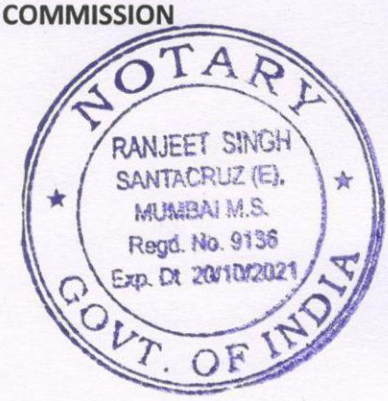
BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

AT MUMBAI



REVIEW CASE NO: ____ OF 2019

IN

CASE NO: 26 OF 2019

IN THE MATTER OF:

REVIEW PETITION UNDER REGULATION 85 OF MAHARASHTRA ELECTRICITY REGULATORY COMMISSION (CONDUCT OF BUSINESS) REGULATIONS, 2004 READ WITH SECTION 94 (1) (F) OF THE ELECTRICITY ACT, 2003.

AND

IN THE MATTER OF:

REVIEW OF PART OF ORDER DATED 26.03.2019 IN CASE NO. 26 OF 2019 PASSED BY THE HON'BLE COMMISSION.

AND

IN THE MATTER OF:

REVIEW PETITION SEEKING TO REVIEW PART OF ORDER DATED 26.03.2019 IN CASE NO. 26 OF 2019 VIDE WHICH THE HON'BLE COMMISSION HAS HELD THAT 1.25% INTEREST SHALL BE LEVIED AS PENAL INTEREST EVERY MONTH, IN ADDITION TO THE PENALTY IN THE FORM OF "DELAYED PAYMENT CHARGES" (**"DPC"**) FOR LATE PAYMENT OF OUTSTANDING BILLS BY MSEDCL.

AND

IN THE MATTER OF:

Maharashtra State Electricity Distribution Company Limited

....Petitioner

Versus

M/s. Rajlakshmi Minerals ....Respondent

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BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY

REGULATORY COMMISSION

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AND

IN THE MATTER OF:

The Chief Engineer (Renewable)
Maharashtra State Electricity Distribution Co. Ltd Prakashgad,
Plot No G-9, Anant Kanekar Marg,
Bandra (East), Mumbai - 400 051
E-mail:- ceremsedcl@gmail.com

...Review Petitioner/Applicant

Versus

Rajlakshmi Minerals

Post Box No. 38, Post Hospet 583 201,

Bellary District, Karnataka

E-mail:- rbssnwindpower@rbssn.com /
rbssnwindpower@gmail.com

...Respondent

MOST RESPECTFULLY SHOWETH:

1. The present review petition is being filed by the applicant seeking to review only a part of observations under Para 18 & Para 3 of the operative part of the order dated 26.03.2019. Hence the present review is being filed only on the ground

that levy of 1.25% interest as penal interest every month, in addition to the penalty in the form of "delayed payment charges" ("**DPC**") for late payment of outstanding bills by MSEDCL as held by this Hon'ble Commission is a mistake/error apparent which has inadvertently creeped in the order dated 26.03.2019 in Case No. 26 of 2019.

A copy of the order dated 26.03.2019 in Case No. 26 of 2019 passed by this Hon'ble Commission is annexed and marked hereto as **Exhibit- R1.**

1. DESCRIPITON OF PARTIES:

(i) Maharashtra State Electricity Distribution Company Limited hereinafter referred to as **("MSEDCL or Review Petitioner")** is a Company constituted under the provisions of Government of Maharashtra General Resolution No. PLA – 1003 / C. R. 8588 dated 25th January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31st May 2005. MSEDCL is functioning in accordance with the provisions envisaged in the Electricity Act, 2003 and is engaged, within the framework of Electricity Act,

2003, in the business of distribution of electricity to its consumers situated over the entire State of Maharashtra, except Mumbai City & its suburbs (excluding Mulund & Bhandup).

(ii) M/s Rajlakshmi Minerals hereinafter referred to as **("Respondent or RM")** is a partnership concern engaged in the generation of electricity from wind power plant and is also involved in the *logistic and transportation business*. RM owns a 3.40 MW wind power facility at Pusrali and Altur village, Shahuwadi Taluka, in Kolhapur District, Maharashtra. The said Power Plant was successfully commissioned on 29.03.2014. Wind Energy Purchase Agreement (**WEPA**)was executed with MSEDCL on 20.08.2014.

A copy of the "Energy Purchase Agreement" dated 20.08.2014 entered into between the Petitioner and the Respondent is annexed and marked hereto as **Exhibit- R2.**

2. PROVISIONS FOR REVIEW:

- *Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004:*

85. Review of decisions, directions, and orders:

(a) *Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may,* ***upon the discovery of new and important matter or evidence which****, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of* ***some mistake or error apparent from the face of the record,*** *or for any* ***other sufficient reasons****, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.*

(b) *An application for such review shall be filed in the same manner as a Petition under these Regulations.*

(c) *The Commission, shall for the purposes of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.*

(d) *When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.*

(e) *When the Commission is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for.*

- *Section 94 (1) (f) of Electricity Act, 2003:*

Section 94. (Powers of Appropriate Commission):

(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

(a) .....

(f) reviewing its decisions, directions and orders;

.....

3. PART OF ORDER UNDER REVIEW:

Observations under Para 18 & Para 3 of the operative part of the order dated 26.03.2019, reproduced herein:

18. *Accordingly, in order to resolve issues of crystallisation of outstanding dues, the Commission once again directs the parties*

involved from both the sides in the present Case to sit together and reconcile the statement of account within two weeks from the date of this Order. At the time of reconciliation, MSEDCL shall inform RM the exact time limit in which the payment would be made to RM for its outstanding dues of principal and DPC amount. Further, MSEDCL should note that if it deviates from its commitment, interest will be payable thereafter (beyond the date committed in the plan) at 1.25 % per month on any LPS/DPC.

ORDER

3. *Further, Maharashtra State Electricity Distribution Co. Ltd, should note that if it deviates from its commitment given in the payment plan, penal interest will accrue thereafter (beyond the date committed in the plan) at 1.25% per month on any LPS/DPC.*

4. ISSUES FOR CONSIDERATION OF REVIEW:

(i) Whether the observations in the order dated 26.03.2019 in Case No. 26 of 2019 is a non-reasoned order?

(ii) Whether observations in the order dated 26.03.2019 in Case No. 26 of 2019 is contrary to the principles of natural justice and thus is bad in law?

(iii) Whether the observations in the order dated 26.03.2019 in Case No. 26 of 2019 has been passed without appreciating that there can be no double penalty in the form of penal interest on any delayed payment of outstanding bills when there already exists DPC?

(iv) Whether the observations in the order dated 26.03.2019 in Case No. 26 of 2019 is without any reasoning for imposing penal interest of 1.25%

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when there already exists a penalty in the form of DPC?

(v) Whether a penalty can be imposed on MSEDCL beyond the terms of the Energy Purchase Agreement?

(vi) Whether the Energy Purchase Agreement expressly provides for penalties/damages in case of non-adherence to the clauses of the Energy Purchase Agreement and can there be any additional penalty beyond the terms of the Energy Purchase Agreement when the same is expressly limited by other clauses of the EPA?

(vii) Whether the observations in the order dated 26.03.2019 in Case No. 26 of 2019 has failed to consider that interest penalty is not a pass through in tariff and imposing double penalty in the form of interest would negatively burden/effect MSEDCL?

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5. **GROUNDS FOR REVIEW (WITHOUT PREJUDICE TO ONE ANOTHER):**

(a) That the observations in the order dated 26.03.2019 in Case No. 26 of 2019 is an error apparent as the said observations were passed by the Hon'ble Commission without affording any reasons for the same and without going into the other material clauses of the Energy Purchase Agreement.

(b) That the observations in the order dated 26.03.2019 in Case No. 26 of 2019 is an error apparent as this Hon'ble Commission has failed to appreciate that 1.25% interest penalty over and above DPC was never a part of the Petition or Prayers in the original proceedings and allowing the same without affording a reasonable opportunity of hearing to MSEDCL on the said issue to defend its case is a violation of the principles of natural justice.

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(c) That the MERC has imposed the 1.25% penal interest on MSEDCL without following the due process of law and without giving a fair chance of hearing on the said issue to MSEDCL. Hence the part of the impugned order violates the principles of natural justice and thus is bad in law and needs to be declared as ultra-vires.

(d) That the observations in the order dated 26.03.2019 in Case No. 26 of 2019 is an error apparent as this Hon'ble Commission has failed to appreciate that the Energy Purchase Agreement is sacrosanct between parties which already has a clause in the name of "Delayed Payment Charges" which has a provision for levy of interest, in case, MSEDCL delays payment of invoices/outstanding bills.

(e) That the observations in the order dated 26.03.2019 in Case No. 26 of 2019 is an error apparent as this Hon'ble Commission has failed to appreciate that there cannot be a double interest penalty on

MSEDCL more so in view of the fact that the DPC clause already exists in the Energy Purchase Agreement.

(f) That the observations in the order dated 26.03.2019 in Case No. 26 of 2019 is an error apparent as this Hon'ble Commission has failed to appreciate that it cannot impose a penalty on MSEDCL which is not in consonance with the terms of the Energy Purchase Agreement. Once the Energy Purchase Agreement provides for a penalty in the form of DPC in case of delayed payments by MSEDCL, then there cannot be another penal interest on MSEDCL on the same issue.

(g) That the observations in the order dated 26.03.2019 in Case No. 26 of 2019 is an error apparent as this Hon'ble Commission has failed to appreciate that there cannot be any additional penalty on the same issue beyond the terms of the Energy Purchase Agreement when the same is expressly limited by

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other clauses of the EPA. This important aspect has been completely overlooked by the Hon'ble Commission as the said issue was never part of the original record.

(h) That the observations in the order dated 26.03.2019 in Case No. 26 of 2019 is an error apparent as this Hon'ble Commission has failed to appreciate that it cannot novate the Energy Purchase Agreement between parties by means of the impugned order. Such observations are absolutely contrary to the established principles and precedents in matters of "sanctity of PPA/EPA".

(i) That the observations in the order dated 26.03.2019 in Case No. 26 of 2019 is an error apparent as this Hon'ble Commission has failed to appreciate that inflicting penal interest of 1.25% over and above the DPC when there already exists a penalty in the form of DPC is without any basis and reasoning that too when on hand, specific relief has been provided for in

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the EPA in the form of DPC in case of non-timely payment of invoices by MSEDCL and on the other hand, other clauses of the Energy Purchase Agreement expressly limit the penalties/damages etc to the extent as provided for in the Energy Purchase Agreement.

(j) That the observations in the order dated 26.03.2019 in Case No. 26 of 2019 is an error apparent as this Hon'ble Commission has erroneously failed to appreciate the precarious financial situation of MSEDCL and has erroneously inflicted double penalty on MSEDCL without assigning any reasons for inflicting 1.25% penal interest in addition to the DPC.

(k) That the observations in the order dated 26.03.2019 in Case No. 26 of 2019 is an error apparent as this Hon'ble Commission has failed to appreciate that interest penalty is not a pass through component in tariff and imposing double penalty in the form of interest would negatively burden/effect MSEDCL as

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the same would never be allowed to be a pass through in tariff.

6. The Petitioner states that this Hon'ble Commission has the jurisdiction to adjudicate the present dispute.

7. The Petitioner states that it had filed an Appeal on 30th March 2019 bearing No. 1629 of 2019 before the Hon'ble Appellate Tribunal for Electricity against the order dated 26.03.2019 in Case No. 26 of 2019. This appeal was filed well within the period of limitation. The Hon'ble Appellate Tribunal for Electricity vide order dated 16.04.2019 gave liberty to the Petitioner to approach this Hon'ble Commission under "Review Jurisdiction" and file a "Review Petition" within a period of two (2) weeks from the date of order passed by the Hon'ble Appellate Tribunal for Electricity. Hence the present "Review Petition" is being filed by MSEDCL before this Hon'ble Commission.

8. The Petitioner craves leave of this Hon'ble Commission to add/amend/substitute the present petition with the prior permission of this Hon'ble Commission.

PRAYER

In view of the above, it is therefore most respectfully prayed that this Hon'ble Commission may graciously be pleased to:

a) Review/modify the observations in Para 18 & Para 3 of the operative part of the order dated 26.03.2019 passed in Case No. 26 of 2019 to the extent as prayed herein.

b) Hold and declare that there can be no "Additional Interest Penalty" over and above the mechanism of "Delayed Payment Charges" as provided for in the Energy Purchase Agreement, in case of delay in payment of invoices by MSEDCL.

c) Pass such further orders as this Hon'ble Commission deems fit and proper in the interest of justice and good conscience.

It is prayed accordingly.

Date:

Bharat

Deponent

Place: Mumbai
Petitioner

NOTARY
RANJEET SINGH
SANTACRUZ (E),
MUMBAI M.S.
Regd. No. 9136
Dt. 20/10/2021
GOVT. OF INDIA

(E), M.S. 9136 20/10/2021 T. OF INDIA

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AND

IN THE MATTER OF:

The Chief Engineer (Renewable)
Maharashtra State Electricity Distribution Co. Ltd Prakashgad,
Plot No G-9, Anant Kanekar Marg,
Bandra (East), Mumbai - 400 051
E-mail:- ceremsedcl@gmail.com

...Review Petitioner/Applicant

Versus

Rajlakshmi Minerals

Post Box No. 38, Post Hospet 583 201,

Bellary District, Karnataka

E-mail:- rbssnwindpower@rbssn.com / rbssnwindpower@gmail.com

...Respondent

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AFFIDAVIT VERIFYING THE REVIEW APPLICATION

I, Mrs. Kavita K Gharat, age 41 Years, working as Chief Engineer (Renewable Energy) with the Petitioner Company, having my office address at MSEDCL, Prakashgad, Plot No.G-9,Anant Kanekar Marg, Bandra (East), Mumbai 400051 , do hereby by solemnly declare as under:-

1. That I am the authorized representative of the Petitioner in the above-mentioned Petition and as such am well conversant with the facts of the present case and hence competent and authorized to swear the instant affidavit.

2. The statements made in paragraphs 1 to 3 of the application are true to my knowledge and belief and are based on information and I believe them to be true. That the statements made in Para 4 to 7 are legal submissions based on the advice of my advocate.

3. I say that there are no proceedings pending in any court of law/ tribunal or arbitrator or any other authority, wherein the Applicant are a party and where issues arising and/or reliefs sought are identical or similar to the issues arising in the matter pending before the Commission.

Solemnly affirm at Mumbai on this 30th day of April, 2019 that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Mumbai

Dated: 30.04.2019

Deponent

Identified by me

NOTARY
RANJEET SINGH
SANTACRUZ (E),
MUMBAI M.S.
Regd. No. 9136
Exp. Dt 20/10/2021
GOVT. OF INDIA

BEFORE ME

RANJEET SINGH
M.Sc.LL.B.
NOTARY
MAHARASHTRA
GOVT OF INDIA

30 APR 2019

NOTARIAL