



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

I. A. No. 10 of 2023
in
O. P. No. 36 of 2023

Dated 19.12.2023

Present

Sri. T. Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s. Kakatiya Cement Sugar & Industries Limited,
Regd. Office at # 1-10-140 / 1, "GURUKRUPA".
Ashok Nagar, Hyderabad – 500 020.

.... Applicant / Petitioner.

AND

Southern Power Distribution Company of Telangana Limited
#6-1-50, Mint Compound,
Hyderabad – 500 063, Telangana

... Respondents.

The application came up for hearing on 18.12.2023 in the presence of Sri. Vikram Pooserla, advocate along with Ms. Achala Siri, counsel for petitioner and Sri Mohammad Bande Ali, Law Attachee for respondents, having been heard and having stood over for consideration to this day, the Commission passed the following:

INTERIM ORDER

M/s. Kakatiya Cement Sugar and Industries Limited (application / petitioner) has filed an application under section 94 (2) of the Act, 2003 r/w TSERC Regulation No. 2 of 2015 seeking interim direction to the respondent not to take any coercive steps against the petitioner, including disconnection of HT service connection No. SPT 427 belonging to the petitioner, in pursuance to the notice bearing Lr. No. SE /

OP / SPT / SAO / JAO / HT / D. No. 75 / 23, dated 07.07.2023 issued by the respondent, pending disposal of the main O.P. captioned above, and to pass any further orders as deemed fit and proper in the premise of the case. The pleadings of the same are extracted below.

- a. It is stated that in view of certain encouraging incentives of the erstwhile Government of Andhra Pradesh as under the G.O.Ms. No. 93 dated 18.11.1997, the applicant / petitioner had proposed to set up a Captive Power Plant (CPP) with a capacity of 16.7 MW for captive production and utilization of the electrical energy. Upon the sanction provided by NEDCAP vide its letter dated 09.06.2000, the applicant / petitioner had invested huge amounts for captive production and utilisation of the electrical energy for its own industrial purposes and set up a non-conventional energy plant with a capacity to generate 16.7 MW of power for consumption as well as sale.
- b. It is stated that thereafter, the applicant / petitioner entered into two agreements, namely a power purchase agreement dated 19.02.2002 (PPA) and a power purchase and captive wheeling agreement dated 19.02.2002 (PP&CWA) with the erstwhile Transmission Corporation of Andhra Pradesh Limited (now, the Telangana State Transmission Corporation Ltd. i.e. TSTRANSCO), in accordance with the provisions of the Andhra Pradesh Electricity Reforms Act, 1998 (Reforms Act, 1998), and in line with the incentives allowed for wheeling and banking and charges for captive consumption in various government orders. The said agreements were valid from the commercial operation date to 30.06.2004. As under the PP&CWA, the applicant / petitioner agreed to pay a compensation of 2% per KWH for the provision of wheeling service to the plant of the applicant / petitioner situated in Dondapadu Village, Chintalapalem Mandal, Suryapet District.
- c. It is stated that thereafter, in accordance with the provisions of the Reforms Act, 1998, the erstwhile Andhra Pradesh Transmission Corporation Ltd. (APTRANSCO) filed its tariff proposal for the year 2001-02, which included a proposal for levying wheeling charges. In consideration of the tariff proposal and the application made by APTRANSCO, the erstwhile Andhra Pradesh Electricity Regulatory

Commission (APERC) vide order dated 24.03.2002 in O.P. No. 510 of 2001 fixed the wheeling charges for the year 2002-03 at 50 paise per KWH of energy transmitted through the network along with 28.4% of energy input by the project developer into the grid towards system loss. The charges were effective from 01.04.2002.

- d. It is stated that aggrieved by the order dt. 24.03.2002 in O.P. No. 510 of 2001, the applicant / petitioner filed an appeal vide C.M.A. No. 1260 of 2002 before the erstwhile High Court of Andhra Pradesh. The Hon'ble High Court was pleased to pass an interim order dated 23.04.2002 suspending the operation of APERC's order dated 24.03.2002. It is pertinent to mention herein that similar appeals were filed by other generators against APERC's order dated 24.03.2002. The Hon'ble High Court had passed interim orders suspending the operation of APERC's order dated 24.03.2002 in all such appeals.
- e. It is stated that on 24.03.2003, APERC in a review of the tariff proposal for 2003-04 revised the wheeling charges for the financial year 2003-04 in O.P. Nos. 1 to 5 of 2003. However, APERC noted that wheeling charges would be collected as per the interim orders of the courts in the pending appeals till the same are disposed by the courts.
- f. It is stated that subsequently, the Hon'ble High Court vide order dated 18.04.2003 allowed all the appeals and writ petitions against APERC's order dated 24.03.2002 and the same was set aside. Aggrieved by the Hon'ble High Court's order dated 18.04.2003, APTRANSCO approached the Hon'ble Supreme Court in a batch of special leave petitions and civil appeals. The civil appeal and special leave petition in respect of the applicant / petitioner were registered on 07.07.2003 as C.A. No. 5058 of 2003 and SLP(C) No. 10404 of 2003 respectively.
- g. It is stated that while things stood thus, APTRANSCO issued a demand notice dated 23.07.2003 to the applicant / petitioner demanding wheeling charges. Similarly, erstwhile APCPDCL issued a demand notice dated 28.07.2003 towards wheeling charges for the month of July 2003, and informed that a supplementary bill for the period 01 April 2002, to June 2003 would be issued in due course. Aggrieved by

the aforesaid demand notices dated 23.07.2003 and 28.07.2003, the applicant / petitioner filed W.P. No. 16521 of 2003 before the erstwhile High Court of Andhra Pradesh challenging the said demand notices. The Hon'ble High Court was pleased to pass interim order dated 07.08.2003 directing APTRANSCO and APCPDCL to levy and collect wheeling charges at 2% of the delivered energy.

- h. It is stated that thereafter, vide order dated 23.03.2004 in O.P. Nos. 495 to 499 of 2003, APERC revised the wheeling charges for the year 2004-05 in a review of the tariff proposal, subject to any order or directions issued by the Hon'ble High Court and the Hon'ble Supreme Court in pending proceedings.
- i. It is stated that the PPA and PP&CWA had expired on 30.06.2004, consequent to which the applicant / petitioner sought for renewal of the agreements. Insofar as the PP&CWA is concerned, APTRANSCO had agreed to continue the wheeling and banking facility to the applicant / petitioner if it furnishes an undertaking on Rs. 20 / NJS paper giving its consent for payment of wheeling charges and any other charges, as fixed by the APERC from time to time. The applicant / petitioner had accepted the offer of APTRANSCO and furnished an undertaking dated 21.09.2004. Accordingly, the APTRANSCO had continued the Wheeling & Banking to the applicant / petitioner.
- j. It is stated that as the PP&CWA with the applicant / petitioner came to an end on 30.06.2004, APCPDCL, APSPDCL and APTRANSCO began levying wheeling charges at the rate fixed by APERC for the year 2004-05. In this regard, APCPDCL issued revised bills for the months of July 2004 to October 2004, and APSPDCL issued revised bills for the months of July and August 2004. Several letters were also issued by the applicant / petitioner on one hand and the DISCOMs and APTRANSCO on the other regarding the revised bills. However, as the parties could not reach an understanding, the applicant / petitioner approached the erstwhile Hon'ble High Court of Andhra Pradesh vide W. P. No. 21192 of 2004.

- k. It is stated that subsequently, pursuant to an amendment agreement dated 14.10.2004, the PPA was renewed for a further period and had expired on 11.04.2022.
- l. It is stated that thereafter, in W. P. No. 21192 of 2004, the Hon'ble High Court was pleased to suspend the operation of the proceedings in the letters dated 08.11.2004 and 11.11.2004 issued by APCPDCL and in the letters dated 16.08.2004 and 16.09.2004 issued by APSPDCL, and further directed the respondents therein to levy and collect wheeling charges at 2% of the delivered energy vide interim order dated 19.11.2004. The said W.P. No. 21192 of 2004 is currently pending adjudication by the Hon'ble High Court of Telangana.
- m. It is stated that ever since the establishment of the power plant, the applicant / petitioner had been generating power and utilizing the same as per the schedule approved. Further, the applicant / petitioner, in terms of incentives given by the government of India has been using the wheeling and banking facility through the grid for its cement factory. The delivered and unused energy of the applicant / petitioner, after wheeling, will be banked (that is kept as reserve in the grid of the TRANSCO).
- n. It is stated that as things stood thus, this Commission had notified the Regulation cited as Andhra Pradesh Electricity Regulatory Commission (Interim balancing & Settlement code) Regulation 2006 (2 of 2006) herein after referred to as Regulation No.2 of 2006, which is in complete disparity to the initiatives and incentives given by the Union and the State Governments. The said regulation specifies that no generators other than wind and mini- hydel power generators shall be allowed the facility of banking. In fact, apart from refusing the banking facility, the APTRANSCO and DISCOMs had withheld the applicant / petitioner's banked energy and refused to allow the applicant / petitioner to draw the same.
- o. It is stated that consequently, the applicant / petitioner was constrained to file W. P. No. 22670 of 2007 before the Hon'ble High Court challenging the said regulation. In the said writ petition, the applicant / petitioner had also filed a miscellaneous petition seeking interim relief,

wherein the Hon'ble High Court was pleased to pass an interim order dated 26.10.2007 directing APTRANSCO to maintain record of energy supplied by the applicant / petitioner. Pursuant to the interim order, the applicant / petitioner had been supplying energy to the APTRANSCO, who had been maintaining the record of the energy supplied by the applicant / petitioner. The applicant / petitioner has withdrawn the said W. P. No. 22670 of 2007 on 27.11.2008 as the APTRANSCO was maintaining the record of the energy supplied to it. Further, on receiving legal advice, the applicant / petitioner had filed miscellaneous application seeking restoration of W. P. 22670 of 2007 before the Hon'ble High Court, and the same was allowed on 07.04.2014.

- p. It is stated that some of the power generating companies had also questioned the denial of banking facility to them by APTRANSCO relying on the provisions of clause No. 12 of Regulation No.2 of 2006 through filing of W. P. No. 15313 of 2007 and batch before the Hon'ble High Court. The petitioners therein prayed the Hon'ble Court to direct APTRANSCO to permit them to use the banked energy ignoring clause 12.1 of Regulation No. 2 of 2006. By virtue of a judgment dated 14.05.2008 in the said writ petitions, the Hon'ble High Court had exempted application of clause 12.1 of Regulation 2 of 2006 to the cases of the petitioners therein till the disposal of the civil appeals pending before the Hon'ble Supreme Court in respect of the levy and determination of wheeling charges and directed the respondents therein to permit the petitioners to use the banked energy without insisting for a fresh agreement in terms of Regulation No. 2 of 2006.
- q. It is stated that thereafter, once again, APTRANSCO had refused to provide the facility of wheeling and banking to the applicant / petitioner placing reliance on regulation 2 of 2006, Hence, the applicant / petitioner was constrained to file another writ petition numbered as W. P. No. 26105 of 2008 challenging the refusal of APTRANSCO to wheel the energy banked by it. The Hon'ble High Court, vide an interim order dated 28.11.2008, directed APTRANSCO and DISCOMs to continue the wheeling and baking facility to the applicant / petitioner.

- r. It is stated that by virtue of the said interim order dated 28.11.2008, the APTRANSCO and DISCOMs were obligated to allow the applicant / petitioner to wheel power to its scheduled consumers from out of the unutilized / unallocated power banked by the applicant / petitioner with it and continue facility of banking to the applicant / petitioner. However, since the APTRANSCO and DISCOMs were sporadically trying to impose penal charges by relying on Regulation 2 of 2006 and attempting to bypass the interim order, the applicant / petitioner was constrained to file W. P. No. 17113 of 2009 before the Hon'ble High Court, wherein an interim order dated 19.08.2009 came to passed directing the respondents therein not to take any coercive steps against the applicant / petitioner.
- s. It is stated that as things stood thus, the Hon'ble High Court vide order dated 21.12.2018 was pleased to dispose W. P. No. 16521 of 2003 in terms of the common order dated 18.04.2003 passed by the Hon'ble High Court in the batch of appeals and writ petitions filed against APERC's order dated 24.03.2002.
- t. It is stated that the TSTRANSCO, pursuant to the afore-mentioned interim orders of the Hon'ble High Court, had allowed the applicant / petitioner herein to wheel and bank its energy. While so, since 2018, the TSTRANSCO and the respondent herein had, once again, arbitrarily refused to continue the wheeling and banking facility to the applicant / petitioner and adjust the banked units in the power bills, leading to the filing of W. P. No. 18179 of 2019 before the Hon'ble High Court vide interim orders dated 09.09.2019 and 18.11.2019, the Hon'ble High Court had directed the TRANSCO and respondent herein not to take any coercive steps against the applicant / petitioner. Accordingly, wheeling and banking facility came to continued and the units of energy wheeled from November 2018 till March 2022 were duly given credit to in September 2022 through revised power bills.
- u. It is stated that subsequently, the Hon'ble Supreme Court was pleased to allow C. A. No. 5058 of 2003 and batch petitions vide judgment and order dated 29.11.2019 allowing the appeals filed by APTRANSCO and holding that APERC had the competence to determine the

wheeling charges. The review petition filed by the company vide R. P. (C) No. 1505 of 2020 against the Hon'ble Supreme Court's order dated 29.11.2019 was dismissed by an order dated 14.07.2020.

- v. It is stated that pursuant to the judgment and order of the Hon'ble Supreme Court dated 29.11.2019, the respondent issued two separate notices dated 27.06.2020 calling upon the applicant / petitioner to pay an amount of Rs. 42,22,23,128/- and Rs. 1,60,70,675/- towards difference in wheeling charges and transmission charges respectively in cash and energy losses determined by the Commission allegedly payable by the applicant / petitioner as against HT SC No. SPT 427 belonging to the applicant / petitioner. In the said notices, the details pertaining to the amounts claimed were stated to have been provided in the annexure to the notice. However, no such annexure containing the details as alleged were provided along with the notices dated 27.06.2020 to the applicant / petitioner. The said notices dated 27.06.2020 were received by the applicant / petitioner only on 20.07.2020.
- w. It is stated that a reply letter dated 25.07.2020 was addressed by the applicant / petitioner to the respondent requesting to furnish complete details of the calculation data, calculation methodology, calculation formulae and references to the month-wise, year-wise tariff orders relied upon by the authority for deriving at the amount for examination and for providing appropriate response.
- x. It is stated that pursuant to the said letter, the officials of the applicant / petitioner had approached the officials of the respondent on 06.08.2021 and sought for details pertaining to the claims being made. It was brought to the knowledge of the applicant / petitioner at that time that the claims pertain to the difference in wheeling charges from the year 2002 to 2017. However, no clarifications or details were given in regard to the specifics of the amounts being claimed. As such, the claims for difference in the wheeling and transmission charges were never made against the applicant / petitioner till 27.06.2020. Thus, the claims were as such, barred by limitation.

- y. It is stated that without considering the applicant / petitioner's representation vide letter dated 25.07.2020, the CGM (Revenue), TSSPDCL, acting for the respondent, had issued a notice dated 24.08.2020 asking the applicant / petitioner to pay an amount Rs. 43,82,93,803/- towards difference in transmission / wheeling charges in cash and energy losses determined payable by the company, which amounts were alleged to have been detailed in the annexure. Once again, no annexure has been attached to the notice and no details pertaining to the claim were provided to the applicant / petitioner.
- z. It is stated that thereafter, again, on 10.11.2020, the CGM (Revenue), TSSPDCL issued another notice asking the applicant / petitioner to pay an amount of Rs. 43,82,93,803/- towards difference in transmission / wheeling charges along with a statement showing the details of the wheeling charges which are allegedly payable by the applicant / petitioner. At this point in time, a statement showing details of the wheeling charges to be collected from the generators was annexed to the notice. As per the minimal break-up provided in the statement, the CGM (Revenue), TSSPDCL claimed an amount of Rs. 31,87,10,836.78/- payable as interest towards a sum of Rs. 13,52,30,382.30/- which is the alleged actual shortfall amount payable by the applicant / petitioner towards the difference in wheeling and transmission charges. Yet again, the calculation methodology, calculation formulae and references to the month-wise, year-wise tariff orders relied upon by the authority for deriving at the amount for examination has not been provided to the applicant / petitioner and the alleged claims were put forth without any basis.
- aa. It is stated that in response to the same, the applicant / petitioner addressed a letter dated 12.12.2020 to the the CGM (Revenue), TSSPDCL clearly stating that the claims made are barred by limitation, vague and unsustainable, that the demand notices are devoid of any particulars and the amounts were never claimed against the applicant / petitioner prior to 27.06.2020, and that the interest charged is not liable to be paid as the interest claimed is unreasonable and without basis

contractually or in law. Further, the CGM (Revenue), TSSPDCL was requested not to take any coercive steps or precipitative action against the applicant / petitioner.

- ab. It is stated that while things stood thus, the applicant / petitioner had received two distinct notices, both dated 08.09.2021 issued by the respondent claiming the difference in wheeling and transmission charges. A total amount of Rs. 1,22,48,567/- and Rs. 46,78,31,895/- towards difference in transmission / wheeling charges was demanded to be paid by the applicant / petitioner. The said notices were received by applicant / petitioner only on 21.09.2021 and 23.09.2021 respectively. The applicant / petitioner is now demanded a higher amount vide the afore-said notices and once again, no basis, break-up or calculation of whatsoever nature has been provided to the applicant / petitioner in regard to the claims made. Further, surprisingly, the said notices dated 08.09.2021 contained no reference to the earlier letters dated 25.07.2020 and 12.12.2020 addressed by the applicant / petitioner denying the liability. Ignoring the applicant / petitioner's replies and in complete isolation, such notices were issued threatening to disconnect the power supply to the applicant / petitioner's plant. As regards the said notices dated 08.09.2021, the applicant / petitioner addressed a detailed comprehensive letter dated 24.09.2021 to the respondent, denying any liability towards the claims made and requesting not to take any coercive steps for recovery of the claimed amounts in furtherance of their notices dated 08.09.2021.
- ac. It is stated that thereafter, the applicant / petitioner filed writ petition vide W. P. No. 24862 of 2021 before the Hon'ble High Court of Telangana for challenging the said notices dated 08.09.2021. The Hon'ble Court was pleased to dispose of the said writ petition vide order dated 04.10.2021, directing the Superintending Engineer (SE) (Operations Circle), TSSPDCL to furnish the copy of the letter dated 17.06.2020 referred in both the notices dated 08.09.2021 and also in the explanation dated 24.09.2021 and pass appropriate orders by putting the applicant / petitioner on notice and affording him an opportunity of personal hearing. The SE (Operations Circle), TSSPDCL

was further directed to complete this exercise within four weeks from the date of receipt of a copy of the order, and till such exercise is completed, respondent Nos. 2 to 5 therein were directed not to take further steps pursuant to both the notices dated 08.09.2021, including disconnection of the power supply to the applicant / petitioner.

- ad. It is stated that subsequent to the above-mentioned order dt. 04.10.2021 passed by the Hon'ble High Court, the applicant / petitioner once again received a notice dated 24.11.2021, vide email on 03.12.2021 from the respondent through the Superintending Engineer SE (Operation Circle). As under the said notice, the respondent had demanded the applicant / petitioner to pay an amount of Rs. 43,82,93,803 /- towards differential wheeling charges, including surcharge calculated up to January 2020 (with surcharge being raised until payment made by the consumer), failing which the supply of power to the applicant / petitioner at HT service connection No. SPT 427 would be disconnected without further notice.
- ae. It is stated that aggrieved that the directions of the Hon'ble High Court in order dated 04.10.2021 have been summarily ignored by the respondent, the applicant / petitioner was constrained to file a contempt case vide C. C. No. 1531 of 2021. When the CC was taken up for hearing for the first time on 24.12.2021, the Ld. Judge of the Hon'ble High Court, upon hearing the submissions on behalf of the applicant / petitioner, was pleased to issue a show-cause notice to the SE (Operation Circle), TSSPDCL calling upon him to show-cause as to why action should not be taken against him.
- af. It is stated that subsequent thereto, the following instances took place:
- i. SE (Operation Circle), TSSPDCL issued a notice dated 11.01.2022 falsely alleging that an opportunity of personal hearing on 26.11.2021 was provided to the applicant / petitioner vide notice dated 24.11.2021, bearing reference No. 111 /21, which notice was never received by the petitioner.
 - ii. Thereafter, SE (Operation Circle), TSSPDCL issued another notice providing an opportunity of hearing on 05.02.2022. A personal hearing was conducted on 05.02.2022, wherein

applicant / petitioner duly appeared and submitted a representation dated 02.02.2022.

- iii. The SE (Operation Circle), TSSPDCL, Suryapet passed a speaking order dated 12.02.2022 holding that the applicant / petitioner is liable to pay the differential wheeling and transmission charges. In this regard, it is submitted that the observations of the SE (Operation Circle), TSSPDCL in the speaking order dated 12.02.2022 are wholly erroneous and unsustainable in law.
- ag. It is stated that while things stood as above, the claim for differential wheeling and transmission charges was bifurcated amongst the TSTRANSCO and the respondent herein pursuant to certain internal understanding between both, consequent to which, the respondent had only resorted to claiming differential wheeling charges as against the applicant / petitioner.
- ah. It is stated that thereafter, in view of an oral threat of disconnection received by the applicant / petitioner from the officials of the respondent, the applicant / petitioner, under protest, was constrained to deposit a total of sum of Rs. 11,95,82,966/-, being the entire principal sum claimed by the respondent towards differential wheeling charges (The said sum of money was deposited in two parts – Rs. 8,00,00,000/- on 24.03.2022 and Rs. 3,95,82,966/- on 27.10.2022). In this regard, it is stated that without prejudice to the contentions of the applicant / petitioner pertaining to deposit of the principal sum of differential wheeling charges, the levy of interest / surcharge on the said amount was vehemently disputed by the applicant / petitioner as being highly arbitrary and unreasonable. Thus, the applicant / petitioner did not make any deposit towards the same. Further, as a matter of fact, the respondent orally assured the applicant / petitioner that no coercive measures will be taken against the applicant / petitioner in respect of the interest that remained unpaid.

- ai. It is stated that on 25.01.2023, the W. P. No. 17113 of 2009 pending before the Hon'ble High Court of Telangana came to be dismissed as infructuous.
- aj. It is stated that while so, the contempt case in C. C. No. 1531 of 2021 was disposed of by this Hon'ble Court through order dated 09.06.2023 holding that the SE (Operation Circle), TSSPDCL, Suryapet had complied with the directions of the High Court and provided an opportunity of hearing to the applicant / petitioner, though with a delay.
- ak. It is stated that thereafter, the SE (Operations Circle), TSSPDCL had issued a notice dated 07.07.2023 demanding to be paid a sum of Rs. 42,36,86,659/- towards alleged balance differential wheeling charges (presumably interest / surcharge on the principal sum claimed) within 15 days from the date of receipt of the said notice, failing which the power supply to the HT service connection of the applicant / petitioner shall be disconnected.
- al. It is stated that the said notice dated 07.07.2023 was received by the applicant / petitioner only on 13.07.2023. It is pertinent to mention herein that no break-up or calculation of whatsoever nature towards the balance amount claimed has been annexed to the impugned notice, and the impugned notice makes no reference to the amount deposited by the applicant / petitioner under protest. Thus, in response to the notice, the applicant / petitioner addressed a letter dated 19.07.2023 informing that principal amount claimed towards differential wheeling charges had already been deposited by the applicant / petitioner and that the interest being levied is not payable under law. It was further contended that the power of disconnection is not available to the respondent as the amounts being demanded do not pertain to a period of two years prior to the date of issuance of the notice. The applicant / petitioner also sought for a break-up pertaining to the balance amount being claimed, but to no avail.
- am. It is stated that the said amount demanded by the respondent is being continuously shown as arrears pertaining to the applicant / petitioner in the books of accounts of the respondent, consequent to which the applicant / petitioner is denied permanent supply of power under HT

Category – I TSNPDCL as well as renewal of PP&CWA by the TS TRANSCO. It appears that the arrears are also reflected in the monthly HT C.C. bill raised by the respondent on the applicant / petitioner.

- an. It is stated that the aforesaid notice dated 07.07.2023 is vague, arbitrary, issued in a manner such that it is contrary to the principles of natural justice and is as such, illegal. The levy of interest / surcharge by the respondent on the alleged delayed payment of differential wheeling charges by the applicant / petitioner is wholly arbitrary and illegal. Further, it also appears that the respondent is purporting to charge interest on the surcharge / interest levied on the applicant / petitioner, which is without any basis under law and void.
- ao. It is stated that the applicant / petitioner apprehends that the respondent, in pursuance to its notice dated 07.07.2023, would resort to coercive measures including disconnection of power at its HT service connection SPT No. 427 for non-payment of alleged balance differential wheeling charges. Being left with no other alternate and efficacious remedy, the applicant / petitioner is constrained to approach this Commission for seeking urgent interim relief.
 - i. It is stated that that the notice dated 07.07.2023 issued by the respondent threatening disconnection of power, failing payment of the balance wheeling charges by the applicant / petitioner is manifestly arbitrary and illegal.
 - ii. It is stated that the power of disconnection under section 65 of the Act, 2003 is applicable only for the dues that relate to a period of two years prior to the date of issuance of the notice. Indisputably, the alleged balance amount does not relate to the period of two years prior to the notice dated 07.07.2023. Thus, the threat of disconnection of power in the notice under reply is contrary to law that is section 56 of the Act, 2003.
 - iii. It is stated that the levy of surcharge / interest on the differential wheeling charges for the period from FY 2002-03 till 2022-23 by the respondent is manifestly arbitrary and illegal.
 - iv. It is stated that it is settled principle of law that interest is payable only after the dues are finally determined. It is further

settled that interest would be payable only when there is a failure to pay as per crystallized liability. [Reliance is placed on ***NTPC Ltd. v. M.P. SEB, (2011) 15 SCC 580, and CIT v. Ranchi Club Ltd., (2013) 15 SCC 545***]. It is submitted that as elaborated above, the liability to pay wheeling charges in cash was persistently disputed by the applicant / petitioner before this Commission, the erstwhile High Court of Andhra Pradesh and the Hon'ble Supreme Court till the final judgment and order dated 29.11. 2019 was passed in C. A. No. 5058 of 2003 and batch petitions upholding the power of the APERC to determine wheeling charges. Pursuant to such order, a demand for the differential wheeling charges was made against the applicant / petitioner for the first time vide respondent's notice dated 27.06.2020, which was received on 20.07.2020. Such demand was further disputed by the applicant / petitioner, which led to the filing of W. P. No. 24862 of 2021 and the speaking order dt. 12.02.2022 passed by the respondent, whereby the liability was finally determined by the respondent. Thus, the liability of the applicant / petitioner on differential wheeling charges came to be crystallized by the respondent only on 12.02.2022. Without prejudice to the contentions of the applicant / petitioner in respect of the liability to pay the differential wheeling charges, the applicant / petitioner had duly deposited the principal sum of Rs. 11,95,82,966/- claimed towards differential wheeling charges in two parts – Rs. 8,00,00,000/- on 24.03.2022 and Rs. 3,95,82,966/- on 27.10.2022. Thus, there being no delay in payment of the principal sum claimed towards differential wheeling charges, no surcharge/interest is leviable against the applicant / petitioner. Thus, the levy of surcharge / interest on the principal sum claimed towards differential wheeling charges, calculated with effect from 2002 is wholly arbitrary and against the said principles of law.

- v. It is stated that the effect of the judgment and order dated 29.11.2019 passed by the Hon'ble Supreme Court in C. A. No.

5058 of 2003 and batch petitions is merely that the APERC had power to determine wheeling charges and thus, the wheeling charges set out in the tariff orders from 2002 till such date stood final. Accordingly, the liability to pay wheeling charges came to be determined. The same, cannot, in any way, be construed to have a retrospective effect so as to impose interest / surcharge on the wheeling charges so determined.

- vi. It stated that the interim order dated 19.11.2004 passed by this Hon'ble Court in W. P. No. 21192 of 2004 is subsisting as of today and thus, the applicant / petitioner was only liable to pay wheeling charges in kind at the rate of 2% of the delivered energy. However, contrary to the directions of the Hon'ble High Court, the respondent purported to levy the differential wheeling charges in cash by way of notices dated 27.06.2020, 24.08.2020, 08.09.2021, 24.11.2021, 12.02.2022 and 07.07.2023.
- vii. It is stated that through the speaking order dated 12.02.2022, the respondent mechanically reiterated its demand for differential wheeling charges and interest thereon, without any consideration of the issues raised by the applicant / petitioner and without any application of mind. There has been no proper determination of the demand, which is wholly arbitrary, illegal, without jurisdiction, and in violation of the principles of natural justice. Thus, the speaking order dated 12.02.2022 holding that interest is payable with effect from 2002 and the notice dated 07.07.2023 issued by the respondent claiming balance differential wheeling charges, presumably the interest component on the principal amount already deposited, is arbitrary and liable to be set aside.
- viii. It is stated that without prejudice to the afore said, the interest / surcharge levied by the respondent appears to have been calculated at an exorbitant rate and the same is without any basis whatsoever, either under law or otherwise. The claim of the respondent with reference to the interest of Rs. 42 crores

and above on the principal sum of Rs. 11.95 crores is excessive and unjust.

- ix. It is stated that the claim of the respondent towards balance differential wheeling charges and the notice dated 07.07.2023 lacks transparency to the extent that it does not refer to the payments made by the applicant / petitioner and does not disclose the break-up and basis of the amount demanded. It is settled proposition of law that the principles of natural justice are inbuilt in the statutory rules and require observance unless the same stand excluded by the rules itself. The respondent, while issuing the said notice demanding payment of alleged balance differential wheeling charges, ought to have provided a break-up of the alleged amount claimed to be due from the applicant / petitioner. Thus, the same is contrary to principles of natural justice.
- x. It is stated that the respondent is raising arbitrary, vague, illegal and time-barred claims pertaining to surcharge / interest on alleged difference in wheeling charges payable by the applicant / petitioner so as to cause severe loss to the applicant / petitioner and make unlawful gains to themselves.
- xi. It is stated that the HT service connection SPT No. 427 belonging to the applicant / petitioner which is threatened to be disconnected pertains to the cement plant of the applicant / petitioner, which is highly power intensive. If the HT connection of the applicant / petitioner is disconnected, then the running of the plant would come to a stand-still, subjecting the applicant / petitioner to severe losses, and thousands of workers / employees of the applicant / petitioner employed at the cement plant would be left at bay.
- xii. That the applicant / petitioner would be subjected to severe loss, if the urgent ad-interim reliefs sought herein are not granted.
- xiii. The alternative or inconsistent pleas, if any, are taken without prejudice to each other and the applicant / petitioner reserve the

right to raise additional grounds / pleas / questions of law at the time of hearing.

- ap. It is stated that owing to the levy of surcharge / interest on differential wheeling charges and non-payment thereof (as the same is vehemently disputed by the applicant / petitioner for reasons stated above), the applicant / petitioner apprehends that the officials of the respondent will resort to disconnection of power at its HT service connection No. SPT-427.
- aq. It is stated that the applicant / petitioner has no other effective alternative remedy except to approach this Commission by way of the present application. It is stated that the applicant / petitioner has not filed any writ or suit or case before this Commission or before any other forum seeking the relief prayed for in this petition.
- ar. It is stated that the applicant / petitioner has made out a prima facie case and the balance of convenience is in its favour for this Commission to intervene and exercise its powers. Further, if urgent interim reliefs as prayed for are not granted, the applicant / petitioner will suffer irreparable loss and injury.
- as. It is stated that the applicant / petitioner reserves its right to file any additional pleadings / documents as and when required at a later stage in the interest of justice or as directed by the commission.

2. Therefore, the applicant / petitioner has sought the following prayer in the application.

“Pending adjudication and disposal of the main O.P. filed by the Petitioner, this Hon’ble Commission may graciously be pleased to direct the Respondent not to take any coercive steps against the Petitioner, including disconnection of HT Service Connection No. SPT 427 belonging to the Petitioner, in pursuance to the notice bearing Lr. No. SE / OP / SPT / SAO / JAO / HT / D. No. 75/23, dated 07.07.2023 issued by the respondent.”

3. The Commission has heard the counsel for petitioner and the representative of the respondent and also considered the material available to it. The submissions on the date of hearing are noticed below, which are extracted for ready reference.

Record of proceedings dated 18.12.2023:

“...The counsel for petitioner stated that the petition is filed towards claims made by licensee on account of recovery of wheeling charges. He also stated that interlocutory applications have been filed seeking to restrain the respondent from taking any coercive steps as also not facilitating renewal of power wheeling & purchase agreement entered with the petitioner.

The counsel for petitioner stated that due to urgency the petitioner has sought interim orders as there is a threat of disconnection of power supply to the petitioner. Though claims have been made towards wheeling charges, they are hit by limitation as such claims were never raised during the relevant period. The counsel for petitioner through the correspondence made by the respondent have shown that the claims are made for the first time in the year 2021, which was questioned before the Hon'ble High Court. The Hon'ble High Court disposed of the writ petition with a direction to give opportunity and pass a detail order by the licensee.

The counsel for petitioner stated that as the licensee did not implement the order of the Hon'ble High Court the petitioner had moved a contempt petition before the Hon'ble High Court. However, the Hon'ble High Court disposed of the contempt petition upon perusal of disposal of the representation made by the petitioner. Now, the licensee is seeking to implement its orders and insisting on payment of the amounts by the petitioner. The petitioner has already paid the principal amount as claimed by the licensee.

The representative of the respondent stated that notice has been issued by the Commission only the other day and the matter is listed today. The respondent needs time to file counter affidavit both in the original petition and the interlocutory applications. The Commission enquired with both the parties as to the real urgency, upon which the counsel for petitioner stated that the remand has been made for the first time in 2021 and reiteration is made only in the year 2022. Moreover, the licensee has adjusted the interest portion which the petitioner is not liable against the payments due to the petitioner. Thereby there are variations in the amounts claimed.

The representative of the respondent stated that the petitioner has no other alternative but to pay amount as the same is confirmed by Hon'ble Supreme Court. Even otherwise, the amount has been confirmed in the year 2022 itself

and as such the petitioner cannot now claim urgency in the matter. The Commission agrees with the contention of the petitioner that there is likely power disconnection and not facilitating renewal of PPA. Accordingly, it is necessary that the interest of the petitioner has to be protected for the present. The Commission made it clear that the licensee shall not take any coercive steps against the petitioner. In this regard, Commission passes an interim order as an ad-interim measure. Accordingly, the parties are directed to complete the pleadings by the next date of hearing in the original petition as well as interlocutory applications. The matter is adjourned.”

4. In the arguments before the Commission, the counsel for applicant / petitioner stated that the applicant needs interim protection as the respondent is insisting payment of amount due towards wheeling charges for continuing the PPA. Also, the Commission has to hear the original petition and dispose of the same, which may take some time. In view of the same, he sought necessary orders on the interlocutory application now being considered by the Commission.

5. The Commission having considered the submissions of the counsel for applicant / petitioner sought to know as to the stand of the respondent. The representative of the respondent as noted above sought time for filing counter affidavit in the original petition as well as in the interlocutory applications. The Commission is not inclined to grant any time for filing counter affidavit in the interlocutory applications for the present. Accordingly, the Commission directs that the respondent shall not take any coercive steps in the matter until the matter is finally decided by the Commission.

6. The Commission passes ad-interim order as above. The original petition is directed to be listed for hearing on 04.04.2024. The parties are at liberty to file counter affidavit and rejoinder respectively in the original petition and interlocutory applications as the case may be by the next date of hearing.

This Order is corrected and signed on this the 19th day of December, 2023.

Sd/- (BANDARU KRISHNAIAH) MEMBER	Sd/- (M. D. MANOHAR RAJU) MEMBER	Sd/- (T. SRIRANGA RAO) CHAIRMAN
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