Conciliation Act, 1996.] (including claims/amounts) which must be received by the other party within a period of 3 years from the rejection of a final bill, failing which, the time bar would prevail; in the present case, the notice invoking arbitration was issued 5½ years after rejection of the claims on 4-8-2014; consequently, the notice invoking arbitration is ex facie time-barred, and the disputes between the parties cannot be referred to arbitration in the facts of this case.

108. The Supreme Court concluded holding that the period of limitation for filing an application under Section 11 would be governed by Article 137 of the First Schedule of the Limitation Act, 1963; the period of limitation will begin to run from the date when there is failure to appoint the arbitrator; and, in rare and exceptional cases, where the claims are ex facie time-barred, and it is manifest that there is no subsisting dispute, the Court may refuse to make the reference.

109. Following **BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738,** and several earlier judgements, the Supreme Court, in **Secunderabad Cantonment Board v. B. Ramachandraiah & Sons, (2021) 5 SCC 705**, held that, applying the aforesaid judgments to the facts of this case, so far as the applicability of Article 137 of the Limitation Act to the applications under Section 11 of the Arbitration Act is concerned, it is clear that the demand for arbitration in the present case was made by the letter dated 7-11-2006; this demand was reiterated by a letter dated 13-1-2007, which letter itself informed the appellant that appointment of an arbitrator would have to be made within 30 days; at the very latest, therefore, on the facts of this case, time began to run on and from 12-2-2007; the appellant's laconic letter dated 23-1-2007, which stated that the matter was under consideration, was within the 30-day period; on and from 12-2-2007, when no arbitrator was appointed, the cause of action for appointment of an arbitrator accrued to the respondent and time began running from that day; the High Court was clearly in error in stating that, since the applications under Section 11 of the Arbitration Act were filed on 6-11-2013, they were within the limitation period of three years starting from 10-11-2010; and, on this count, the applications under Section 11 of the Arbitration Act, themselves being hopelessly time-barred, no arbitrator could have been appointed by the High Court.

110. The law declared by the Supreme Court, in **BSNL v. Nortel Networks (India) (P) Ltd., (2021) 5 SCC 738,** is that the period of limitation, for substantive claims made in the underlying commercial contract, is prescribed under various Articles of the Limitation Act, 1963; the limitation for deciding the underlying substantive disputes is necessarily distinct from that of filing an application for appointment of an arbitrator; the period of limitation for issuing notice of arbitration would not get extended by mere exchange of letters, **(*S.S. Rathore* v. *State of M.P.*, (1989) 4 SCC 582 : 1990 SCC (L&S) 50; *Union of India* v. *Har Dayal*, (2010) 1 SCC 394; *CLP (India) (P) Ltd.* v. *Gujarat Urja Vikas Nigam Ltd.*, (2020) 5 SCC 185)** or mere settlement discussions; and Sections 5 to 20 of the Limitation Act do not exclude the time taken on account of settlement discussions.

C. OTHER JUDGEMENTS:

111. In **Gujarat Paguthan Energy Corporation Ltd. v. Gujarat Urja Vikas Nigam Limited, 2010 SCC OnLine APTEL 8,** the appellant's claim was objected by the Respondent before the State Commission on the ground that the intervention was sought to be enforced for the first time by the Appellant, by way of letter dated 18.04.1996 sent to the Respondent, demanding return of the Incentive paid to them; the Respondent had immediately refuted the applicability of the notification dated 06.11.1995 as early as 25.04.1996; the cause of action had started from 25.04.1996 onwards and, under Section 56 or 13 of the Limitation Act, the Appellant had to file the petition, seeking a declaration or for recovery of Incentive amount, within a period of 3 years and, since this petition has been filed after nearly 10 years i.e. on 14.9.2005, the claim for the period 3 years prior to the date of filing of the petition i.e. 14.9.2005 was barred by limitation. This preliminary objection was upheld by the State Commission.

112. The Appellant contended, before this Tribunal, that the State Commission did not follow the principles laid down in **Hari Shankar Singhania v. Gaur Hari Singhania (2006) 4 SCC 658** and **Sri Ram Mills Ltd. v. Utility Premises Ltd. (2007) 4 SCC 599** in considering the question of limitation; on the other hand, it wrongly distinguished the principles laid down in those cases by observing that they were applicable only to family disputes and to no other disputes; though **Hari Shankar Singhania v. Gaur Hari Singhania (2006) 4 SCC 658** related to a family dispute, **Sri Ram Mills Ltd. v. Utility Premises Ltd. (2007) 4 SCC 599,** which related to a general dispute, had upheld this principle holding that, where the negotiations are still on, there would not be any question in regard to the commencement of the limitation period; and therefore, so long as the parties were, in a bonafide manner, deliberating for a possible settlement, the cause of action does not start; (ii) from 18.4.1996, on which date the letter was sent to the Respondent to which reply was sent on 25.4.1996, the discussions had started at various levels and attempts were made by both the parties to settle the issue; ultimately, on 27.07.2005, the Government of Gujarat had directed the Appellant to approach the State Commission to resolve the issue on the basis of the recommendation of the High Power Committee constituted by the Govt. of Gujarat and, thereupon, within a period of 2 months from the date of the direction of the Govt. of Gujarat, the Appellant had filed the petition and hence the petition was within the time; and, therefore, the claim ought not to have been rejected on the ground that it was barred by limitation.

113. It is in this context that this Tribunal held that mere correspondence exchanged between the parties through discussion or reconciliation, subsequent to denial of the claim of the party against whom the claim is made, would not extend the period of limitation; in other words, the party

must enforce its claim within a prescribed limitation period unless such correspondence or discussion or means of settlement indicated acknowledgement of the claim; correspondence exchanged between the parties, subsequent to the denial of claim by the party against whom the claim is made, would not extend the period of limitation; the party must enforce its claim within the prescribed limitation period unless such correspondence or meetings suggest acknowledgement of the claim; in **Food Corporation of India v. Assam State Cooperative Marketing and Consumer Federation Ltd., (2004) 12 SCC 360,** the Supreme Court held that, according to Section 18 of the Limitation Act, an acknowledgement of liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom such right is claimed, made before expiration of the prescribed period for a suit in respect of such right has the effect of commencing a fresh period of limitation from the date on which the acknowledgement of liability was so signed; **Bootamal v. Union of India, AIR 1962 SC 1716** related to a case falling under Article 31 of the Schedule to the Limitation Act; Article 31 prescribed a limitation of one year, from when the goods ought to be delivered, for a suit to be filed against a carrier for compensation for non-delivery of goods; in this context, the Supreme Court had held that correspondence between the parties shall not stop the period of limitation from running unless the correspondence reflects acknowledgement of liability; there would not be any question of estoppel in the matter of the starting point of limitation, because of any correspondence carried on between the carrier and the person whose goods are carried; and undoubtedly, if the correspondence discloses anything which may amount to an acknowledgement of liability of the carrier, that will give a fresh starting point of limitation.

114. In **CLP (India) (P) Ltd. v. Gujarat Urja Vikas Nigam Ltd., (2020) 5 SCC 185, (**ie in the Appeal preferred against the Order of this Tribunal in **Gujarat Paguthan Energy Corporation Ltd. v. Gujarat Urja Vikas Nigam Limited, 2010 SCC OnLine APTEL 8**), the question which arose for consideration was whether the State Commission and Aptel fell in error in granting restricted refund calculable for the 3 year period prior to the respondent's application. The Supreme Court held that Aptel's findings, about inapplicability of Section 18 of the Limitation Act, were correct; there was no admission on the part of the appellant, at least of the kind, that extended the time for preferring an application for recovery of excess payments; and repeated letters, or exchange of communications, do not extend the period of limitation, provided by law as held in ***S.S. Rathore*** **v.** ***State of M.P.*****, (1989) 4 SCC 582,** ***Union of India*** **v.** ***Har Dayal*****, (2010) 1 SCC 394,** and ***Schlumberger Asia Services Ltd.*** **v.** ***ONGC*****, (2013) 7 SCC 562.**

115. In **Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal, (2021) 6 SCC 366,** the Supreme Court held that the principle of Section 9 of the Limitation Act was to be strictly adhered to, namely, that when time begins to run, it cannot be halted, except by a process known to law; the IBC does not exclude the application of Section 6 or 14 or 18 or any other provision of the Limitation Act; accrual of fresh period of limitation is in terms of Section 18 of the Limitation Act; it will not give a new lease to time-barred debts under the Limitation Act; when the principal borrower and/or the (corporate) guarantor admit and acknowledge their liability after declaration of NPA but before expiration of three years therefrom including the fresh period of limitation due to (successive) acknowledgments, it is not possible to extricate them from the renewed limitation accruing due to the effect of Section 18 of the Limitation Act; Section 18 of the Limitation Act gets

attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code enures; Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt; such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 of the Code.

116. In view of the law declared in the aforesaid judgements of the Supreme Court, holding that repeated letters, or exchange of communications, do not extend the period of limitation, provided by the law of limitation, the contention, urged on behalf of the first respondent that the period spent bonafide and in good faith, in holding mutual negotiations to resolve their inter-se disputes, must be excluded in computing the period of limitation, does not merit acceptance.

117. The submissions, urged on behalf of the first respondent under this head, necessitates rejection.

VI. SHOULD THE PERIOD SPENT BEFORE NRPC SUB COMMITTEE BE EXCLUDED UNDER SECTION 14 OF THE LIMITATION ACT?

118. Sri Anand K. Ganeshan, Learned Counsel for the Appellant, would submit that the contention of Respondent No. 1 that the matter was being taken up in the subcommittee meetings of the NRPC is wholly extraneous to the issue of the applicability of the Limitation Act, 1963; the constitution of NRPC is under Section 2 (55) of the Electricity Act, 2003, which is for facilitating integrated operation of the power system; the only function of the Regional Power Committee ("**RPC**") is provided in Section 29 (4) of the

Electricity Act, 2003, which relates to compliance of directions; the said Section 29(4) provides that the Regional Power Committee in the region may, from time to time, agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region; this provision appears in Section 29 which deals with the functions of the Regional Load Despatch Centre; the RPC, which is an entity different from that of the Load Despatch Centre, only functions by way of consensus amongst the constituents for the operation of the power system; there is no other statutory function provided to the RPC, let alone any power being conferred on them to adjudicate the disputes between the parties; reliance placed by Respondent No. 1 on the Northern Regional Power Committee (Conduct of Business) Rules, 2006 does not further its case; the said rules are not statutory in nature, but are merely procedures to be followed by NRPC; Rule 3(viii) of the said Rules itself provides for evolving consensus on all issues in relation to the economy and efficiency of the power system; this is also the provision that is referred to in the impugned order; reliance on Rule 23.2 is misplaced; the decision referred to in the said rule is the decisions arrived at by consensus for further implementation; there is no adjudicatory provision provided anywhere, nor is there any statutory sanction in the Electricity Act, 2003, for vesting of any adjudicatory functions on the RPC; pendency of issues to be discussed before the RPC would not entitle Respondent No. 1 to the benefit of Section 14 of the Limitation Act, 1963; Section 14 applies to proceedings before courts, which certainly cannot include the RPC; further, it is not as if any proceedings before the NRPC have been dismissed for want of territorial jurisdiction or for any such like reason for Section 14 to be applicable; and, viewed from any angle, the claim of Respondent No. 1 cannot be said to fall within the prescribed period of limitation and is therefore liable to be dismissed.

119. Sri Puneet Jain, Learned Counsel for the first respondent, would submit that the Central Government had, in exercise of the powers conferred under Section 2(55) of the Electricity Act, constituted the Northern Regional Power Committee (NRPC) vide resolution dated 25.5.2005, and the subsequent amendment dated 29.11.2005 which was published in the Gazette of India; the NRPC committee is, thus, a statutory body established under the provisions of the Electricity Act, 2003; the States of Delhi, Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttaranchal, Uttar Pradesh and Union Territory of Chandigarh are its members; under clause 9 of the said resolution, the NRPC has made rules called "The Northern Regional Power Committee (Conduct of Business) Rules, 2006; while NRPC is a statutory body, its members have "mutually agreed" to resolve issues evolving a process of consensus under the aegis of the NRPC through its various subcommittees; under clause 20.1 the functions of the sub-committee include "... issues concerning settlement of payments among constituents..." and thereafter under clause 23.2 the "decision of the committee" arrived at for "and other above functions" shall be implemented by the constituents; thus, under the rules framed by the constituent members, which include the States of Rajasthan and Punjab, Rule 23(2) contemplates a "decision of the Committee" which "shall be implemented", and hence binding on the constituent members; thus, disputes relating to and concerning "settlement of payments among constituents" can be referred for decision of the committee which can and is empowered under Rule 3(viii) "to evolve consensus on all issues relating to economy and efficiency in the operation of power system in the region"; thus, the committee functions on assisting the parties to arrive at a consensus on issues which may include issues concerning settlement of payments among constituents; the functions of the NRPC

and its sub-committees cannot be construed narrowly by a skewed interpretation of Section 29(4) of the Electricity Act, 2003; once the constituents "agree" to the functions, the settlement of payments, among constituents, would come within the confines of "economy and efficiency" of operations under Section 29(4) also; since the parties had mutually "agreed" to resolve issues through consensus, the respondent had approached the CSC of the NRPC under which some of the issues were resolved and the appellant had admitted liability of Rs. 5.05 Crores, but all issues could not be resolved; since resolution of disputes "through consensus" could not fully resolve all the issues, though the matter continues to remain pending before it, the respondent decided to approach the CERC under Section 79(1)(f), which could either decide the issue itself or refer the parties to arbitration; since the respondent had approached the CSC of NRPC, under an Alternate Dispute Resolution Mechanism, which could not fully decide the issue, the application filed by the first respondent, before the CERC for an "adjudication", cannot be said to be barred by limitation; and in any case, since the proceedings before the CSC by both the parties was a bonafide attempt to resolve the disputes, the said period is required to be excluded for the purposes of computation of Limitation.

120. Learned Counsel for the first Respondent would also submit that the first respondent had approached a forum of Alternate Dispute Resolution Mechanism before the Commercial Sub-Committee (CSC) of the NRPC (Northern Regional Power Committee) on 5.9.2008 within 3 years from the communication dated 31.8.2006 and then on 23.10.2006; as the issue remained pending before the said committee, the claim of the first respondent cannot be said to be barred by limitation; and alternatively, since the first respondent approached the Committee where the issue

remained pending as on the date of filing of the petition before the CERC, the period spent before the sub-committee ought to be excluded under Section 14 of the Limitation Act for the purposes of computing the period of limitation.

121. Learned Counsel for the first respondent would also state that, if this Tribunal comes to the conclusion that the NRPC did not have jurisdiction as it could only attempt to evolve a consensus among the parties and not "adjudicate" the disputes, and, since the proceedings before the committee are proceedings of a civil nature and the issue raised before it is the same as the one raised before the CERC in the present petition and between the same parties, on the basis of the principles underlying Section 14 of the Limitation Act, the said period is required to be excluded for the purposes of computing limitation; and, in view of these submissions, the petition filed by the first respondent, under Section 79(1)(f) of the Electricity Act, cannot be said to be barred by Limitation.

A. SECTION 14 OF THE LIMITATION ACT:

122. Before examining the rival contentions, it is useful to take note of the scope and purport of Section 14 of the Limitation Act which relates to exclusion of time of proceeding bona fide in court without jurisdiction. Under sub-section (1) thereof, in computing the period of limitation for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. Section 14(2) provides that, in computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court

of first instance or of appeal or revision, against the same party for the same relief, shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. While Section 14(1) is applicable to Suits, Section 14(2) is attracted in the case of applications.

123. The principle of Section 14, which is a principle based on advancing the cause of justice, would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case. **(M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58)**.The object of Section 14 is that, if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding. What is necessary is the absence of negligence or inaction. So long as the plaintiff or applicant is bona fide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case. **(M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58).**

124. On an analysis of Section 14 of the Limitation Act, it is evident that the following conditions must be satisfied before the said Section can be pressed into service: (*1*) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party; (*2*) The prior proceeding had been prosecuted with due diligence and in good faith; (*3*) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature; (*4*) The earlier proceeding and the latter proceeding must relate to the same matter in issue and; (*5*) Both the proceedings are in a court.

(Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169).

125. Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. The intention of the legislature in enacting Section 14 is to give relief to a litigant who had approached the wrong forum. The policy of Section 14 is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. An element of mistake is inherent in the invocation of Section 14 which is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. The legislature enacted Section 14 to exempt a certain period covered by a bona fide litigious activity. **(Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169).**

B. DUE DILIGENCE AND GOOD FAITH: ITS MEANING IN THE CONTEXT OF SECTION 14:

126. Due diligence and caution are essential pre-requisites for attracting Section 14. Due diligence, which cannot be measured by any absolute standard, is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under particular circumstances. The time during which a court holds up a case, while it is discovering that it ought to have been presented in another court, must be excluded, as the delay of the court cannot affect the due diligence of the party. The definition of good faith, in Section 2(*h*) of the Limitation Act, would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Section 14 will not help a party who is guilty of negligence, lapse or inaction. However, there can be no hard-and-fast rule as to what amounts to good faith. It is a matter to be

decided on the facts of each case. It will, in almost every case, be more or less a question of degree. The mere filing of an application in a wrong court would not, prima facie, show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other courts with due diligence and in good faith. **(Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169; M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58)**

127. On the question whether an omission in the plaint, to mention the value of the properties involved in the suit, could be brought within the condition of “due care and attention”, according to the meaning of “good faith” as understood in the Limitation Act, the Supreme Court, in **Madhavrao Narayanrao Patwardhan v. Ram Krishna Govind Bhanu, 1959 SCR 564**, held that the question was not whether the plaintiff did it dishonestly or that his acts or omission in this connection, were mala fide; on the other hand, the question was whether, given due care and attention, the plaintiff could have discovered the omission without having to wait for about 10 years or more; the trial court examined the plaintiff's allegation that the omission was due to his pleader's mistake, and held that the plaintiff himself was responsible for drafting the plaint and for presenting it in court, and that no pleader had any responsibility in the matter; no reason was adduced why, in these circumstances, the value of the subject-matter of the suit, was mentioned in the plaint in the earlier suit but not in the plaint in respect of the present suit; the plaintiff had not brought on record any evidence to show that he was prosecuting the previously instituted suit with “due diligence” as required by Section 14; he had not adduced evidence to show that, inspite of his due diligence, the suit remained pending for over

ten years in that court, before he thought of having the suit tried by a court of higher pecuniary jurisdiction; all the conditions, necessary to bring the case within Section 14, were not satisfied by the plaintiff; the burden lay on the plaintiff to satisfy those conditions in order that he may entitle himself to the deduction of that period; the courts below were in error in expecting the contesting defendant to adduce evidence to the contrary; and when the plaintiff had not satisfied the initial burden which lay upon him to bring his case within Section 14, the burden would not shift, if it ever shifted, to the defendant to show the contrary.

SECTION 14 APPLIES ONLY TO COURTS OR QUASI-JUDICIAL TRIBUNALS:

128. The principles of Section 14 are applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of a bona fide mistake of law or defect of procedure. The equity underlying Section 14 should be applied to its fullest extent and time taken in diligently pursuing a remedy, in a wrong court, should be excluded. **(Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169).**

129. Any authority or tribunal having the trappings of a court would be a "court" within the meaning of Section 14. The word "court" refers only to a proceeding which proves to be abortive. In this context, for Section 14 to apply, two conditions have to be met. First, the primary proceeding must be a suit, appeal or application filed in a civil court. Second, it is only when it comes to excluding time in an abortive proceeding that the word "court" has been expanded to include proceedings before tribunals. **(*P. Sarathy* v. *SBI* :(2000) 5 SCC 355; M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58).**The context of Section 14 of the Limitation Act would require that

the term “court” be liberally construed to include within it quasi-judicial tribunals as well. This is for the very good reason that the principles of Section 14 is that whenever a person bona fide prosecutes with due diligence another proceeding which proves to be abortive because it is without jurisdiction, or otherwise no decision could be rendered on merits, the time taken in such proceeding ought to be excluded as otherwise the person who has approached the court in such proceeding would be penalised for no fault of his own. **(M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58).** The word “court” in Section 14 takes its colour from the preceding words “civil proceedings”. Civil proceedings are of many kinds and need not be confined to suits, appeals or applications which are made only in courts stricto sensu. This is made even more clear by the explicit language of Section 14 by which a civil proceeding can even be a revision which may be to a quasi-judicial tribunal under a particular statute. **(M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58).**

C. QUASI-JUDICIAL TRIBUNALS: ESSENTIAL ATTRIBUTES:

130. The expression “Tribunal” does not mean the same thing as a “court” but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions. (***Durga Shankar Mehta*** **[(1955) 1 SCR 267;** ***Associated Cement Companies Ltd. v. P.N. Sharma*****: AIR 1965 SC 1595).** The basic and essential condition which makes an authority or a body a tribunal, is that it should be constituted by the State and should be invested with the State's inherent judicial power. Sometimes a rough and ready test is applied in determining the status of an adjudicating body by enquiring whether the said body or authority is clothed with the trappings of a court. **(*Associated Cement Companies***

***Ltd. v. P.N. Sharma*: AIR 1965 SC 1595; *Engineering Mazdoor Sabha representing Workmen employed under the Hind Cycles Ltd.* v. *Hind Cycles Ltd., Bombay* [(1963) Suppl 1 SCR 625)**

131. If a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and, in the absence of anything in the statute to the contrary, it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act. The second principle is that if a statutory body has power to do any act which will prejudicially affect the subject, then although there are not two parties apart from the authority, and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially. ***(Associated Cement Companies Ltd. v. P.N. Sharma*: AIR 1965 SC 1595; *Province of Bombay* v. *Kusaldas S. Advani*: (1950) SCR 621).**

132. A Tribunal is entrusted with the judicial powers of the State to adjudicate upon the rights of parties when there is a lis between the contesting parties, and the fact that pleadings have to be filed, evidence has to be led, and the disputes has to be decided according to law after considering the representations made by the parties would make the adjudicating body a Tribunal. ***(Harinagar Sugar Mills Ltd.* v. *Shyam Sundar Jhunjhunwala*:(1962) 2 SCR 339**; ***Associated Cement Companies Ltd. v. P.N. Sharma*: AIR 1965 SC 1595).** A Tribunal should be constituted by the State, and should be invested with any part of the judicial functions of the State. In deciding whether an authority required to act judicially when dealing with matters affecting rights of citizens may be

regarded as a tribunal, though not a court, the principal incident is the investiture of the “trappings of a court”— such as authority to determine matters in cases initiated by parties, sitting in public, power to compel attendance of witnesses and to examine them on oath, and others. Some, though not necessarily all, such trappings will ordinarily make the authority which is under a duty to act judicially, a “tribunal”. **(*Associated Cement Companies Ltd. v. P.N. Sharma*: AIR 1965 SC 1595; *Jaswant Sugar Mills Ltd., Meerut* v. *Lakshmichand*:(1963) Supp 1 SCR 242)**

133. Tribunals, though they are not full-fledged Courts, yet exercise quasi-judicial functions. ***(Associated Cement Companies Ltd. v. P.N. Sharma*: AIR 1965 SC 1595; *Bharat Bank Ltd., Delhi* v. *Employees of the Bharat Bank Ltd*: (1950) SCR 459**).The State, by appropriate measures, may transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. (***Associated Cement Companies Ltd. v. P.N. Sharma*: AIR 1965 SC 1595)**

134. Tribunals share with the courts one common characteristic; both the courts and the tribunals are “constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions”. (***Durga Shankar Mehta* v. *Thakur Raghuraj Singh* [(1955) 1 SCR 267**; ***Associated Cement Companies Ltd. v. P.N. Sharma*: AIR 1965 SC 1595).** Courts and Tribunals are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. As in the case of courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and, by virtue of the said power, it is the State's inherent judicial function which they discharge. (***Associated Cement Companies Ltd. v. P.N. Sharma*: AIR 1965 SC 1595)**

135. Courts and tribunals act judicially, and in the term "court" are included the ordinary and permanent tribunals and in the term "tribunal" are included all others, which are not so included. Among the powers of the State, is included the power to decide controversies between parties, aptly called the judicial power of the State. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary Courts of Civil Judicature. Their procedures may differ, but the functions are not essentially different. The essential power exercised by courts and tribunals alike is the judicial power of the State. ***(Harinagar Sugar Mills Ltd.* v. *Shyam Sundar Jhunjhunwala*:(1962) 2 SCR 339**; ***Associated Cement Companies Ltd. v. P.N. Sharma*: AIR 1965 SC 1595).**

136. As Section 14 of the Limitation Act would apply only to quasi-judicial tribunals, apart from Courts, the Supreme Court, in **A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd., (2016) 3 SCC 468,** confined application of the Limitation Act only to the adjudicatory proceedings before the Regulatory Commissions. It is only if either the Northern Regional Power Committee, or its commercial sub-committee, is held to be a quasi-judicial tribunal would Section 14, subject to fulfilment of the other conditions stipulated therein, apply. In considering this question, it is useful to take note of the relevant provisions of the Electricity Act, 2003, and the relevant clauses of the Northern Regional Power Committee (Conduct of Business) Rules 2006, in terms of which the commercial sub-committee was constituted.

D. PROVISIONS OF THE ELECTRICITY ACT RELATING TO REGIONAL POWER COMMITTEES:

137. Section 2 of the Electricity Act, is the definition Section and stipulates that in this Act, unless the context otherwise requires, (55) "Regional Power Committee" shall mean a committee established by resolution by the

Central Government for a specified region for facilitating the integrated operation of the power systems in that region. The only other reference to the Regional Power Committee, in the Electricity Act, is in Section 29(4) which provides that the Regional Power Committee in the region may, from time to time, agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region. Section 29(4) relates only to the Regional Power Committees, and not any of its sub-committees. Further the said provision only enables the Regional Power Committee to agree on matters concerning (1) stability and smooth operation of the integrated gird and (2) economy and efficiency in the operation of the power system in that region. No power of adjudication, or for resolution of disputes inter-se its constituents, has been conferred by Section 29(4) even on the Regional Power Committees. The endeavour of the sub-committee of NRPC, to persuade the Appellant and the first respondent to mutually resolve the issue regarding payment of dues, is evidently not in discharge of the statutory functions of the NRPC under Section 29(4) of the Act.

138. As reliance is placed thereupon by Sri Puneet Jain, Learned Counsel for the 1st Respondent, it is useful to note what the Northern Regional Power Committee (Conduct of Business) Rules, 2006 provide.

E. Northern Regional Power Committee (Conduct of Business) Rules 2006:

139. Under the provisions of Section 2(55) of the Electricity Act 2003, the Government of India, vide resolution F.No.23/1/2004-R&R dated 25th May, 2005 and subsequent amendment dated 29.11.2005 published in the Gazette of India, established the Northern Regional Power Committee (herein after referred to as NRPC) comprising of the States of Delhi, Haryana, Himachal Pradesh, Jammu & Kashmir, Punjab, Rajasthan,

Uttaranchal and Uttar Pradesh and the Union Territory of Chandigarh. In terms of clause —9 of the said resolution dated 25th May 2005, the NRPC made "The Northern Regional Power Committee (Conduct of Business) Rules, 2006" ("the rules" for short) which came into force from the date of its approval by the NRPC, and was to remain in force unless otherwise modified. Clause 2.1 thereof provides that, in these Rules unless the context otherwise requires:- (d) 'Commercial sub-committee (CC)' means a sub-committee constituted by the Committee to consider commercial related issues; (e) 'Commission' means Central Electricity Regulatory Commission; (f) 'Committee' means the Northern Regional Power Committee constituted by the Central Government under Section 2(55) of the Electricity Act, 2003.

140. Chapter-III of the said rules relates to sub-committees of NRPC, and clause 17 relates to Constitution of Sub-Committees of NRPC. Clause 17.1 provides that the following sub-committees will be constituted by NRPC to guide and assist it in conducting the functions assigned to it.(a) Technical Co-Ordination Sub-Committee (TCC); (b) Operation Co-Ordination Sub-Committee (OCC); (c) Commercial Sub-Committee (CC); (d) Protection Sub-Committee (PC); (e) System Study Sub-Committee; and (f) LGBR Sub-Committee. Clause 17.2 provides that the NRPC or Member Secretary, NRPC or any Sub-Committee may constitute a task force, core group for a specific purpose from among the members and external experts to advice on any specific issue.

141. Clause 20 relates to Commercial Sub-Committee (CC) and Clause 20.1 provides for its functions. Thereunder the Commercial Sub-Committee(CC) shall discuss all commercial related issues viz. energy accounting, schemes required for inclusion in the Bulk Power Supply Agreements, requirement of power from the new projects, installation of special energy meters and its cost sharing, etc., metering aspects,

reviewing of the payments towards UI charges, treatment of transmission losses, commercial declaration of lines/substation and Generation units, commercial issues in inter-state and inter-regional exchange of power, issues concerning settlement of payments among constituents, if any, etc, and any other matter referred by the TCC/NRPC. Commercial Committee shall audit the Regional Energy Accounts and UI & Reactive Pool Accounts.

142. Chapter IV relates to the procedure for conducting sub-committee meetings of NRPC and Clause 23 relates to conducting of sub-committee meetings, issue of notice, agenda and its minutes. Clause 23.2 provides that the decision of the committee arrived at for Operation of the Regional Grid and other above functions shall be implemented by the Constituents; and, in case the Sub-committee recommends the matter to the TCC / NRPC for further deliberation or decision, the same shall be referred by NRPC secretariat to TCC/ NRPC.

F. CONTENTS OF THE MINUTES OF MEETINGS OF THE COMMERCIAL SUB-COMMITTEE OF THE NRPC:

143. The first Respondent informed the Superintendent Engineer (Comml), Northern Regional Power Committee, by letter dated 22.01.2008, that an outstanding amount of Rs 7.12 Crores and Rs. 37.22 Lacs was payable to the first Respondent by the Appellant and the Union Territory of Chandigarh respectively; even after regularly pursuing with them, payments were not being released; and this be included in the agenda item for the next Commercial Sub-Committee meeting of NRPC.

144. The minutes of the 11th meeting of the commercial sub-committee, held on 9th March, 2009, records that, with regard to the outstanding dues of Punjab, the representative of the first respondent had informed that, as decided in the last sub-committee meeting held on 12.12.2008, the reconciliation of accounts with PSEB had been carried out on 3rd and 4th

March, 2009; the details, as desired by PSEB, had also been provided by RVPNL for verification by PSEB; and due to discussions in the commercial sub-committee, the matter was expedited. He requested that the issue may not dropped from the agenda of next meeting and if, in the meantime, the issue got settled, they would inform NRPC secretariat accordingly."

145. The minutes of the 25th meeting of the commercial sub-committee, held on 24th December, 2013 records that the representative of RVPN had stated that an amount of Rs.7.14 crores was receivable from PSEB, and PSPCL was not making the payment despite highest level of pursuance; and the representative of PSPCL had stated that the issue was under consideration, and they would resolve the issue mutually.

146. The minutes of the 36th meeting of the commercial sub-committee, held on 11th June, 2018, records that the representative of RVPN had briefed about the correspondence among RVPN and PSPCL, and raised the issue that the outstanding amount of Rs. 7.14 crores was due from PSPCL to RVPN; the representative of PSPCL had assured to take up the issue with their finance department and discuss mutually with RVPNL; and the member secretary, NRPC had requested RVPN and PSPCL to discuss and resolve the issue bilaterally and inform the status to NRPC Secretariat.

147. The Northern Regional Power Committee was itself constituted by an executive order passed by the Government of India i.e. by their resolution dated 25.05.2005. The rules were, in turn, made by the Northern Regional Power Committee in terms of Clause 9 of the Resolution dated 25.05.2005 and, consequently, these Rules neither have statutory sanction nor the force of law. Such rules are, at best, in the nature of the administrative guidelines or instructions, and do not constitute either subordinate or delegated legislation. While the commercial sub-committee was

constituted by the NRPC in terms of Clause 17.1 of the said Rules, the constitution of these committees was only to guide and assist NRPC in discharging the functions assigned to it. The functions assigned to the commercial sub-committee, under clause 20, is only to discuss, among others, issues concerning settlement of payment among its constituent members. Even if both the Appellant and the 1st Respondent are held to be constituents of the sub-committee, the functions assigned to the sub-committee is only to discuss the issue of settlements of payments, and nothing more. Failure on the part of one of the constituents, to make payment to the other, would not enable the commercial sub-committee to direct the defaulting constituent to make payment to the other. As neither the NRPC nor its commercial sub-committee have been assigned judicial power by the Electricity Act, to adjudicate disputes between the constituent members, the provisions of the Limitation Act which apply only to courts and quasi-judicial tribunals, would have no application to the NRPC or to its Commercial Sub Committee.

148. Further, the requirement of Section 14 of Limitation Act is that the 1st Respondent should have prosecuted with due diligence a civil proceeding. The proceeding before the commercial sub-committee of the NRPC would not constitute a civil proceedings and, by raising issues before the commercial sub- committee, the 1st Respondent cannot be said to have exercised due diligence in prosecuting a civil proceeding. As neither the NRPC nor its commercial sub-committee have been conferred the power of adjudication of disputes, the first respondent cannot be said to have acted with due diligence in approaching the NRPC or its commercial sub-committee. In any event, such proceedings must have failed on account of the defect of jurisdiction or other cause of a like nature. It is not even the case of the 1st Respondent that either the NRPC or its Commercial sub-

committee had rejected their claim on the ground of lack of jurisdiction. On the other hand, it is the specific case of the 1st Respondent that their request to the NRPC is still pending consideration of the commercial sub-committee, and it is only because they were not able to recover, the outstanding amount from the appellant, that they eventually filed the Petition before the CERC on 14.02.2019.

149. Consequently the time spent by the 1st Respondent, before the commercial sub-committee of the NRPC, from 2008 till they filed the petition before the CERC on 14.02.2019, cannot be excluded in computing limitation, as Section 14 of the Limitation Act has no application to proceedings before the NRPC or its commercial sub-committee neither of which are quasi-judicial tribunals to which alone, besides courts, would Section 14 of the Limitation Act apply.

VII. OTHER CONTENTIONS:

150. As noted hereinabove the CERC has, in the impugned Order, held that the adjustment of accounts, between the Appellant and the first Respondent, was a continuing process; their outstanding assets and liabilities and balance-sheet was always with them; though the balance-sheet of the Appellant had not been placed before them, but it had not been pleaded before them that the said liability was not being shown even in its balance-sheet; the burden was upon the Appellant to plead and prove the same; it is only because the liability was admitted that the Appellant did not produce the same; a balance-sheet is an acknowledgement of a subsisting liability; and, therefore, they found that the claim of the first respondent was not barred by Limitation as it was consistently being acknowledged.

A. ENTRIES IN A BALANCE SHEET:

151. On the question whether an entry made in a balance sheet of a corporate debtor would amount to an acknowledgment of liability under Section 18 of the Limitation Act, the Supreme Court, in **Asset Reconstruction Co. (India) Ltd,** observed that several judgments, such as ***Mahabir Cold Storage* v. *CIT*, 1991 Supp (1) SCC 402, A.V. Murthy v. B.S. Nagabasavanna, (2002) 2 SCC 642, S. Natarajan v. Sama Dharman, (2021) 6 SCC 413,** have indicated that an entry made in the books of accounts, including the balance sheet, can amount to an acknowledgment of liability within the meaning of Section 18 of the Limitation Act; in ***Bengal Silk Mills Co.* v. *Ismail Golam Hossain Ariff*, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115,** the Calcutta High Court held that, though the filing of a balance sheet is by compulsion of law, the acknowledgment of a debt is not necessarily so; in fact, it is not uncommon to have an entry in a balance sheet with notes annexed to or forming part of such balance sheet, or in the auditor's report, which must be read along with the balance sheet, indicating that such entry would not amount to an acknowledgment of debt for reasons given in the said note; and, therefore, it is not necessary that the acknowledgment of liability must be contained in a document addressed to the creditor.

152. While an entry in the Balance Sheet of the Appellant, regarding the liability of the first respondent, would undoubtedly amount to an acknowledgement of debt, the CERC has itself acknowledged that the balance-sheet of the Appellant had not been placed before them. The CERC has placed the burden on the Appellant to plead and prove that their Balance Sheet did not contain any such entry, and has, through a convoluted process of reasoning, held that it is only because the liability was admitted, that the Appellant did not produce their Balance Sheet.

153. The onus was on the first respondent, which had invoked the jurisdiction of the CERC seeking recovery of amounts due, to plead and prove that the amount claimed by them, as due from the Appellant, was not barred by limitation. While it was no doubt open to the first Respondent to request the CERC to exercise its powers under Section 94(1)(b) of the Electricity Act, to direct the Appellant to produce its Balance Sheet, they failed to do so. Yet the CERC presumes, without an iota of evidence on record, that the Appellant's Balance Sheet must have had such an entry, and there is therefore an acknowledgement of debt. The finding of the CERC in this regard is perverse, is based on no evidence, and is liable to be set aside.

154. Besides directing the Appellant to pay the time barred debt of Rs 5.05 crores along with interest at the rate as per their agreement, pendent lite and future, within four weeks, the CERC has also directed that a mutual meeting may be held, between the appellant and the first respondent, to resolve the disputed amount of Rs 2.09 crores within six weeks of the order. Unlike the amount due of Rs.5.05 crores which they had at least acknowledged in their letter dated 13.11.2009, the Appellant has, right from the very inception, disputed their liability to pay the sum of Rs 2.09 crores claimed as due by the first respondent. The CERC's direction to the Appellant to hold a meeting with the first respondent, regarding the latter's claim for payment of the time-barred debt of Rs.2.09 crores, is illegal and is liable to be set aside. As the amounts claimed by the first respondent, in their petition before the CERC, are barred by limitation, imposition of costs of Rs.5.00 Lakhs on the Appellant, on the ground that unnecessary litigation had been thrust upon the first respondent, is also illegal and is, accordingly, set aside.

VIII. CONCLUSION:

155. Viewed from any angle, the Order of the CERC, directing the Appellant to make payment of a time-barred debt, with interest thereupon, to the first respondent, and in imposing costs of Rs,5.00 Lakhs on them, is illegal. The Appeal is allowed and the impugned Order under appeal, passed by the CERC, is set aside. The pending IA shall also stand disposed of.

Pronounced in the open court on this the **30th day of May, 2023**.

(Sandesh Kumar Sharma) Technical Member	(Justice Ramesh Ranganathan) Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

mk/tpd