

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

**APPEAL No. 199 of 2022**

**Dated: 09.07.2024**

**Present: Hon'ble Sandesh Kumar Sharma, Technical Member  
Hon'ble Mr. Virender Bhat, Judicial Member**

**IN THE MATTER OF:**

**NuPower Renewables Private Limited**  
through its Director,  
Having its registered office at 618,  
Marker Chamber V, Nariman Point  
Mumbai – 400 021.

**... Appellant**

**VERSUS**

- (1) Maharashtra Electricity Regulatory Commission**  
through its Secretary,  
World Trade Centre, Centre No.1,  
13th Floor, Cuffe Parade,  
Colaba, Mumbai -400 005
- (2) Maharashtra State Electricity Distribution Company Limited,**  
through its Managing Director,  
having his registered office at Plot G 9,  
Prakashgad- 5th Floor, Station Road  
Bandra (East), Mumbai – 400 051.
- (3) Maharashtra State Electricity Transmission Company Limited,**  
through its Chief Engineer State Transmission Utility (STU),  
Prakashganga, Plot No. C-19, E Block,  
Bandra Kurla Complex,  
Bandra (E), Mumbai, Maharashtra – 400051.
- (4) Maharashtra Energy Development Agency**  
through its Managing Director,

Aundh Road, opposite to Spicer College,  
Near Commissionerate of Animal Husbandary,  
Aundh, Pune, Maharashtra- 411007.

**...Respondents**

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.  
Mr. Buddy A. Ranganadhan  
Mr. Shri Venkatesh  
Mr. Bharat Gangadharan  
Mr. Ashutosh Kumar Srivastava  
Mr. Nihal Bhardwaj  
Mr. Siddharth Nigotia  
Mr. Shivam Kumar  
Mr. Kartikay Trivedi  
Mr. Suhael Buttan  
Mr. Siddharth Joshi  
Mr. Abhishek Nangia  
Mr. Vineet Kumar  
Ms. Soumyaa Sharma  
Mr. Punyam Bhutani  
Mr. Sanjeev Singh Thakur  
Mr. Jatin Ghuliani  
Mr. Anant Singh  
Mr. Rishabh Sehgal  
Mr. Mohit Mansharamani  
Mr. Kunal Veer Chopra  
Mr. Jayant Bajaj  
Mr. Sakya Singh Chaudhary  
Mr. Avijeet Lala  
Ms. Astha Sharma  
Ms. Nameeta Singh  
Ms. Meha Chandra  
Mr. Nithya Balaji  
Mr. Devank Maheshwari  
Mr. Girdhar Gopal Khattar  
Ms. Ayushi R. Saxena  
Ms. Vaidehi Nayak  
Ms. Bikashita Choudhary  
Mr. Karan Jaiswal  
Ms. Ruth Alwin

Counsel for the Respondent(s) : Mr. Sahil Chandra  
Mr. Ritik Shah  
Mr. C. Patil  
Mr. Harsheen M. Palli  
Mr. Charitharth Palli for R-1

Mr. G. Saikumar, Sr. Adv.  
Mr. Sameer Malik  
Mr. Rahul Sinha  
Ms. Udit Saxena  
Ms. Eksha Kashyap  
Mr. G. Sao L.  
Mr. Akash Lamba  
Ms. Eksha Kashyapa  
Mr. Himanshu Latka  
Mr. Tanishq Sirohi for R-2

Mr. Shirish K Deshpande  
Mr. Apurva S.  
Ms. Rucha Mandlik  
Ms. Apoorva Sharma  
Mr. Mohit Gautam for R-3

Ms. Mandakini Ghosh  
Ms. Aakanksha Bhola  
Mr. Rahul Ranjan for R-4

## **JUDGEMENT**

### **PER HON'BLE MR. SANDESH KUMAR SHARMA, TECHNICAL MEMBER**

1. The instant Appeal has been filed by the Appellant, NuPower Renewables Private Limited (in short "NRPL" or "Appellant") challenging the order dated 15.03.2021 (in short "Impugned Order") passed by the Maharashtra Electricity Regulatory Commission (in short "Commission" or "MERC") in Case No. 337 of

2019 to be read with the order dated 09.08.2021 passed in Case No. 58 of 2021 (hereinafter referred to as “Review Order”) vide which the Commission dismissed the petition seeking review of the Impugned Order.

2. The Appellant herein, is aggrieved by the Impugned Order in as much as the Commission has disallowed the prayer of the Appellant and refused to direct the Maharashtra State Electricity Distribution Company Limited (hereinafter referred to as “Respondent No. 2” or “MSEDCL”) to grant Permission to commission and sign Energy Purchase Agreement with the Appellant at preferential tariff, in accordance with the Government of Maharashtra (hereinafter referred to as “GoM”) Wind Policy 2015, further, the impugned findings of the Commission with respect to the non-availability of valid grid connectivity is erroneous and grossly prejudice the rights and interest of the Appellant, in respect whereof the Appellant is seeking redressal in the present Appeal.

### ***Description of parties***

3. The Appellant is a private limited company having engaged in the generation of power through wind turbine generator facilities and is a “generating company” within the meaning of Section 2 (28) of the 2003 Act.

4. The Respondent no. 1, the Commission is the State Electricity Regulatory Commission which was established by the State Government under Section 14 of the Electricity Regulatory Commission Act, 1998 (hereinafter referred to as "1998 Act"), *inter-alia*, is mandated to promote generation of electricity from new and renewable sources under section 86(1)(e) of the Electricity Act, 2003 (in short “Act”).

5. The Respondent No. 2, MSEDCL is a distribution licensee in the State of Maharashtra.

6. The Respondent No. 3, Maharashtra State Electricity Transmission Company Limited (hereinafter referred to as "Respondent No. 3" or "MSETCL") is one of the transmission licensees in the State of Maharashtra.

7. The Respondent No. 4, Maharashtra Energy Development Agency (hereinafter referred to as "Respondent No. 4" or "MEDA") is a government body, established to harness and develop alternate/renewable sources of energy in the state of Maharashtra.

***Factual Matrix of the Case:-***

8. The Appellant has set up and operating Wind Turbine Generators (in short "WTGs") installed at Vaspeth Village, Jath Taluka, Sangli District, having a capacity of 26.65 MW, and at Shedyal Village, Jath Taluka, Sangli District of the capacity of 2.05 MW, the installation and erection of the Appellant's fifteen (15) WTGs were completed by July 2015, further, a joint inspection by MEDA, MSETCL, and MSEDCL was completed for the above fifteen (15) WTGs between September 2015 and November 2017, meanwhile, on 25.01.2013, the Appellant and the Developer entered into a Memorandum of Understanding (in short "MoU"), wherein the Developer undertook all responsibilities in relation to development of evacuation infrastructure and of obtaining grid connectivity for the WTGs to be set up at the Site.

9. The current dispute pertains to the fifteenth (15<sup>th</sup>) WTG, which is Wind Turbine Generator located at location No.VAS-556 at Gut No.556, Vaspeth village, Jath Taluk, Sangli District, Maharashtra. (hereinafter referred to as “subject WTG”)

10. The Respondent No.4, MEDA, on 24.10.2015, issued a notice wherein it provided a waiting list of qualified wind projects for consideration under the 1500 MW capacity for the fulfillment of Renewable Purchase Obligation set under Wind Policy 2015 notified by the Government of Maharashtra on 20.07.2015, however, owing to the ceiling target of 1500 MW vide the Wind Policy 2015, there was some uncertainty over the acceptance of the commissioning of the subject WTG of the Appellant, thereafter, in September 2017, MEDA realized that approximately 1.6 MW of capacity can be accommodated within the 1500 MW target and accordingly, the appellant, on 06.09.2017, gave an undertaking to the MEDA agreeing to abide by the conditions prescribed by the MEDA to operate the subject WTG at a derated capacity of 1.6 MW.

11. A joint inspection of the subject WTG was conducted by the Respondents- MEDA, MSETCL, and MSEDCL on 21.11.2017, the completion of erection and other criteria were recorded in the joint inspection report, and on 17.03.2018, MEDA registered the subject WTG at a derated capacity of 1.60 MW under the Wind Policy 2015 read with Methodology 2015, the said registration of the subject WTG was conditional upon the Appellant submitting valid grid connectivity from MSETCL to the MEDA within six (6) months from issuance of the registration.

12. Pursuant to subject WTG being complete in all aspects and ready for commissioning, the Appellant on 19.03.2018, requested MSEDCL for the issuance of Permission to Commission (in short “PTC”) for commissioning the subject WTG,

however, on 10.04.2018, MSEDCL informed the Appellant that the registration certificate issued by MEDA for derated capacity of 1.60 MW is not in accordance with Wind Policy 2015 and further informed that the MSEDCL has taken decision to procure wind power only through competitive bidding on e-reverse auction basis for any surplus capacity.

13. The MEDA on multiple occasions granted an extension to the Appellant to submit a valid grid connectivity permission issued by MSETCL, however, the Appellant could not submit grid connectivity permission owing to non-issuance of the grid connectivity by MSETCL, thereafter, the Developer and the Appellant on various occasions requested the MSEDCL to grant permission for connecting the Appellant's subject WTG to the grid and grant permission to commission for the subject WTG.

14. The Appellant, on 13.12.2019, aggrieved by the inaction of the MSEDCL, filed Case No.337 of 2019 before the MERC, *inter alia*, prayed for directions for the MSEDCL to grant PTC to the subject WTG, the Commission vide Impugned Order dated 15.03.2021 dismissed the Case No.337 of 2019 of the Appellant and ruled that Appellant's prayer for grant of PTC cannot be allowed because the subject WTG does not have valid grid connectivity.

15. Owing to the errors apparent on the face of the record in the Impugned Order and certain important aspects/evidence not being considered in the Impugned Order, the Appellant approached the Commission under its review jurisdiction and filed Case No.58 of 2021 on 26.04.2021, the Appellant contended and highlighted that the finding in the Impugned Order concerning the grid connectivity is

erroneous, however, the Commission, on 09.08.2021, dismissed the review petition filed by the Appellant.

16. The Appellant herein, is aggrieved by the Impugned Order in as much as the Commission has disallowed the prayer of the Appellant and refused to direct the MSEDCL to grant Permission to Commission and sign Energy Purchase Agreement with the Appellant at preferential tariff, in accordance with the Govt. of Maharashtra's Wind Policy 2015, further, the impugned findings of the Commission with respect to the non-availability of valid grid connectivity is erroneous and grossly prejudice the rights and interest of the Appellant, in respect whereof the Appellant is seeking redressal in the present Appeal.

17. The Appellant submitted the List of Dates along with occurrences of events as under:

**LIST OF DATES**

<b>DATE</b>	<b>PARTICULARS</b>
14.10.2008	The government of Maharashtra issued a new policy for power generation from non-conventional sources of energy.
18.05.2011	Respondent No.4/MEDA had issued a recommendation letter to the wind project developer for the 250MW proposed wind power project at Vaspeth.
12.08.2011	Respondent No. 3/MSETCL had granted grid connectivity permission to the wind project developer for the wind power project.
25.01.2013	The Appellant and Developer entered in Memorandum of Understanding



17.07.2013	Respondent No. 3/MSETCL extended the grid connectivity permission period for the wind power project at the Site for a total of 300 MW till 30.07.2014,
03.06.2014	The Respondent No. 2/MSEDCL notified the Wind Policy 2014 which is applicable for projects to be commissioned in FY 2014-15 onwards
25.07.2014	Respondent No. 3/ MSETCL extended the grid connectivity permission period for the wind power project at the Site for a total of 350 MW
26.09.2014	Respondent No. 2/ MSEDCL issued a Clarification to its Wind Policy 2014
05.01.2015	the Respondent No. 3/ MSETCL, granted grid connectivity to the Developer through interim arrangement through LILO on one circuit of 220 kV DC Jath- Mhaisal line.
12.02.2015	Respondent No. 2/ MSEDCL issued a letter whereby it kept its Wind Policy 2014 in abeyance with effect from 06.02.2015.
26.05.2015	Appellant requested Respondent No. 4/MEDA to issue an infrastructure clearance approval to the Appellant's subject WTG.
04.07.2015	Respondent No. 3/ MSETCL had granted the Developer permission for the commissioning of 100 MVA, 220/33 kV transformer along with HV/ LV bays at 220/33 kV substation situated at Shedyal.
07.07.2015	Respondent No. 3/ MSETCL granted interim grid connectivity for 100 MW (out of 350 MW) of the wind power capacity for the wind power project at the Site on a temporary LILO basis for interconnection with the grid till 31.12.2015.

07.07.2015	Respondent No. 3/ MSETCL restricted the grid connectivity permission period for the wind power project at the Site to 200 MW.
14.07.2015	Maharashtra State Load Dispatch Centre ( <b>MSLDC</b> ) granted permission for synchronization of 100 MW of the wind power capacity for the wind power project at the Site by making a tap arrangement on one circuit of 220 kV Mhaisal- Jath line. It is in accordance with grid connectivity and valid till 29.07.2015
20.07.2015	GoM issued the Government Resolution No. NCE-2015/C.R. 49/Energy-7 ( <b>Wind Policy 2015</b> ).
09.09.2015	GoM issued Government Resolution No. Apau-2015/pra.kra.49/part-8/Eng-7 ( <b>2015 Methodology</b> ).
30.09.2015	Respondent No. 3/ MSETCL had granted to the Developer permission for commissioning of the LILO line on 220 kV Mendhigiri line for the 220 kV substation at Shedyal and the permission for commissioning the second transformer at 220 kV substation situated at Shedyal.
24.10.2015	Respondent No. 4/MEDA had provided a waiting list of qualified wind projects for consideration under the 1500 MW capacity for the fulfilment of RPO set under Wind Policy 2015.
26.10.2015	The Appellant again requested the Respondent No.4/MEDA to grant an infrastructure clearance to the Appellant's subject WTG.
21.11.2015	MSLDC granted further permission for synchronization of an additional 100 MW (out of 350 MW) of the wind power capacity for the wind power project at the Site on a temporary LILO basis till 31.12.2015

28.12.2015	Developer requested the Respondent No. 3/ MSETCL for the six (6) months extension for interim grid connectivity for synchronization expiring on 31.12.2015.
01.01.2016	Respondent No. 3/ MSETCL extended the interim arrangement for connecting 200 MW out of 350 MW wind power project capacity at the Site on a temporary LILO basis till 30.06.2016.
11.02.2016	The Appellant paid fees to Respondent No. 4/MEDA to the tune of Rs. 20,60,250/- towards the infrastructure fees payment, security deposit, and infrastructure processing fees by way of a demand draft and once again requested Respondent No. 4/MEDA to grant the necessary infrastructure clearance to the Appellant's subject WTG.
13.12.2016	Appellant vide its letter to Respondent No. 4/MEDA informed that all the necessary documents were sent to Respondent No. 4 and further requested to grant infrastructure clearance by Respondent No. 4/MEDA to the Appellant's WTG.
.03.2017	Appellant entered into two Wind Energy Purchase Agreements with Respondent No. 2/MSEA for sale of power generated by 14 out of 15 WTGs at rate of Rs. 5.70 per unit with the Wind Policy 2015.
.08.2017	Appellant entered into one Wind Energy Purchase Agreements with Respondent No. 2/MSEA for sale of power generated by 14 out of 15 WTG's at rate of Rs. 5.70 per unit in line with the Wind Policy 2015.
06.09.2017	The Appellant gave an undertaking to the Respondent No. 4/MEDA agreeing to abide by the conditions prescribed by the

	Respondent No. 4 to operate the subject WTG at a de-rated capacity of 1.6 MW.
07.09.2017	Respondent No. 4/MEDA requested the Respondent No. 2 to give views/ comments on operating 2.05 MW capacity windmill with de-rated capacity of 1.60 MW so as to enable the Respondent No. 4 to process the proposal of Appellant for registration of subject WTG with the Respondent No. 4.
17.10.2017	Respondent No. 2/MSEDCL informed the Respondent No. 4/MEDA that there is no provision available in Wind Policy 2015 for operation of windmill on de-rated capacity
21.11.2017	the subject WTG of 2.05 MW capacity, was jointly inspected by the Respondents- MEDA, MSETCL and MSEDCL and the completion of erection and other criteria were recorded in the joint inspection report.
17.03.2018	Respondent No. 4/MEDA registered the subject WTG at a de-rated capacity of 1.60 MW under the Wind Policy 2015 read with Methodology 2015.
19.03.2018	Appellant requested Respondent No. 2/MSEDCL for the issuance of Permission to Commission/PTC for commissioning the subject WTG.
10.04.2018	Respondent No. 2/MSEDCL informed the Appellant that the registration certificate issued by Respondent No. 4/ MEDA for derated capacity of 1.60MW is not in accordance with Wind Policy 2015 and further informed that the Respondent No. 2/ MSEDCL has taken decision to procure wind power only through competitive bidding on e-reverse auction basis for any surplus capacity.

22.06.2018	The developer requested Respondent No. 3/MSETCL for permission for the construction of 220 kV AIS Bay for 350 MW connectivity at MSETCL's 220 KV Jath sub-station to connect the wind power project of 350 MW at the Site.
11.07.2018	Respondent No. 3/MSETCL requested the District Forest Officer, Sangli, to provide land for the proposed construction of two (2) nos. of 220 kV AIS Line Bays adjacent to the existing 220 kV Jath substation, for evacuation of power from the 220 kV Shedyal PSS.
17.09.2018	the Developer requested the Respondent No. 4/ MEDA to grant a suitable recommendation to the Respondent No. 3/ MSETCL for the extension of the existing grid connectivity in place for the 350 MW wind power project situated at the Site.
11.10.2018	Respondent No. 4/ MEDA granted an extension period of three (3) months up to 16.12.2018 to the Appellant to submit a valid grid connectivity permission issued by Respondent No. 3/ MSETCL.
24.10.2018	Appellant replied to the letter of 11.10.2018 of Respondent No.2/MSEDCL and sent the Project Registration Certificate issued by the Respondent No. 4/ MEDA and work completion report by CE, SLDC, Kalwa for visibility on a real-time basis to SLDC.
01.06.2019	Respondent No. 4/MEDA granted the extension to the Project Registration Certificate for the retrospective period of six (6) months for the subject WTG valid from 16.12.2018 to 16.06.2019.

18.07.2019	Respondent No. 4/MEDA granted further extension to the Project Registration Certificate for a period of six (6) months for the subject WTG valid from 16.06.2019 to 15.12.2019.
08.08.2019	the Developer requested the Respondent No. 2/MSEDCL to connect the Appellant's subject WTG to the existing 220 kV Shedyal substation by disconnecting the already existing grid connection of one WTG of 2.0 MW of M/s Jath Wind Energy Private Limited, which has been lying idle and which was already disconnected by the Respondent No. 2/ MSEDCL.
03.09.2019	the Appellant once again requested the Respondent No. 2/ MSEDCL to grant permission for connecting the Appellant's subject WTG to the grid and grant permission to commission for the subject WTG.
19.11.2019	The Electrical Inspector, Govt. of Maharashtra granted the final charging permission to the Appellant's subject WTG.
21.11.2019	the Appellant provided all the required documents to the Respondent No. 2/ MSEDCL and once again requested them to grant PTC to the subject WTG.
03.12.2019	the Appellant once again requested the Respondent No. 4/MEDA to grant an extension of the project registration approval for the subject WTG for a further period of six (6) months.
11.12.2019	Appellant requested the Respondent No. 4/MEDA to grant an extension of the registration granted to the subject WTG by six (6) months in view of the various delays not attributable to Appellant.

13.12.2019	The Appellant, aggrieved by the inaction of the Respondent No. 2/MSEDCL, filed Case No. 337 of 2019 before the Ld. Commission.
18.12.2020	Jath Municipal Council passed a resolution with its No Objection for forest land diversion process.
15.03.2021	Ld. Commission vide Impugned Order dismissed the Case No. 337 of 2019
05.04.2021	Respondent No. 2/MSEDCL dismissed the application submitted by the Appellant seeking PTC for the subject WTG relying upon the Impugned Order.
20.04.2021	the Executive Engineer, EHV project division, Sangli forwarded the NOC from Jath Nagar parishad to the District Forest Office for providing the forest land adjacent to the 220 kV Jath substation for construction of 220 kV Bays.
26.04.2021	The Appellant approached the Ld. Commission under its review jurisdiction and filed Case No. 58 of 2021 praying for review of Order dated 15.03.2021 of the Ld. Commission in Case No. 337 of 2019.
25.05.2021	The Respondent No. 3/ MSTECL vide their letter requested the Developer to submit the progress status of execution of the work towards construction of 2 x 220 kV AIS Bays at Jath substation.
28.05.2021	The Developer apprised the Respondent No. 3/ MSTECL about the status of the forest land diversion process for construction of the 2 x 220 kV line bays at the Jath 220 kV Substation.
09.08.2021	Ld. Commission dismissed the review petition being Case No. 58 of 2021 filed by the Appellant.

08.09.2021	the Developer was accorded temporary grid connectivity from the Respondent No. 3/ MSTECL for the period of a further one year from 08.09.2021.
14.09.2021	The Appellant issued letter No. NRPL/ VAS556/Comm/2021-22/01 and requested the Respondent No. 4/ MEDA for the re-registration of the subject WTG under Wind Policy 2015 and to provide suitable recommendations to Respondent No. 2 towards commissioning of the subject WTG.

### **Submissions of the Appellant**

18. The Appellant submitted that the present Appeal is being filed by NRPL challenging the Impugned Order dated 15.03.2021 passed by the MERC, in Case No. 337 of 2019 (in short “MERC Petition”) to be read with Order dated 09.08.2021 (“Review Order”) passed in Case No. 58 of 2021 (“Review Petition”), wherein the MERC in its Impugned Order has disallowed the prayer of the Appellant and refused to direct the Maharashtra State Electricity Distribution Company Limited (MSEDCL) to grant PTC and sign Energy Purchase Agreement (in short “EPA”) with the Appellant at preferential tariff in accordance with the GoM Wind Policy, 2015 for Appellant’s 15<sup>th</sup> WTG, the main prayers of the Appellant are:

- (a) Set aside the Impugned Order,
- (b) Direct the MSEDCL to allocate a balance 2.8MW capacity connectivity available in the existing 200 MW connectivity obtained for Shedyal Sub-Station for Appellant’s 15<sup>th</sup> WTG,
- (c) Direct MSEDCL to grant PTC to Appellant’s 15<sup>th</sup> WTG,
- (d) Direct MSEDCL to execute EPA for Subject WTG, and



- (e) Direct MEDA to grant re-registration of Subject WTG and issue a recommendation to MSEDCL for granting PTC for Subject WTG.

19. On 16.02.2024, the Appellant filed a detailed Note on its submissions in the present Appeal as per the directions given by this Tribunal on 05.02.2024, on 19.02.2024, this Tribunal granted liberty to the parties to file their Written Submissions, while reserving the present Appeal for orders, accordingly, the Appellant is filing the present Additional Submissions, it is submitted that the present Additional Submissions may be read in conjunction to the previous Note dated 16.02.2024 of the Appellant, the present Additional Submissions also addresses the contentions raised by MSEDCL in its Written Submission dated 04.03.2024.

20. It is submitted that the Appellant has already made detailed submissions in its Note dated 16.02.2024, for the sake of brevity, the submissions made therein are not being repeated herein, and may be read as part and parcel of the present note as well, further, the present Note addresses the submissions made by MSEDCL in its Written Submission dated 04.03.2024.

21. It is submitted that the Appellant is entitled for a preferential tariff under the Wind Policy, 2015 as it had a legitimate expectation in view of the previous policies of the GOM regarding the Wind Power Projects (in short "WPP") the GOM even issued a Government Resolution dated 21.12.2016 to regularize/register various projects (including that of the Appellant) under the Wind Policy, 2015.

22. However, the Respondents did not consider the subject WTG under the Wind Policy 2015, the MSEDCL in its Submissions dated 04.03.2024 has contended that: -

- (a) The Wind Policy applicable at the time of planning the Subject WTG was the Wind Policy, 2008, further in terms of MSEDCL's Internal Policy of June 2014 as clarified in September 2014, grant of preferential tariff was at the discretion of MSEDCL.
- (b) In this regard, the Appellant cannot contend that the Subject WTG should be granted preferential tariff as it was included in the Government Resolution (in short "GR") dated 21.12.2016, which was issued to regularize WPP.
- (c) However, the Wind Policy, 2015 was in respect of various Renewable Energy projects including wind power, BAGASSE/ agriculturally based, small hydropower, biomass-based, solar-based projects, and industrial-based power projects, amongst these except for solar-based projects, the procurement requirement under RPO is upon Distribution licensees in the State of Maharashtra.

23. It is submitted that the MSEDCL's above contentions are liable to be rejected in view of the following: -

- (a) This Tribunal in its Judgment dated 18.08.2022 passed in "*Bothe Windfarm Development Pvt. Ltd. v. Maharashtra Electricity Regulatory Commission & Ors*" (in short "Bothe Judgment") in similar facts and circumstances has held that WPPs of the

appellants therein were entitled to preferential tariff (*Relevant Para 74*) under the Wind Policy, 2015.

- (b) In the Bothe Judgments, the appellants therein were included in the GR dated 21.12.2016, therefore, even in the Appellant's case, there is a clear legitimate expectation, being included in the very same GR.
- (c) MSEDCL has misleadingly contended that the Wind Policy, 2015 was in respect of Renewable Energy projects including wind power, etc. and except for solar-based projects, the procurement requirement under RPO is upon Distribution licensees in the State of Maharashtra, moreover, MSEDCL has not raised this contention previously in the present matter (either before the MERC or before this Tribunal) which makes it evident that this contention is merely an afterthought and baseless.
- (d) In this regard, Clause 2 of the Preamble of the GR dated 21.12.2016 itself stated that as follows: -

*“Under Government Policy dated 14.10.2008, the goal of setting up 2000 M.W. project was decided. **Out of which projects of 1350 MW capacity were set. The said set up Wind Powers Project were included in this new policy and under policy of 20<sup>th</sup> July 2015. It is binding to register the said projects. In these projects, Wind Power Projects of total 147.90 MW which are directly set-up by Mahavitaran Company** however for which Mahaurja has not given infrastructure facility consent or consent for setting up the project are included.”*

- (e) It is self-evident that the GR dated 21.12.2016 or the Wind Policy 2015 dealt with wind power projects which were to be regularized by Mahavitrans Company (i.e., MSEDCL), therefore, MSEDCL cannot and ought not be permitted to contend that the Wind Policy, 2015 or the GR dated 21.12.2016 was for various renewable sources, i.e., Biomass, Solar etc. and the procurement for such 2.05 MW of power of the Appellant would be the responsibility of other Distribution licensees in the State of Maharashtra when firstly the policy itself is called the “Wind Policy” and secondly because the MSEDCL is clearly named in the GR policy, which evinces the intent and purpose of the Government and the basis for issuance of the Wind Policy 2015 and the GR dated 21.12.2016.
- (f) It is repeated that the GR dated 21.12.2016 was a government order specifically directing MSEDCL to regularize the WPP (including that of the Appellant), thus, the contentions raised by MSEDCL in this regard are liable to be rejected by this Tribunal, lastly, MSEDCL in its Written Submission dated 04.03.2024 has erroneously stated that the Subject WTG was completed on 20.04.2014, however, it is clarified that Subject WTG was completed on 20.04.2015.

24. It is submitted that the MSEDCL has erroneously contended that the Appellant did not have a valid grid connectivity, in this regard, it is reiterated that the Appellant’s Developer always had a valid grid connectivity, further, the Appellant seeks liberty to rely on its submissions made in this regard, in the Appeal

and the Note dated 16.02.2024 filed by the Appellant, in fact it must be noted that the MSETCL *vide* its recent Certificate dated 24.07.2023 filed before this Tribunal on 28.07.2023, has duly certified that the STU had issued interim grid connectivity to the Appellant's Developer which shows that the Appellant's Developer always had a valid grid connectivity, including for the Subject WTG, a copy of the Certificate dated 24.07.2023 issued by MSETCL was placed on record at ANNEXURE-A/2 of the paper book.

25. Moreover, under the Wind Policy, 2015 (and Wind Methodology), the MEDA is responsible to grant project registration, in the present case, MEDA has in fact granted project registration to the Appellant for its subject WTG being operated at a derated capacity of 1.6 MW, as only 1.6 MW capacity could be accommodated in the Wind Policy, 2015.

26. However, despite due registration by MEDA, MSEDCL by its Letter dated 10.04.2018 refused to grant PTC to the Appellant for its subject WTG on the ground that it will only procure power through competitive bidding, further, MSEDCL stated that there is no provision in the Wind Policy, 2015 which allows for operation of wind mill on derated capacity.

27. It is submitted that Letter dated 10.04.2018 is crucial for the present dispute as it shows that the MSEDCL has only conjured reasons extraneous to the Wind Policy, 2015 to deny preferential tariff to the Appellant, in this regard, it must be noted that under the Wind Methodology, 2015 (Methodology), MEDA is the final authority to take decision on the matters which are not included in the Methodology for implementing the said Policy, however, MSEDCL has refused registration on

the ground that de-ration of the Wind Turbine is not permissible, when MEDA had evidently decided to proceed on the premise that it shall permit the derating.

28. In this context, in the present case, it is submitted that MSEDCL has speciously stated that the Appellant does not have valid grid connectivity only to shy away from its obligation under the Wind Policy 2015 read with the G.R. dated 21.12.2016, moreover, curiously even MSETCL has stated that it has granted a '*valid grid connectivity*' to the Appellant, contrary to what has been sought to be contended by MSEDCL.

29. Similar to the *Bothe* Judgment, it is evident that MSEDCL/Respondents have wrongly refused to grant preferential tariff to the Subject WTG on specious considerations that too contrary to the express provisions of the Wind Policy 2015 read with the G.R. dated 21.12.2016.

30. In view of the afore-mentioned facts and circumstances (and considering submissions made by the Appellant in the present Appeal and subsequent pleadings), it is submitted that that the Appellant has been denied preferential tariff for reasons extraneous to law, as such, the Appellant is entitled to be compensated, in this regard, it is also stated that the Appellant has installed 15 WTGs (including the Subject WTG) at its Project Site, the installation and erection of the Appellant's fifteen (15) WTGs was completed by July 2015 itself.

31. Pertinently, the Appellant had arranged the financing of the 15 WTGs as a single project, therefore, operation of all 15 WTGs (including Subject WTG) was necessary for servicing the financing obligations, the Appellant will be able to pay

principal instalment and interest to its lenders only if Subject WTG is granted preferential tariff of Rs. 5.70 per unit.

32. This is evident from the fact that the project revenues from the Appellant's 30.75 MW Project is almost equal to the project outflows (which includes payment of interest, principal, insurance, and project operating expenses) considering revenue from the Subject WTG (at 1.60 MW derated capacity) at preferential tariff of Rs. 5.70 per unit, in this regard, the details of Project Inflow *vis-à-vis* Project Outflows is tabulated below: -

<u>Statement showing Revenues and estimated interest and principal payments due to lenders, O&amp;M Expenses, insurance and administrative expenses for the Appellant's Project (30.75 MW)</u>							
Particulars	FY 24-25	FY 25-26	FY 26-27	FY 27-28	FY 28-29	FY 29-30	FY 30-31
Project Revenues/ Inflows							
Sale of Wind Energy	32.4	32.4	32.4	32.4	32.4	32.4	32.4
Generation Based Incentive	2.8	2.8	0.0	0.0	0.0	0.0	0.0
Interest /other income Earned	0.2	0.3	0.4	0.5	0.5	0.5	0.6

Total Project Revenues/ Inflows	35.3	35.4	32.8	32.9	32.9	32.9	32.9
Project Expenses/ Outflows							
Interest on Term Loan	13.8	12.2	10.3	8.3	6.1	3.7	1.1
Principal repayment	14.9	16.3	18.2	19.8	21.6	24.1	19.6
O&M Expenses	2.9	3.1	3.2	3.4	3.6	3.7	3.9
Administrative expenses	0.8	0.8	0.8	0.8	0.8	0.8	0.9
Insurance payment	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Total Project Expenses /Outflows	33.0	32.9	33.1	32.9	32.7	33.0	26.0

[Amount in Crores]

33. In view of the afore-mentioned, it is crucial that the Appellant's Subject WTG ought to be granted preferential tariff, in this regard, following is also necessary for consideration:



- (a) The Subject WTG was included in the list of Projects eligible for preferential tariff for fulfilling the target of 1500 MW under the Wind Policy, 2015.
- (b) In this regard, the Appellant's Subject WTG falls in wind zone 1 which has a preferential tariff of Rs. 5.70 per unit under Wind Policy, 2015.
- (c) Due to refusal of preferential tariff and various other factors which led to revenue shortfall, the Appellant could not create DSRA of Rs. 7.4 Cr approx. with its lenders. In addition, due to this, lenders have levied penal interest on the Appellant.
- (d) Further, this has also led the Appellant in default with a D rating which was also caused by lack of cash flows to repay lending banks as revenues from the Subject WTG (@ Rs 5.70) was considered in the Project (i.e., 15 WTGs) appraisal of the lending banks were non-existent.
- (e) Lastly, it is also noteworthy that due to denial of preferential tariff (and inactions of the Respondents) to the Subject WTG, the Appellant has suffered a loss of Rs. 13 crores (approx.) [along with LPS charges of Rs. 7 crores (approx.)] due to no fault of the Appellant. Hence the said amount of Rs. 13 crores (approx.) plus Rs. 7 crores (approx.) is required to be immediately paid to the Appellant.
- (f) It is reiterated that the project revenues from the Appellant's 30.75 MW Project is almost equal to the project outflows (which includes payment of interest, principal, insurance and project operating expenses) taking into account revenue from the

Subject WTG (at 1.60 MW derated capacity) at preferential tariff of Rs. 5.70 per unit.

**Submissions of the MSEDCL**

34. The MSEDCL submitted that the issues pending adjudication before this Hon'ble Tribunal in the present Appeal are:

- a. Whether PTC needs to be granted for the wind project under consideration?
- b. Whether MSEDCL can be compelled to sign EPA at Preferential Tariff with NPRPL?
- c. Whether NPRPL is eligible for compensation as claimed by it?
- d. Balance of convenience/equity/way forward.

35. Further, submitted that the Appellant had installed and erected 15 Nos. of Wind Turbine Generators ("WTG") in and around the year 2014-15, out of the said generators, the dispute pending adjudication in the present Appeal is only with regards to the WTG erected in April 2014, concerning the other remaining 14 generators, the power to the tune of 26.65 MW is being supplied to the answering Respondent at the Preferential Tariff as determined by the MERC through a 13-year PPA, also submitted that the grounds of promissory estoppel taken by the Appellant have been rightly rejected by the MERC in the Impugned Order.

36. Also argued that the GoM Wind Policy applicable at the time of planning of the said WTG, procurement of materials and installation thereof was the '2008 Policy', in terms of the said policy, it was mandatory for the generator to sell 50%

of the power generated within the State of Maharashtra only, as observed by the MERC in the Impugned Order, the MSEDCL through Preferential Tariff procured 26.65 MW out of 28.70 MW.

37. It is further submitted that in terms of the MSEDCL's Internal Policy of June 2014 as clarified in September 2014, the procurement by way of Preferential Tariff was at the discretion of the management of MSEDCL and the decision 'whether to execute PPA' is with MSEDCL's board after taking into consideration the fulfilment of RPO target kept by GoM as per the applicable 2008 Wind Policy, therefore, a reasoned decision of the MSEDCL board with due application of mind not to enter into an EPA for the WTG of the Appellant.

38. It is submitted that the contention of the Appellant with regards to the 15<sup>th</sup> WTG, though it was the first one to be erected, is covered by the GoM wind policy of 2015 and that it finds a place in the govt. resolution no. 2016/PR.KR.251/URJA-7 dated 21.12.2016 at serial no. 23 is misplaced and unreasonable.

39. In this regard, it is submitted that the same does not help the Appellant as the said Policy of 2015 is in respect of various RE projects including wind power, BAGASSE/ agricultural based, small hydropower, biomass-based, solar-based projects, and industrial-based power projects, amongst these except for solar-based projects, the procurement requirement under RPO is upon the Distribution licensees in the State of Maharashtra.

40. It is pertinent to note that the same Policy document of 2015 makes MEDA registration compulsory for the projects to avail various benefits under the said policy including the applicability of Preferential tariff, therefore, the answering

Respondent cannot be forced to execute PPA with the Appellant even if the Appellant's project finds a place in the GoM resolution referred to herein above as it had already fulfilled its obligation for Preferential Tariff under the 2008 notification and therefore, if at all the Appellant has any case for selling its power at Preferential Tariff under 147 MW roll over from 2008 Policy to 2015 Policy, the procurement for such 2.05 MW of power of the Appellant would be the responsibility of other Distribution licensees in the State of Maharashtra.

41. Also submitted that with regards to the PTC, MEDA recommendation letter, valid connection of Grid connectivity issued by MSETCL, and work completion report/synchronization permission by MSLDC are a prerequisite, it is an admitted position that it was the responsibility of the project developer SMWPD to arrange valid grid connectivity in terms of the MOU executed between the Appellant and developer, it is rightly observed by the MERC in Impugned Order in para 22 that the project developer had initially received the grid connectivity approval of 250 MW, which was subsequently increased to 300 MW, thereafter, the developer sought permission to change the two Nos. of bays which it had to construct for the evacuation of power from GIS bay to AIS bay, which requires additional land.

42. It is further submitted that the 350 MW grid connectivity approval was reduced to 200 MW and MSETCL had given approval for evacuating the same through LILO arrangement (Para 22.2 r/w 22.3), the MERC also noticed that whether the 15<sup>th</sup> WTG (under adjudication herein) would be covered under the restricted 200 MW evacuation permission or not is dependent upon the MOU between the Appellant and developer, it is imperative to note that the developer had also shown a lackadaisical approach to the construction of the bays for evacuation of the power was only placed in March 2019, therefore, the registration

given by MEDA which was subject to proper grid connectivity cannot be said to be fulfilled, hence, MSEDCL had taken the stand that there was no proper recommendation letter from MEDA (Unqualified registration) nor there was any connectivity granted by MSETCL as the Appellant was not included in the permission granted for temporary evacuation through LILO, which was also not a valid grid connection as the project developer had failed to construct the two AIS bays for permanent grid connectivity.

43. Further, submitted that under the relevant MERC RE Tariff Regulation for RE sources, it is MEDA that grants the certificate with regard to the wind zone as per the classification given by C-WET, it is further submitted that the Preferential tariff is based on the location of the wind turbine generator, whether it is Zone I, Zone II, Zone III, or Zone IV, the practice to determine preferential tariff has been discontinued by the MERC after FY 2017-18, before granting the final registration letter MEDA has to cross check the title of the land, No Objection from relevant authority including gram panchayat, forest department etc., after the said recommendation letter, MSETCL has to check whether there is transmission capacity for the evacuation of power from the location of the project, only after these two are checked and found to be in order and available, can the permission to commission be granted by MSEDCL, as far as the sequence of approvals are concerned the last limb in the SLDC report mentioned herein above.

### **Submissions of the MEDA**

44. It is submitted that Respondent No. 4 is the nodal agency under the Wind Policy dated 20.07.2015 and Methodology dated 09.09.2015 issued by the Government of Maharashtra, the Methodology dated 09.09.2015 provides a

maximum extension of 12 months in two stages and the policy and the methodology prescribe that the wind power projects established under the Wind Policy and Methodology are required to be registered with MEDA, the relevant extracts of the Methodology dated 09.09.2015 is as follows:

***“7. Registration of Wind Power Projects-***

*The wind power projects to be set up under this policy will be required to be registered with Maharashtra Energy Development Agency (MEDA). The wind power projects shall be eligible to execute power purchase agreement or to seek open access approval or to sell energy through Renewable Energy Certificates only upon obtaining project registration from MEDA. The project registration will be granted up to the limit of the target of 5000 MW prescribed under this policy.*

...

*11. The policy declared by Government of Maharashtra on 20th July 2015 lays down that 1500 MW of wind power projects will be commissioned for fulfilment of Renewable Purchase Obligation (RPO). For this purpose, the projects commissioned after the achievement of 2000 MW capacity under the previous policy and the projects commissioned in the first stage as per the point no. 10 above, will be first taken into account. The following methodology will be adopted for getting the wind power projects commissioned under the scope available in respect of the remaining capacity.*

*11.1 In this second stage, the project proposals received first by MEDA and found to be complete in all respects first by MEDA will be taken up for consideration. MEDA will issue recommendation for the*

*issuance of Permission to Commission (PTC) to MSEDCL for the projects which fulfil the following criteria and which secure all 16 marks as per the system of award of marks as given below.*

*System of award of marks: - Marks will be awarded upon verification as per the following criteria.*

- A. All documents and fees deposited, as per this methodology: 4 marks*
- B. Project / erection of WTG complete: 4 marks*
- C. Evacuation system from WTG to pooling station complete, and pooling station functional: 4 marks*
- D. EHV line from pooling station to MSETCL EHV substation complete: 4 marks*

*For ensuring the fulfilment of the above criteria, the representatives of MSEDCL, MSETCL, MEDA and the project developer / project holder will jointly inspect the project site. The joint inspection team will allot marks for criteria B, C and D. The projects which secure 16 marks will be recommended for issuance of Permission to Commissioning (PTC). MEDA will issue clearance for commissioning after the receipt of PTC from MSEDCL will commission the projects.*

*11.2 After completion of the second stage as mentioned above, the projects which could not get commissioned in the first stage as per the methodology at point no. 10, will be again considered for commissioning under the third stage. The same system of award of marks will be applied for commissioning of projects under this third stage. This system of award of marks will be applied in this manner until the entire 1500 MW capacity gets commissioned.*

12. *The projects commissioned as per point no. 10 and 11 above, and in various stages, will have to be registered.*

13. *The projects registered with MEDA under this policy dated 20th July, 2015, will be eligible for incentives and exemptions. This aspect will be mentioned in the registration letter to be given to the project.*

...

16. *If the wind power project is not commissioned within nine months from the date of issue of registration letter and there are proper justifiable reasons, and the proposal is submitted with reasons or delay before due date of expiry of registration then, after verifying the reasons, extension may be issued by MEDA.*

16.1 Extension fee: -

*A maximum of 12 months extension will be given in two stages after the expiry of the period given in the letter of registration. In the first stage, six months extension will be given after reviewing progress of the project by MEDA, charging extension fee of Rs. 1 lakh per MW. If second stage extension is required, a review of the progress will be done and after charging fee of Rs. 2 lakh per MW, the extension will be issued by MEDA. The extension fee shall be deposited in advance. If the projects are not commissioned within the extension period of 12 months, then the commitment fee will be forfeited.*

45. The Appellant applied for registration of 1.6 MW (derated) WTG and MEDA vide letter dated 17.03.2018 registered the subject WTG with a derated capacity of 1.60 MW under the Wind Policy 2015 read with Methodology 2015 subject to the conditions that the Appellant commission the project within 9 months of the date of the letter (by 16.12.2018) and submit the valid grid connectivity letter from



MSEDCL/MSETCL to MEDA within 6 months from issuance of the letter (by 17.09.2018).

46. Upon the request of the Appellant, MEDA on 11.10.2018, granted extension period of three 3 months to Appellant to submit a valid grid connectivity permission issued by MSETCL (extension from 17.09.2018 up to 16.12.2018).

47. On 6.12.2018, the Appellant once again wrote to Respondent No. 4 and sought extension of time to submit valid grid connectivity and extend the timeline under project registration, the relevant extract of the letter is as below:

*“In the above circumstances as the project registration validity for our project of de-rated capacity of 1.60 MW (WTG capacity 2.05 MW: 1 x 2050 kW) wind power project at Gut No 556 of village Vaspeta, Tal-Jath, Dist- Sangli expires by 16<sup>th</sup> December 2018; we request you to kindly extend the project registration validity and time for submission of valid grid connectivity for further period of 6 months from the date of expiry.”*

48. Thereafter, Appellant sought for an extension to the Project Registration Certificate. MEDA vide letter dated 01.06.2019, granted the first stage extension to the Project Registration Certificate for the retrospective period of six (6) months for the subject WTG valid from 16.12.2018 to 16.06.2019, as per the Methodology dated 09.09.2015.

49. On 4.07.2019, Appellant once again wrote to Respondent No. 4 that it was in the process of receiving valid grid connectivity approval from MSETCL to

commission its' wind project, hence, Appellant sought second extension of six months to commission the project.

50. Upon further request of the Appellant, MEDA again on 18.07.2019, granted the second stage extension to the Project Registration Certificate for a period of six (6) months for the subject WTG valid from 16.06.2019 to 15.12.2019, as per the Methodology dated 09.09.2015.

51. Therefore, it was the Appellant's consistent stand that it does not have valid grid connectivity from MSETCL to commission its' project, accordingly, Appellant kept requesting extensions from Respondent No. 4 to commission its' project, as per the Wind Policy 2015 and Methodology, despite allowing the extension of 21 months (9 months from the date of registration + two extensions of 6 months each) from date of issuing registration, the Appellant had failed to submit valid grid connectivity, the last leg of extension was valid till 16.12.2019 for commissioning of the project.

52. On 14.09.2021, the Appellant issued letter and requested the MEDA for the re-registration of the subject WTG under Wind Policy 2015 and to provide suitable recommendations to Respondent No. 2 towards commissioning of the WTG, hence, admittedly, the Appellant's project was not commissioned till July 2021 and registration was valid up to 16.12.2019, there is no legal provision of extension after 21 months under RE Policy-2015, it is submitted that MEDA cannot extend the registration of the subject WTG under the RE Policy 2015 & its Methodology.

53. Further, submitted that there are timelines specified under the 2015 Policy for registration and commissioning of projects, the 2015 Policy does not provide

for extension of timelines beyond 21 months for commissioning, in the present case, the Appellant has not been able to meet the timelines, further, presently the Appellant is also not covered by the 2020 Policy, the Appellant, however, can register and avail benefits under RE Policy, 2020.

### **Our Observations & Conclusion**

54. The Appellant placed reliance on this Tribunal judgment passed in Appeal No. 119 of 2020 and batch titled ***Bothe Windfarm Development Pvt. Ltd. vs. MERC***, it is, therefore, important to note the relevant extracts of the judgment, as under:

*1. The Wind Power Project (“WPP”) developers, having set up Wind Turbine Generators (“WTGs”) at different locations in the State of Maharashtra, statedly in terms of the governmental policy for power generation from non-conventional sources of energy feel aggrieved by denial of direction to the distribution licensee to execute Energy Purchase Agreements (“EPAs”) as also appropriate compensation for the electricity generated and injected by them from the date(s) of their respective commissioning and connectivity into the distribution network of the said licensee.*

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*4. WinIndia Ventures Pvt. Ltd. (hereinafter referred to as “WinIndia”) is similarly placed company having its registered office in Bangalore. It had set up a WTG with capacity of 1.5 MW in district Sangli (Maharashtra) which was commissioned on 23.12.2014.*

*Feeling aggrieved, inter alia, by refusal to execute EPA on the part of MSEDCL, WinIndia had approached MERC by Case no. 24 of 2020 seeking various reliefs including, amongst others, a direction to MSEDCL to enter into the EPA with it w.e.f. 23.12.2014 and for compensation for the power injected during the period 23.12.2014 to December, 2019 in the sum of Rs.13,64,78,327/- (inclusive of interest). The said petition was decided by MERC by Order dated 03.07.2020 adopting the view taken in the case of Bothe (supra), declining the direction to MSEDCL to sign EPA though granting compensation to WinIndia for the energy injected during FY 2014-15 to FY 2016-17 for similar reasons, even while declining carrying cost.*

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**65.** *From the narrative of the factual background, it is clear that the subject WTGs were set up by the appellant WPPs in terms of RE Policy, the development and commissioning having been monitored by MSEDCL, the intended beneficiary of the entire generation capacity thereby created. There is no denial as to the fact that the appellant WPPs had established, set-up and commissioned their respective projects, particularly the WTGs which are subject matter of the present dispute, on the promises made by RE Policy – 2008 read with RE Policy – 2015, as indeed assurances held out by MSEDCL Circular 2014. Promises were made and commitments taken including in the form of undertakings furnished by the WPPs, and accepted by MSEDCL, that their entire capacity would be sold to, and purchased by the latter (MSEDCL),*

*as per the tariff regime put in position by MERC, MSEDCL having started taking the supply and accounting it towards RPO obligations issuing, at least in the case of WinIndia, even credit notes for such supply. The cases of such WPPs who, by then, had not been covered by formal EPAs were subjected to scrutiny by the State Government which resolved to have the same regularized and so recommended in December, 2016, the requirement of MEDA registration introduced around that time having deferred immediate action in that light. There is no case made out by MSEDCL of suffering any inequity by being held bound by its promise or the relief claimed being detrimental to public interest. The additional targets of RE Policy – 2015, as already found, are yet not exhausted. All the requisite ingredients for the doctrine of promissory estoppel to come into play are thus shown to exist, the argument of MSEDCL to renege on its promises being arbitrary, unfair and unconscionable.*

**66.** *The appellant WPPs contend that implied contracts exist between the parties, execution of EPAs being only a formality required to be completed. Reliance is placed on the decisions of the Supreme Court reported as Haji Mohd. Ishaq v Mohd. Iqbal and Mohd. Ali & Co., (1978) 2 SCC 493 and Bhagwati Prasad Pawan Kumar v Union of India, (2006) 5 SCC 311.*

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**69.** *We agree with the submissions of the WPPs herein that the conduct of the parties leaves no room for doubt that contracts had come into being MSEDCL permitted not only commissioning but*

*also connectivity and has been enjoying the electricity injected into its system without demur, accounting it towards its RPO obligations, indisputably reaping financial gains by receiving corresponding tariff from its consumers.*

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**72.** *All the requisite ingredients are in place, they being valid offer, acceptance, express mutual consents, lawful object and consideration. In fact, the implied contracts (qua subject WTGs) between these WPPs on one hand and the MSEDCL, on the other, had even been acted upon by the latter (MSEDCL) commencing procurement of supply, showing it in its account as part of the fulfillment of RP obligations. Clearly, the WPPs did not intend the supply of electricity to be gratuitous.*

**73.** *On the forgoing facts and in the circumstances, we are not impressed with the reasons cited by MSEDCL for refusal to sign EPAs with the appellant WPPs. The reference to competitive bidding guidelines issued in 2017 is not correct. The contracts had already come into existence and the signing thereof, following the model EPA already approved by MERC, was only a matter of formality. The competitive bidding guidelines could not preclude such contracts to be formalized so as to be given retrospective effect. Such guidelines may have to be followed for future arrangements. The MEDA registrations granted in 2019 would relate back to the respective dates of application for such registration i.e. January-February, 2016. The appellant WPPs had*

*commissioned the WTGs in 2014-15 and had started injecting power thereby generated from the date(s) of commissioning into the system of MSEDCL. It bears repetition to note that the new targets created by RE Policy – 2015, particularly to the extent set apart for RP obligations, have not been yet exhausted, a finding returned by us on the basis of scrutiny of the facts discovered by CMD of MSEDCL. The claims of appellant WPPs herein, upon being allowed, will not result in the said target being exceeded. The WPPs thus are entitled to the execution of the formal EPAs from the date(s) they fulfilled all the eligibility requirements, i.e. date(s) on which they had applied for such registrations as have been granted later. The denial of a direction for EPAs to be executed thus cannot be upheld.*

**74.** *As a sequitur, the appellant WPPs are entitled to the tariff for the electricity generated and supplied from the respective dates on which they are entitled w.e.f. the date(s) from which the EPAs are to become effective. The restriction of compensation only for the period for which MSEDCL has claimed RPO compliances and consequent denial (of compensation) for the remainder is unjust and, therefore, incorrect. For these reasons, the appeals of MSEDCL grudging the restricted grant of compensation cannot be accepted.*

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**76.** *In the result, the appeals of MSEDCL i.e. Appeal nos. 227 of 2020, 226 of 2021, 227 of 2021 and 269 of 2022 are found devoid of merit and liable to be dismissed. The appeals of Bothe Windfarm*

*Development Pvt Ltd. (Appeal no. 119 of 2020), Khandke Wind Energy Private Limited (Appeal no. 125 of 2020), Lalpur Wind Energy Private Limited (Appeal no. 132 of 2020) and WinIndia Ventures Pvt. Ltd. (Appeal nos. 193 and 194 of 2020) deserve to be allowed with following directions:*

*(a) MSEDCL is directed to execute forthwith EPAs with Bothe Windfarm Development Pvt Ltd., Khandke Wind Energy Private Limited, Lalpur Wind Energy Private Limited and WinIndia Ventures Pvt. Ltd. respecting wind turbine generators which are subject matter of the present cases, such EPAs to be made effective from the respective dates of submission of application for registration with MEDA, reference being made in this regard to the registration certificates issued by MEDA;*

*(b) MSEDCL will be obliged to pay to the respective WPPs compensation equivalent to the average power purchase cost from the date of COD as prevailing at the time of commissioning of the respective projects and at generic tariff prevalent on the date on which the EPA is to become effective in terms of the above direction for the supply injected by the WPPs, the said supply/procurement being regularized, post facto in terms of the EPAs which have been directed to be executed as above, the liability on this account to be discharged by MSEDCL against invoices that shall be raised by the concerned WPPs; and*

*(c) MSEDCL shall restore the supply of electricity of the appellant WPPs, wherever the same has been disrupted, on the basis of impugned decisions without any delay.”*



55. From the above extracted judgment, it is clear that the present case is not identical to the Bothe Judgment of this Tribunal on some aspects, however, major facts are similar except that there is no implied contract as the Appellant has not injected any power into the grid and there is no EPA executed by the Appellant and the MSEDCL.

56. However, the fact cannot be denied in the present case also that the State Government through its RE Policy -2015 has made certain promises encouraging the Developers to setup WTGs, para 61 of the Bothe judgment is reproduced hereunder:

*“61. Promises were held out by the State Government through its RE Policy-2015, followed by methodology order, and subsequent notification of the government resolution issued on 21.12.2016 to accommodate and regularize the WPPs which had been commissioned after the targets of RE Policy-2008 had been exhausted for the purposes of new capacity added by RE Policy-2015, particularly in the own interest of MSEDCL for fulfilling its RPO obligations to the extent of 1350 MW. **This gave rise to legitimate expectations for all WPPs then in the process of being established and commissioned.**”*

57. It also cannot be disputed that the project was commissioned in 2015, and a joint inspection by the MEDA, MSEDCL, and MSETCL has confirmed the same, accordingly, MEDA, responsible for granting project registration under the Wind

Policy, 2015 (and Wind Methodology), has granted project registration to the Appellant for its subject WTG being operated at a derated capacity of 1.6 MW, as only 1.6 MW capacity could be accommodated in the Wind Policy, 2015.

58. Further, it is a factual position that the Wind Policy, 2008 was notified and it assured certain benefits to the developers including an assurance that 100% of electricity would be purchased by State Discoms, however, in 2013-2014, the target of commissioning 2000 MW of WPPs mentioned in Wind Policy, 2008 was exhausted, thereafter, on 03.06.2014, MSEDCL issued “New Policy for Wind Power Projects to be commissioned in FY 2014-15 and onwards”, followed by a Clarification to the earlier Policy on 26.09.2014, however, on 06.02.2015, MSEDCL decided that it is not a Policy and termed it a circular inter-alia kept the two circulars in abeyance.

59. Subsequently, on 20.07.2015, GoM issued Wind Policy, 2015 in continuation of Wind Policy, 2008 followed by Wind Methodology, 2015 on 09.09.2015, to ensure that the Projects that were planned and in the process of being developed under Wind Policy, 2008 but could not be accommodated thereunder, possibly due to exhausted targets, were held out a renewed assurance by way of the new policy as if they had been commissioned “after the expiry of previous policy” under the new target of 1350 MW set apart for RPO Regime, as also recorded in the Bothe Judgment.

60. On 21.12.2016, the State Government issued an Order styled as “To give permission for Registration of mutually implemented Wind Power Projects by MAHAVITARAN Company after checking technical issues and regularizing” which, inter-alia directed Mahaurja to take steps to regularize the projects set out in the

said order, subsequently, the WPPs took steps for such clearances and registration. However, in the absence of registration with MEDA, MSEDCL declined to execute the EPAs with these WPPs.

61. Thus, there cannot be any doubt that GoM vide Government Policy & Methodology has made certain promises, and the issuance of conditional registration by the nodal agency MEDA has resulted in legitimate expectations, further, once such registration was allowed for a derated capacity of 1.6 MW by the nodal agency MEDA, the refusal by MSEDCL/ MSETCL, the other government entity for granting connectivity, on the ground that a WTG with derated capacity cannot be granted connectivity, is nothing but denial of legitimate rights of a project developer.

62. Such contrary decisions by the Government authorities are unjust and arbitrary and, thus cannot be agreed to, the Appellant, also, submitted various facts of the case which resulted in legitimate expectations similar to those as considered in the Bothe Judgment while rendering the said judgment by this Tribunal, as under:

- (a) On 14.10.2008, the GOM issued its Wind Policy, 2008.
- (b) On 12.08.2011, MSETCL granted grid connectivity permission for 250 MW to the Appellant's Developer for the proposed Wind Project.
- (c) On 25.01.2013, the Appellant and its Developer executed a MoU.
- (d) On 03.06.2014, MSEDCL issued "*New Policy for Wind Power Projects to be commissioned in FY 2014-15 and onwards*".
- (e) On 26.09.2014, MSEDCL issued a Clarification to the earlier

Policy dated 03.06.2014.

- (f) On 06.02.2015, MSEDCL decided that the Circular dated 03.06.2014 and 26.09.2014 were to be kept in abeyance (prospectively).
- (g) On 20.04.2015, the Subject WTG was completed.
- (h) On 26.05.2015, the Appellant wrote a Letter to MEDA requesting for Infrastructure Clearance for the Subject WTG, however, at this juncture, it must be stated that the Infrastructure Clearance was kept pending, even in *Bothe* Judgment, MEDA had not granted Infrastructure Clearance to the WPPs who were ultimately constrained to approach the MERC.
- (i) On 20.07.2015, GOM issued Wind Policy, 2015.
- (j) On 09.09.2015, the GOM issued its Wind Methodology, 2015.
- (k) On 13.10.2015 & 21.11.2017, a joint inspection was carried out for the Subject WTG.
- (l) On 21.12.2016, the State Government issued an Order styled as *“To give permission for Registration of mutually implemented Wind Power Projects by MAHAVITARAN Company after checking technical issues and regularizing”* which, *inter-alia*, stated that Mahaurja should regularize the said projects accordingly, pertinently, NRPL was also included in the said Order at Serial No. 23, further, the said Order *inter-alia* stated as follows: -

*“2. Under Government Policy dated 14.10.2008, the goal of setting up 2000 M.W. project was decided. Out of which projects of 1350 M.W. capacity were set. The said set up Wind Powers Projects were included in this new policy and*

*under policy of 20<sup>th</sup> July, 2015. It is binding to register the said projects. In these projects, Wind Power Projects of total 147.90 M.W. which are directly set-up by Mahavitran Company however for which **Mahaurja has not given infrastructure facility consent or consent for setting up the project are included.** Since the said Wind Power Project of 147.90 M.W. has been set-up directly, the matter for regularizing the said project was under consideration of Government.*

**Government Resolution:** -

1. Pursuant to this Government Order, Government is prescribing the procedure for granting approval to the said 147.90 M.W. Wind Power Projects mentioned in list submitted by Mahaurja pursuant to letter dated 30.11.2016 subject to condition of complying ... and Mahaurja should **take procedure to regularize the said projects accordingly.**

**[Emphasis Supplied]**

- (m) On 24.03.2017 & 08.08.2017, the Appellant executed three EPAs in total with MSEDCL in respect of the other 14 WTGs which were erected as a composite project along with the subject WTG by the Appellant.
- (n) On 06.09.2017, the Appellant in terms of its communications with MEDA gave an undertaking to it, thereby undertaking to operate the subject WTG at a derated capacity of 1.60 MW in order for it to be included under the Wind Policy, 2015.

- (o) On 07.09.2017, MEDA requested MSEDCL to give its views/comments on operating a 2.05 MW capacity windmill with a de-rated capacity of 1.60 MW so as to enable MEDA to process the proposal of Appellant for registration of Subject WTG.
- (p) On 17.10.2017, MSEDCL informed MEDA that there is no provision in Wind Policy, 2015 for the operation of wind mill on de-rated capacity.
- (q) On 17.03.2018, despite the communication dated 17.10.2017 from MSEDCL, MEDA registered the Subject WTG at a de-rated capacity of 1.60 MW which was conditional upon submission of a valid grid connectivity from MSETCL/MSEDCL within six months.
- (r) On 19.03.2018, the Appellant wrote to MSEDCL to request it to issue Permission to Commission the subject WTG.
- (s) On 10.04.2018, MSEDCL by its letter to the Appellant, *inter alia*:
  - (i) noted that the MEDA registration certificate is subject to the submission of a valid grid connectivity letter,
  - (ii) that there is no provision available in the Wind Policy, 2015 which allows de-ration of the Wind Turbines.
  - (iii) MSEDCL has taken a decision to procure wind power only through competitive bidding followed by e-reverse auction and hence it will not procure power from the Appellant's subject WTG at the preferential tariff rate.

63. We find the decision of the Respondents/ MSEDCL as completely unjustified and irrational, in allowing the other 14 WTGs of the Appellant which were erected

and inspected along with the Subject WTG, and thus, have qualified for preferential tariff for which MSEDCL has duly executed EPAs.

64. It is also from the afore-mentioned factual background that the Appellant had made out a case of legitimate expectation that its Subject WTG would be granted preferential tariff under the Wind Policy, 2015, in these circumstances the refusal by the Respondents to grant connectivity and preferential tariff to the Appellant is arbitrary.

65. The Appellant informed that the WPPs in the said Bothe Judgement were not granted MEDA registration/infrastructure clearance and in the meanwhile, Wind Policy, 2015 was issued, thereafter, on 21.12.2016, the GOM issued a Resolution for regularization of the said WPPs, accordingly, in view of the policies issued by the GOM as well as the Resolution dated 21.12.2016, it was held that the WPPs had a legitimate expectation to be granted preferential tariff under the Wind Policy, 2015, similarly, in the present case the Appellant also had a legitimate expectation which is evidenced from the fact that its subject WTG was included in the GoM Order/Resolution dated 21.12.2016, also, in Appellant's case, MEDA did not timely grant Infrastructure Clearance to the Appellant for the Subject WTG, further, when the Appellant's subject WTG was registered at a derated capacity when MEDA realized that there was a balance 1.6 MW available for accommodating the subject WTG in the Wind Policy, 2015, then MSEDCL refused to accept the MEDA registration and as such reverted to the Appellant to state that it will procure wind power only through competitive bidding followed by e-reverse auction and hence it will not procure power from the Appellant's subject WTG at the preferential tariff rate.

66. We are satisfied with the above submission of the Appellant, that the present case is identical to Bothe Judgment case on the above-said count.

67. Further, the Appellant argued in countering the observation of Respondents/ MERC that a valid Grid Connectivity is not available and the Appellant was not eligible for any relief as MSEDCL had rightly denied PTC in the absence of a valid grid connectivity, it is his argument that the Appellant always had a valid grid connectivity, in this regard, following is noteworthy as submitted by the Appellant:

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- (a) On 18.05.2011, MEDA issued a Grid Connectivity Recommendation for the Appellant's Developer **250 MW** wind farm.
- (b) On 12.08.2011, the Appellant's Developer was granted a valid grid connectivity by **MSETCL for 200 MW based on the load flow studies** and, *inter-alia*, stated as follows: -
  - i. In the Load Flow Studies, it is observed that 220 kV Mhaisal-Miraj S/C line is critically overloaded. Hence, now **only 200 MW** of wind generation is permitted.
  - ii. Total 250 MW wind power generation will be permitted only after commissioning of 400/220 kV Alkud Substation by MSETCL.
  - iii. The Grid Connectivity is hereby permitted subject to completion of specified scope of work by you and completion of proposed 220 kV Jath Substation along with proposed associated 220 kV lines by MSETCL.
- (c) The internal and external 33 kV line to the 200 MW Shedyal Substation have been completed by the Appellant's wind park



developer.

- (d) On 04.07.2015, MSETCL granted permission for commission to Appellant's Developer for first transformer of the 220 kV Shedyal Substation. On 30.09.2015, MSETCL granted permission for commission for the second transformer (to which the subject WTG is connected).
- (e) On 14.07.2015 and 14.11.2015, MSETCL granted synchronization permission for the Shedyal Substation.
- (f) Therefore, it is evident that the Shedyal Substation is complete in all respects for connectivity of **200 MW**.
- (g) In fact, it was clarified before the MERC that the Shedyal Substation (200 MW) is fully operational and connected to the Grid *via* Jath Substation owned by MSETCL, in this regard, following is noteworthy: -
  - i. The Shedyal Substation is connected by online SCADA with SLDC and SLDC is scheduling power transmitted from 200 MW Shedyal Substation.
  - ii. It may be noted that the Appellant's Developer had planned the Shedyal Substation capacity to be 350 MW. In order to develop the capacity of Shedyal Substation to full capacity of 350 MW (i.e., to increase the Shedyal Substation from 200 MW to 350 MW), AIS bays had to be installed on Jath Substation which is owned by MSETCL. However, it should be noted that the Shedyal Substation (with a capacity of 200 MW) is complete in all respects and all the requirements for 200 MW have been completed by the Appellant's Developer.
  - iii. It is emphasized that non-installation of AIS line bay

- extension equipment does not create any technical problem for the current 200 MW Shedyal Substation as the AIS Line Bay extension equipment is required only when Shedyal Substation capacity increases beyond 200 MW to 350 MW.
- iv. The construction of AIS Line Bay Extension is a pre-requisite for issuance of permanent grid connectivity approval for 350 MW Shedyal Substation. However, since at present, the Shedyal Substation (with 200 MW) is complete in all respect, it is evident that the Appellant's Developer has a valid grid connectivity.
- v. In this regard, it is submitted that MSETCL in its Letter dated 24.07.2023 has, *inter-alia*, stated that: -

*“STU had issued interim grid connectivity for 200 MW ... by making interim arrangement i.e., LILO on one ckt of 220 kV Jath-Maisal ... (For 100 MW vide letter dtd. 07.07.2015 and for the balance 100 MW vide letter dtd. 31.10.2015). **This interim grid connectivity for 200 MW is issued as the scope of work for grid connectivity assigned to M/s. Sri Maruti Wind Park Developers was getting delayed due to non-receipt of forest land for construction of 2 Nos. of 220 kV feeder bays adjacent to existing 220/33 kV Jath Substation** ... STU will issue final grid connectivity after the completion of the above scope of work”.*

**[Emphasis Supplied]**

- (h) Clearly, therefore, the existing grid connectivity for 200 MW was a valid grid connectivity for the Subject WTG of which

connectivity for 100 MW was granted *vide* letter MSETCL's letter 07.07.2015 and for the balance 100 MW *vide* letter dated 31.10.2015.

68. We are satisfied that the Appellant has, in fact, enjoyed the valid Grid Connectivity, none of the Respondents denied the above facts.

69. The MSEDCL argued that in terms of the MSEDCL's Internal Policy, the procurement by way of Preferential Tariff was at the discretion of the management of MSEDCL, we find the above argument totally unacceptable as MSEDCL itself has kept the circular in abeyance, further, it has already been dealt and rejected in Bothe judgment.

70. Further, MSEDCL's submission that the Policy of 2015 is in respect of various RE projects and except for solar-based projects, the procurement requirement under RPO is upon the Distribution licensees in the State of Maharashtra, is completely misplaced and misleading, the same is also dealt in Bothe Judgment and rejected.

71. All other submissions made by the Respondents also have been considered in detail and dealt with in the Bothe Judgment, as such these submissions are rejected herein.

72. However, the contentions of the Respondents that there is a delay in executing certain works being carried out by the Appellant's Developer and completion of the proposed 220 KV Jath S/s along with the proposed associated 220 KV lines by MSETCL, have been replied to by the Appellant as under:

- a. the Appellant through its Developer made all bona fide efforts to secure the forest land adjacent to MSETCL's Jath S/s and to transfer the same to MSETCL, however, the same was not acceptable. It is pertinent to note that as per the Forest Conservation Rules, 2003, the user agency (i.e., MSETCL, since the Jath S/s is owned and under MSETCL's control) is required to make a request in its own name for diversion or de-notification of forest land for non-forest purpose or for using forest land for non-forest purpose in the relevant format as prescribed therein.
- b. on the basis of discussions held with Jath Nagarpalika and MSETCL, it was decided to apply for the said land directly in the name of MSETCL. It is pertinent to note that only on such a basis does the Jath Nagarpalika agree to accord its NoC for the diversion of the requisite forest land. It was agreed that the Appellant's developer shall *inter alia* bear all the expenses and fees for the same.
- c. On 11.07.2018, MSETCL by its letter requested the District Forest Officer, Sangli, to provide land for the proposed construction of 2 Nos. of 220 kV AIS Line Bays adjacent to existing 220 kV Jath Substation, for evacuation of power from the 220 kV Shedyal PSS. Notably, the District Forest Office, Sangli requested MSETCL to submit the proposal for clearance to the District Forest Authority Sangli.
- d. On 26.03.2019, the Appellant placed two (2) work orders to Spark Electro Consultants Pvt. Ltd. for carrying out

construction and allied activities for 220 kV AIS line bays as per MSETCL's specifications and handover of the same to MSETCL.

- e. On 18.12.2020, the Jath Nagarpalika passed a resolution with its 'No Objection' for the forest land diversion process.
- f. On 01.04.2021, MSETCL wrote a Letter to the Deputy Conservator of Forest and *inter alia* submitted that it is proposing to construct 2 nos. of 220 kV feeder bays on forest land adjacent to 220 kV Jath Substation and submitted its proposal for providing required land for 220 kV bays while enclosing documents therewith.
- g. The Diversion of the said forest land is still pending with the Forest Department. Hence, it is evident that the Appellant took all possible steps to acquire the forest land, however, for reasons beyond the control of the Appellant, the same is yet to be diverted to MSETCL by the relevant forest authorities.

73. We are inclined to accept the submissions of the Appellant that such events are uncontrollable, it is a settled principle of law that delay on the part of Government Authorities cannot be attributed to the affected parties, the Appellant because of such delay is penalized in the form of being denied generation and injection of power in the grid even after completing the project in 2015 itself.

### **ORDER**

In the light of the above, we find the Appeal has merit and deserves to be allowed, the Impugned Order passed by MERC is set aside.

The Respondents are directed as under:

- a) MEDA to grant re-registration of Subject WTG and issue recommendation to MSEDCL for granting PTC for Subject WTG.
- b) MSEDCL to allocate balance 2.8MW capacity connectivity available in the existing 200 MW connectivity obtained for Shedyal Sub-Station for Appellant's 15<sup>th</sup> WTG,
- c) MSEDCL to grant PTC to Appellant's 15<sup>th</sup> WTG, and
- d) MSEDCL to execute EPA for Subject WTG at preferential tariff.

The Appeal along with IAs, if any are disposed of accordingly.

**PRONOUNCED IN THE OPEN COURT ON THIS 9<sup>th</sup> DAY OF JULY, 2024.**

**(Virender Bhat)**  
**Judicial Member**

*pr/mkj*

**(Sandesh Kumar Sharma)**  
**Technical Member**