IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 213 of 2023

Dated : 26th February, 2024

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

In the matter of :

M/s TGV SRAAC LIMITED
(Formerly known as Sree Rayalaseema Alkalies
And Allied Chemicals Limited)
40-304, II Floor, K.J. Complex, Bhagyanagar,
Kurnool rep.by its Vice President (Finance),
Mr. A. Venkat Rao, S/o Sharma, R/o Hyderabad-500 004

… Appellant

VERSUS

1. Andhra Pradesh Electricity Regulatory Commission
Rep. by its Secretary,
Having its Office at 11-4-660, 4th Floor,
Singareni Bhavan, Red Hills,
Lakdikapul, Hyderabad-500 004
Email: commn-secy@aperc.gov.in

2. Transmission Corporation of Andhra Pradesh Limited
(APTRANSCO),Rep by its Chairman & Managing Director
Office at Vidyut Souda Gunadala Elluru Road,
Vijayawada-A.P.520004
(www.aptransco.co.in)

Email: drsrikant.nagulapalli@aptransco.co.in

3. Southern Power Distribution Company of A.P., Ltd.,
Rep. by its Chairman & Managing Director,
Having its Office at 19-13-65/A,
Vidyut Nilayam, Srinivasapuram, Tirupati., A.P.- 517 503
(www.apspdcl.in) email: seopn_tpt@apspdcl.in

4. New & Renewable Energy Development Corporation
Andhra Pradesh(NREDCAP)
Rep by its Vice-Chairman& Managing Director
#12-464/5/1, River Oaks Apartment,
CSR Kalyana Mandapam Road, Tadepalli,
Guntur District-522501, A.P.
Email: info@nredcap.in

… Respondents

Counsel on record for the Appellant(s)	:	Alladi Ravinder, Sr. Adv. Hitendra Nath Rath for App. 1
Counsel on record for the Respondent(s)	:	Sridhar Potaraju Mukunda Rao Angara Ankita Sharma Shiwani Tushir Yashvir Kumar for Res. 1 Sidhant Kumar Manyaa Chandok for Res. 3

JUDGEMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. In this appeal, the Appellant has assailed the order dated 20th December, 2021 of the First Respondent, Andhra Pradesh Electricity Regulatory Commission (in short APERC) whereby it has dismissed the Appellant's Petition O.P. No. 65 of 2019.

2. The Appellant is a Caustic Soda Manufacturing Industry situated near Kurnool District of Andhra Pradesh and has erected Wind Power generation Units consisting of site-1 with a capacity of 2.00 MW and site-2 with a capacity of 1.00MW (total 3.00MW). It entered into a Wind power wheeling agreement with the 2nd Respondent, Transmission Corporation of Andhra Pradesh Limited (in short APTRANSCO) on 27th March, 1996 for a period of 20 Years expiring on 26th March, 2016. Another Company M/s. Sree Rayalaseema Power Corporation Ltd. also constructed the wind electrical power generation units at Ramagiri Village in Ananthapur District, Andhra Pradesh consisting of site-3 with a capacity of 0.945 MW and site-4 with a capacity of 0.945MW (total 1.89MW). It also entered into Wind power wheeling agreement with the then A.P. State Electricity Board on 28th March1997 for a period of 20 Years expiring on 27th March, 2017.

3. The said Sree Rayalaseema Power Corporation Ltd. is stated to have merged into M/s Sree Rayalaseema Hi-strength Hypo Ltd. (RHHL). Thereafter, the wind power generation units of the said corporation were acquired by the Appellant herein and accordingly the agreement entred by M/s Sree Rayalaseema Power Corporation Ltd. with Andhra Pradesh Electricity Board was amended on 26th October, 2015, which was approved by the 1st Respondent, APERC on 26th October, 2015.

4. The case of the Appellant before the Commission was that after expiry of the term of wheeling agreements, the Respondent advised for change of CTPT and metering equipment at both ends for renewal of wheeling agreements for all the four wind power units and accordingly, the Appellant completed the erection of CTPT and metering equipment under the supervision of the officials of 2nd Respondent, AP TRANSCO and AP SPDCL. It was stated that thereafter the Appellant filed prescribed application along with requisite fee for renewal of the wheeling agreements so as to take credit of power generated for captive use at its factory in Kurnool. Upon completion of all the formalites, four different Open Access agreeements were entered into between the Appellant and 3rd Respondent, New & Renewable Energy Development Corporation Andhra Pradesh (NREDCAP) on 9th July, 2019 for availing wheeling

services for a period from 7th June, 2019 to 30th April, 2020 for all the four units separately. It was further contended that meanwhile, the Appellant continued to inject power into the grid from all the four wind power units.

5. Subsequently, the Appellant approached the 1st Respondent Commission with a petition under 86(1)(f) of the Electricity Act, 2003 read with Regulation 55 of APERC (Conduct of Business) Regulation, 1999 for a direction for giving credit of about 73,68,610 units of wind power generated and evacuated into the grid from its wind power units between April, 2016 and June, 2019 in the future energy bills of the Appellant.

6. The stand of the 2nd Respondent, Southern Power Distribution Company of Andhra Pradesh (SPDC) before the Commission was that the Appellant have been injected power into the grid w.e.f. 26th March, 2016 in case of units at site-1 with a capacity of 2.00 MW and site-2 with a capacity of 1.00MW and w.e.f 27th March, 2017 at site-3 with a capacity of 0.945 MW and site-4 of 0.945MW in the absence of any Open Access Agreement and, therefore, such power was not entitled to be accounted for as the same is contrary to the provisions of 2006 Regulations. It was also pleaded that after the expiry of previous agreements, the Appellant did not approach the Respondents for exporting the power into grid and filed an application for Short-Term

Open Access (STOA) on 17th December, 2018 whereafter STOA was entered into on 9th July, 2019 for a period from 7th June, 2019 to 30th April, 2020. Thus, according to the Respondents, the appellant's claim is with regard to the unauthorised power exported by it to the grid which is not tenable in law.

7. On the basis of the pleadings of the parties, following three issues were framed by the Commission for adjudication;

1. *"Whether there was delay on the part of respondent No.1 in granting Open Access to the petitioner ?*
2. *Whether in the absence of Open Access agreement and Scheduling given by the petitioner, injection of power into the Grid is lawful ?*
3. *Whether the petitioner is entitled to the payment for the power injected into the Grid from the time of expiry of the wheeling agreements upto the grantof Open Access to it ?"*

8. The Commission, vide the impugned order dated 20th December, 2021 has held against the Appellant on all the above mentioned three issues and accordingly rejected its petition.

9. While deciding the issue number 1 against the Appellant, the Commission has held that there was no delay on the part of the Respondent in approving the applications for grant of LTOA & STOA. These findings of the Commission on said issue have not been assailed by the Appellant before us in this appeal. In fact, we find that

Learned Counsel for the Appellant had not pressed the case of the Appellant on this issue before the Commission also.

10. The findings of the Commission on the issue numbers 2 & 3 have been vehemently contested by the Appellant before us. It is argued that the impugned order of the Commission contrary to law as well as statutory principles relating to the law of contract more particularly Section 70 of the Contract Act. It is submitted by Appellant's Counsel that there were proper wheeling agreements between the Appellant and the 2nd Respondent till 26th March, 2016 and 27th March, 2017 in respect of the power generated from the four wind power units of the Appellant and for the mere fact that there was some delay in execution of further Long Term Open Access agreement between the parties for certain reasons, after expiry of these agreements, the power injected into the grid from the Appellant's wind power units during the said interregnum cannot be termed as unauthorized or infirm. He argued that the Appellant never intended to supply power to the Respondents free of cost and it was all through within the knowledge of the Respondent that power was being evacuated into the grid from the Appellant's wind power units and, therefore, they cannot be permitted to deny credit to the Appellant for 7.3 million units of power so injected into the grid. It is also pointed out by the Learned Counsel that during the said period, the Respondents

never raised any objection to the injection of power into the grid by the Appellant and even have utilized the same for commercial purposes and thus they are liable to give credit to such power. He argued that the Commission has erred in not considering the Order of the Commission itself in Silfon Vs A.P.Transco decided on 31st March, 2018 and judgement of this Tribunal in M/s Vibrant Greentech Pvt. Ltd. Vs. APSPDCL decided on 5th July, 2021 wherein also the Appellant had injected power into the grid without the knowledge of the officials of respondents in order to use the same for its manufacturing unit and this Tribunal had held that the refusal to adjust the power so injected by the Appellant will amount to deny the legitimate rights conferred on the Appellant. He also cited judgement of the Hon'ble Supreme Court in State of West Bengal Vs. M/s. B.K. Mondal & Sons : AIR 1962, SC, 779 to buttress his submissions.

11. We note here that nobody has been appearing in this appeal on behalf of the 2nd Respondent i.e A.P. Transco and 4th Respondent i.e. NREDCAP. The appeal is vehemently opposed on behalf of the Respondent No. 3, SPDC. It was argued that since the injection of power by the Appellant into the grid in the absence of a valid contract or authorization was unlawful and contrary to the Regulations made under Section 42 of the Act, the conditions set forth for applicability of Section 70 of the Contract Act in B.K. Mondol's case by the Hon'ble

Supreme Court are not fulfilled in the instant case and, therefore, the Appellant is precluded from basing its claim under said provision of law. It was further argued that this Tribunal has in catena of judgements held that unilateral injection of power into grid in the absence of contract or authorization creates grid indiscipline and no claim for credit of such power can be entertained under the provisions of non-gratuitous delivery under Section 70 of Contract Act. The Appellant's Counsel referred to Clause 5 of Regulation No. 2 issued by the 1st Respondent Commission in exercise of powers under Section 42 of the Electricity Act, 2003, which provided for an application process for grant of STOA and LTOA. He argued that when a statute provides for a particular manner of doing a thing, that has to be done in that particular manner or otherwise doing of the act shall have to be deemed is unlawful and therefore the injection of power by Appellant into the grid without specific authorization of SLDC being totally unlawful, no credit for the same can be given. In this regard, the Learned Counsel cited the judgements of this Tribunal in Kamachi Sponge & Power Corporation Ltd. Vs. Tamil Nadu Generation and Distribution Corporation Ltd. & Ors. in Appeal No. 120 of 2016 decided on 8th May, 2017, Renew Wind Energy (Andhra Pradesh) Private Limited Vs Karnataka Electricity & Regulatory Commission and Ors. in Appeal No. 117 of 2016 decided on 30th September. 2017 and M/s Indo

Rama Synthetics (I) Ltd. Vs. Maharashtra Electricity Regulatory Commission & Others in Appeal No. 123 of 2010 decided on 16th May, 2011.

12. Further, according to the Learned Counsel, reliance upon the judgements of this Tribunal in Vibrant Greentech case is totally mis-placed for the reason that it has been rendered only on an interim application and is not a final order as well as for the reason that the facts of that case were totally different from the facts of the instant case. He also pointed out that in the judgement delivered in Renew Wind Case, this Tribunal has noted the judgement of the Hon'ble Supreme Court in B.K. Mondol's case and, thereafter, denied the relief to the Appellant under Section 70 of the Contract Act. Thus according to the Learned Counsel, the impugned judgement of this Commission does not call for any interference by this Tribunals.

13. We have given our thoughtful consideration to the facts of the case emanating from the pleadings of the parties and have taken note of rival submission made by Learned Counsels for the Appellant as well the 3rd Respondent.

14. It is not in dispute that the Appellant was having two separate wheeling agreements dated 27th March, 1996 (regarding units at S-1 & S-2) and 28th March, 1997 (regarding units at S-3 & S-4) respectively with a validity period of 20 years, expiring on 26th March, 2016 and 27th

March, 2017 respectively. It was transmitting its captive power under these agreements through the network of the respondent and continue to do so even after the expiry of the wheeling agreements. It is also not in dispute that there was no agreement between the parties in this regard from the date of expiry of these two initial wheeling agreements till 7th June, 2019 when a fresh Short-Term Open Access agreement was executed between the parties. According to the Respondents, such unauthorized injection of power cannot be accounted for whereas the case of the Appellant is that the credit for such power cannot be denied to it when there was no objection on the part of the respondents for injection of power into the grid during the period in question and the Respondents even have utilized the same thereby achieving financial benefit and, therefore, it is entitled to credit for such power.

15. The claim of the Appellant is with regard to the power evacuated by it into the grid w.e.f. 26th March, 2016 (in case of units at Site-1 & Site-2) and w.e.f. 27th March, 2017 (in case of units at Site-3 & Site-4) till 7th June, 2019. Manifestly, no objection was raised to such injection of power into the grid from the wind power generation units of the Appellant during this period at any point of time by the officials of 2nd Respondent & 3rd Respondent. Even the respondents continued to gain financial benefit from such power by selling it to the consumers. We wonder, as to why, such conduct of the parties i.e. continued

supply of power by the Appellant from its wind power generating units even after the expiry of the wheeling agreements on one hand and receiving as well as utilization of such power by the respondents without any objection or demur on the other hand, cannot be construed to constitute a fresh contractual relationship between the parties beyond the expiry of wheeling agreements. Such kind of contracts are known as “Quasi Contract” which have gained legal recognition in India also by way of Section 70 in the Contract Act, 1872.

16. “Quasi Contract” is also known as “implied contract” which acts as a remedy for a dispute between two parties which do not have an express contract between them. A Quasi Contract is a legal obligation, not a traditional contract. Such transactions are also referred as “constructive contract” as these are constructed by the Court when there is no existing contract between the parties. Such arrangements may be inferred or imposed by the Court when goods or services are accepted by a party even though there might not have been any order. The acceptance and utilization of the goods or services by the other party creates an expectation for payment in the mind of the party providing the goods/services.

17. The concept of Quasi Contract is basically founded on the doctrine of “unjust enrichment”. This doctrine itself is based upon the maxim “Nul ne doit s’ enricher aux depens des autres” (No one ought

to enrich himself at the expense of others.) The rationale behind the doctrine of unjust enrichment is that in certain situations, it would be unjust to allow the defendant to retain a benefit at the plaintiff's expenses. To apply this doctrine, it must be established that :-

(i) the Defendants/Respondents have been enriched by the receipt of a "benefit";

(ii) this enrichment is "at the expenses of the plaintiff";

(iii) the retention of the enrichment is unjust.

18. The Hon'ble Supreme Court had the occasion to deal with and explain the contours of Section 70 of the Contract Act, 1972 in State of West Bengal Vs. B.K. Mondol & Sons, AIR, 1962 SCC 779 and it was held as under :-

> *"Three conditions must be satisfied before S. 70, Contract Act can be invoked. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. When these conditions are satisfied S. 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered.*
>
> *The person said to be made liable under S. 70 always has the option not to accept the thing or to return it. It is only where he voluntarily accepts the thing or enjoys the work done that the liability under S. 70 arises. Section 70 occurs in Chap. V which deals with certain relations resembling those created by contract. In other words, this chapter does not deal with the rights or liabilities accruing from the contract. It deals with the rights and liabilities accruing from relations which resemble those created by contract.*

In cases falling under S. 70 the person doing something for another or delivering something to another cannot sue for he specific performance of the contract nor ask for damages for the breach of the contract for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. All that S. 70 provides is that if the goods delivered are accepted or the work done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus where a claim for compensation is made by one person against another under S. 70, it is not on the basis of any subsisting contract between the parties, it is on the basis of the fact that something was done by the party for another and the said work so done has been breach of the contract for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. All that S. 70 provides is that if the goods delivered are accepted or the work done is voluntarily enjoyed then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus where a claim for compensation is made by one person against another under S. 70, it is not on the basis of any subsisting contract between the parties, it is on the basis of the fact that something was done by the party for another and the said work so done has been voluntarily accepted by the other party.

The word 'lawfully' in the context indicates that after something is delivered or something is done by one person for another and that thing is accepted and enjoyed by the latter, a lawful relationship is born between the two which under the provisions of S. 70 gives rise to a claim for compensation.

The thing delivered or done must not be delivered or done fraudulently or dishonestly nor must it be delivered or done gratuitously. Section 70 is not intended to entertain claims for compensation made by persons who officiously interfere with the affairs of another or who impose on others services not desired by them. When a thing is delivered or done by one person it must be open to the other person to reject it. Therefore, the acceptance and

enjoyment of the thing delivered or done which is the basis for the claim for compensation under S. 70 must be voluntary.

What S. 70 prevents is unjust enrichment and it applies as much to individuals as to corporations and Government. On principle S. 70 cannot be invoked against a minor. There is good authority for saying that S. 70 was framed in the form in which it appears with a view to avoid the niceties of English law on quasi-contracts."

(Emphasis supplied)

19. We may, elucidate the concept of 'Quasi Contract' as well as Doctrine of 'Unjust Enrichment' by way of following illustration :-

"A person X sends some goods to person Y in the absence of any order from Y. Y is dutybound to either refuse delivery of goods as and when those are tendered to him or immediately after receipt of goods, to return those to X or at least send a communication (oral, telephonic or written) to him informing him that he has sent the goods without any order from Y and hence, should take those back. However, in case Y accepts goods stoically and also utilizes them, he cannot be heard to say that he shall not pay to X for them as he has not ordered them. In that case, Y shall be required to pay for the goods. This is what the essence of Section 70 of Contract Act also is."

20. When we apply the concept of Quasi Contract as well as the doctrine of unjust enrichment envisaged under Section 70 of the Contract Act, as explained by the Hon'ble Supreme Court in the above noted judgement of B.K. Mondal, to the facts of the instance case, we

find that the Appellant is entitled to the payment of power injected into the grid from its wind generation units during the period as noted hereinabove. This is not a case where the appellant had been injecting power into the Grid in the absence of any agreement at all. The facts of the case clearly indicate that initially the Appellant was evacuating power into the grid under valid wheeling agreements which expired on 26th March, 2016 and 27th March, 2017. The facts would further indicate that the Appellant continued the injection of power into the grid even after the expiry of these wheeling agreements in the hope that fresh LTOA would be executed between the respondents for which it had started communicating with them. Ultimately, fresh Short Term Open Access agreements were executed between the parties between 7th June, 2019. Meanwhile, power continued to be injected into the grid from the wind power generating units of the Appellant without any objection or demur on the respondents and the respondents even utilized the same by selling it to the consumers thereby deriving financial benefit from it. The Appellant had vide letter dated 18th March, 2016 (i.e. before the expiry of the agreement dated 26th March, 2016) requested the respondents for permission for “Carrying” power from the points of generating stations to the destination point and for entering into fresh wheeling agreements. The respondents advised the Appellant for change of CTPT and metering equipment at both

ends for renewal of wheeling agreements which was duly done by the Appellant under the supervision of officials of 2nd and 3rd Respondents. The Appellant also filed prescribed application in this regard accompanied by requisite fee for the renewal of the wheeling agreements, even though belatedly. It is, therefore, evident that injection of power into the grid by the Appellant from 26th March, 2016 was under bonafide belief that the wheeling agreements would be renewed sooner or later and with the legitimate expectation of the appellant that it would be compensated for such power. Certainly, it was not a gratuitous act on the part of the Appellant. At no point of time was any objection raised by the officials of 2nd & 3rd Respondent and they even continued to avail benefit of such power by selling it to consumers. Therefore, all the ingredients of Quasi Contract envisaged under Section 70 of the Contract Act, as explained by the Hon'ble Supreme Court in B.K. Mondol judgement, are fulfilled in the present case.

21. We do not feel impressed by the arguments raised on behalf of the respondents that such injection of power into the grid by the Appellant in the absence of contract or authorization creates grid indiscipline and, therefore, cannot be accounted for. We feel that the 2nd and 3rd Respondents also were responsible for so called grid indiscipline, if any, in this case. They were aware about the fact that

initial agreements executed with the Appellant have expired and the Appellant continues to inject power into the grid. It was for them, to avoid grid indiscipline, to object to such evacuation of power into the grid by the Appellant and to stop the same or at least to notify the appellant to desist from doing so. They did neither. To the contrary, they continued accepting power from Appellant's wind generating power units stoically and even utilized the same. Thus, they too were contributing towards grid indiscipline. It also needs to be borne in mind that the power units involved herein are wind power generating units which are considered as 'Must Run Unit'. As these units are connected to the grid, power must be injected into the grid unless stopped at the point of connection to the grid by the respondents, which they did not do. In view of such conduct of the respondents in accepting the power from the wind power generating units of the Appellant even after expiry of the initial wheeling agreement and utilizing the same by selling it to the consumers, it does not lie in their mouth to say that they are not liable to account for the same towards the Appellant.

22. Now let us examine the judgements cited on behalf of the parties during the course of arguments.

23. In Renew Wind Energy (AP) Pvt. Ltd. Vs. Karnataka ERC decided on 3rd September, 2017, this APTEL has held inter alia as under :

"From the combined reading of the above provisions and decision of the State Commission, it is clear that the Appellant was not supposed to inject power into the grid without commercial agreement and without prior consent of SLDC. Injection of power without permission from of SLDC tantamount to gridindiscipline due to which grid security may be compromised. Although in present case the quantum of power injected is low but it is a matter of grid discipline if violated by the many generators at a time may result in insecure grid operation. Grid indiscipline cannot be allowed whether it is renewable power or conventional power. SLDC was supposed to communicate to the Appellant about the outcome of its LTOA application within 30 days from its receipt. The same was not done by SLDC. However, the State Commission has accepted the reasons for delay in processing the LTOA application of the Appellant based on submissions made by KPTCL. The State Commission has also compensated the Appellant for power injected by it beyond 8.8.2013 and the Respondent Nos.3 & 4 have paid the requisite amount."

(Emphasis supplied)

24. Similar view has been taken by this Tribunal in Kamachi Sponge & Power Corporation Ltd. Vs. Tamil Nadu Generation and DistributionCorporation Ltd. Decided on 8th May, 2017wherein it was held as under :

"From the combined reading of all the above provisions and the communications exchanged between the Appellant and the Respondent No.1 it is clearly established that the Appellant has pumped the energy on its own without entering into any contract with Respondent No.1 and without the knowledge/schedule from SLDC. The energy pumped into the grid during the period under dispute by the

Appellant is unauthorised and does not call forany payment by the Respondent No.1."

(Emphasis supplied)

25. In M/s. Indo Rama Synthetics (I) Ltd. Vs. Maharashtra Electricity Regulatory Commission decided on 16th May, 2011, this Tribunal has held as under :

"……...We are in agreement with the contentions of the SLDC and the observation of the State Commission in the impugned order. Admittedly, in this case power has been injected by the appellant primarily during the off peak hours. Moreover, the power generated by the appellant on liquid fuel is expensive. The expensive power was injected by the appellant without any schedule, contract or agreement or knowledge of the SLDC and the distribution licensee. The appellant has also not been able to cite any sections of the 2003 Act, rules or regulations which would entitle him to any compensation for the injection of power without any schedule and agreement.

Unlike other goods electricity cannot be stored and has to be consumed instantaneously. The generating plants, interconnecting transmission lines and sub-stations from the grid. State grids are interconnected to form Regional Grids and interconnected regional grids form the National Grid. The SLDC prepares the generation schedule one day in advance for the intra-state generating station and drawal schedules for the distribution licensees based on the agreements between the distribution licensee and the generators/trading licensees, declared capacity by the generators and drawal schedule indicated by the distribution licensees. The generators and the licensees are expected to follow the schedule given by the SLDC in the interest of grid security and economic operation. If a generator

connected to the grid injects power into the grid without a schedule, the same will be consumed in the grid even without the knowledge or consent of the distribution licensees. However, such injection of power is to be discouraged in the interest of secure and economic operation of the grid. In the present case, the expensive power was injected by the appellant without the knowledge or consent of the distribution licensee or agreement and without any schedule from SLDC. Admittedly, the appellant's power was high cost power for which none of the distribution licensees had any agreement with theappellant. Therefore, there is no substance in the contention of the appellant for compensation."

(Emphasis supplied)

26. In the judgement dated 5th July, 2021 in the case of M/s Vibrant Greentech Pvt Ltd Vs. APSPDCL, the Commission has held as under:-

"Admittedly, the projects were synchronized on 29-3-2017 and PPAs were entered on 30-3-2017. In pursuance of the said two documents, the respondents allowed the power to be evacuated into the Grid by the petitioners. At no point of time was any objection raised either by the functionaries of the Discom or by the SLDC officials. The respondents continued to avail the benefit of power supply from the petitioners till the power connections were disconnected in March 2020. Thus, the conduct of the parties i.e., supply of power by the petitioners on the one hand and receiving and utilizing the power without any demur on the other, constituted afresh relationship between the petitioners and the respondents dehors the PPAs which formed the basis for a claim under Section 70 of the Contract Act. This transaction is separable from the obligations arising under

the PPAs. Even though the PPAs are held to be unenforceable, the petitioners are nevertheless entitled for compensation under Section 70 of the Contract Act for the power supplied by them to respondent No.1."

27. It is seen that the facts of the case before the Commission in Vibrant Greentech case were almost identical to the facts of this case and in spite of the same, the Commission ignored its order in the said case and declined compensation to the Appellant herein for the power supplied by it to the respondents during the period in question. In the case of Kamachi Sponge, the Appellant had commenced pumping of power into the grid even before synchronization and without seeking any approval/schedule on the SLDC. Even SLDC was not aware about the power being pumped into the grid by the Appellant during the period in question. It is in these circumstances, that this Tribunal had held that the Appellant had pumped energy on its own without entering into any contract with the Respondent Discom and without any knowledge or approval/schedule of SLDC and thus termed the said power as unauthorized for which the Appellant was not entitled to any payment. The facts of the said case are clearly distinguishable from the facts of the instance case before the Tribunal and, therefore, the said judgement has no relevance at all.

28. In the case of Renew Wind Energy also, the Appellant had started injecting power into the grid in the absence of any commercial agreement and without prior concurence of SLDC. It is in these circumstances that this Tribunal held that the respondents would not be liable to pay charges for the said power. Similarly, in the case of Indo Rama Synthetics (I) Ltd. also, the respondent SLDC had denied

having knowledge about the injection of power in real time by the Appellant and, therefore, this Tribunal did not find any substance in the claim of the Appellant for compensation for the power so injected into the grid.

29. The facts of both these cases are clearly distinguishable from the facts of this case and hence, do not advance the case of respondents in any way.

30. We may also note another judgement of this Tribunal in the case of M/s. BESCOM Vs. Reliance Infrastructure Ltd. & Anr., Appeal No. 170 of 2012 decided on 24th January, 2013. It was related to compensation for energy injected into the grid from wind power plant of Reliance Infra for the period between expiry of the PPA and the date of execution of Wheeling and Banking Agreement (WBA). It was held by this Tribunal that the fact that the energy pumped by Reliance Infra into the grid was received as well as consumed by the BESCOM undisputedly, the BESCOM was the beneficiary in using the energy so injected by the Reliance Infra and, therefore, liable to pay for such energy. This judgement was noted by this Tribunal in the case of Renew Wind Energy (supra) but was distinguished from the facts of that case on the premise that the Appellant in Renew Wind Energy case was aware that it is injecting power into the grid without any contractual agreement as well as prior permission from the SLDC. However, the facts of the BESCOM's case are totally identical to the facts of the instant case before us and, therefore, we do not find any reason from making any departure from the judgment passed in that case.

31. In the light of the above discussion, we are unable to agree to the findings of the Commission. We find the impugned order of the Commission erroneous as well as un-sustainable in the eyes of law. The same is hereby set aside.

32. We hold the Appellant entitled to credit for the power injected into the grid from the time of expiry of wheeling agreement up to the grant of Open Access to it i.e. from April, 2016 to May, 2019.

33. Accordingly, the appeal stands allowed.

Pronounced in the open court on this 26th day of February, 2024.

(Virender Bhat) Judicial Member	(Sandesh Kumar Sharma) Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

Js