



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

**O. P. No. 54 of 2022**  
**&**  
**I. A. No. 44 of 2022**

**Dated 16.12.2023**

**Present**

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

Between:

M/s. Nirjara Solaire Urja Private Limited,  
504 & 505, 5th Floor, Windsor,  
Off CST Road, Kalina, Santacruz (E),  
Mumbai, Maharashtra 400 098.

... Petitioner

**AND**

1. Southern Power Distribution Company of Telangana Limited (TSSPDCL),  
Corporate Office, H. No.6-1-50, Mint Compound,  
Hyderabad 500 063.
2. Transmission Corporation of Telangana Limited (TSTRANSCO),  
A-Block, Room No.451, Vidyut Soudha,  
Khairatabad, Hyderabad 500 063.
3. Telangana State Power Coordination Committee (TSPCC),  
Vidyut Soudha, Hyderabad 500 082. ... Respondents

(respondent No.2 & 3 deleted from the array of the petition by the Commission)

The petition came up for hearing on 18.08.2022, 05.09.2022, 30.09.2022, 31.10.2022, 21.11.2022, 12.01.2023 and 24.04.2023. Sri. Rohit Aditya K. Singh alongwith Sri. P. S. S. Bhargava, counsels for petitioner are present on 18.08.2022, Sri. P. S. S. Bhargava, counsel for petitioner is present on 05.09.2022 and 21.11.2022, Sri. Vishrov Mukerjee alongwith Sri. Rohit Venkat, counsels for petitioner are present

on 30.09.2022, Sri. Rohit Venkat, counsel for petitioner is present on 31.10.2022 and Sri. Vishrov Mukerjee alongwith Sri. P. S. S. Bhargava, counsels for petitioner are present on 12.01.2023 and Sri. Pratyush Singh alongwith Sri. P. S. S. Bhargava, counsels for petitioner are present on 24.04.2023. Sri. Mohammad Bande Ali, Law Attaché for respondent is present on 18.08.2022, 05.09.2022, 30.09.2022, 31.10.2022, 21.11.2022, 12.01.2023 and 24.04.2023. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

### **ORDER**

M/s. Nirjara Solaire Urja Private Limited (petitioner) has filed a petition under section 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) and the provisions of the power purchase agreement (PPA), directions to the respondent for release of payments due along with late payment surcharge to the petitioner and consequently payment of future bills in a timely manner in accordance with PPA in respect of 10 MW solar plant at Ramayanapet substation in Medak District. The averments of the petition are extracted below:

- a. It is stated that the petitioner (NSUPL) owns and operates a 10 MW solar power plant in Medak District, State of Telangana.
- b. It is stated that the respondent No.1, Southern Power Distribution Company of Telangana Limited (TSSPDCL), is a distribution licensee in the state of Telangana, to whom NSUPL supplies power under the PPA dated 20.03.2015.
- c. It is stated that the respondent No.2, Transmission Corporation of Telangana Limited (TSTRANSCO) is the electricity transmission company of the Government of Telangana State (GoTS). All invoices and correspondence re. LPS have been submitted to TSTRANSCO by NSUPL, for TSTRANSCO's needful action. Accordingly, TSTRANSCO is a proper and necessary party for the proper adjudication of the present petition.
- d. It is stated that the respondent No.3, Telangana State Power Coordination Committee (TSPCC) is an entity created to ensure coordination between the distribution companies in the state of Telangana. Further, all invoices are submitted to and processed by TSPCC. Accordingly, TSPCC is a proper and necessary party for the proper adjudication of the present petition.

### Supply of Power to TSNPDCL

- e. It is stated that on 18.07.2014, Government of Telangana directed Transmission Corporation of Telangana Limited (TSTRANSCO) and Telangana State Power Coordination Committee (TSPCC) to issue a tender on behalf of Telangana State Electricity Distribution Companies (TSDISCOMs) for purchase of 500 MW solar power.
- f. It is stated that on 27.08.2014, TSSPDCL issued Request for Selection (RfS) for selection of solar power developers for procuring 500 MW through tariff based competitive bidding.
- g. It is stated that on 23.01.2015, M/s Solairedirect Energy India Private Limited (SEIPL) was selected as the successful bidder and accordingly a letter of intent (LoI) was issued in favour of SEIPL by TSSPDCL for purchase of 10 MW solar power at tariff of Rs.6.89 per kWh for a period of 25 years.
- h. It is stated that thereafter, NSUPL, a joint venture between Edelweiss Infrastructure Yield Plus backed Sekura Energy Pvt. Ltd. and Solairedirect Energy India Pvt. Ltd., a subsidiary of Engie Group, was incorporated for the implementation of the project.
- i. It is stated that on 20.03.2015, NSUPL executed a PPA with TSSPDCL for the supply of 20 MW power from the project. The Project achieved COD on 25.06.2016.

### Invoices raised by NSUPL

- j. It is stated that NSUPL has been supplying power to TSSPDCL consistently since COD. However, TSSPDCL has regularly delayed payment of monthly tariff bills. As on date, payment towards monthly energy bills with effect from January, 2021 is due and payable by TSSPDCL to NSUPL. NSUPL has raised the following invoices for the period from January, 2021 to March, 2022 on TSPCC and TSTRANSCO:

<b>Invoice No.</b>	<b>Invoice Submission Date</b>	<b>Month</b>	<b>Amount (Rs.)</b>
NSUPL/S/2020-21/10	01.02.2021	January 2021	11,074,986
NSUPL/S/2020-21/11	02.03.2021	February 2021	12,525,331
NSUPL/S/2020-21/12	31.03.2021	March 2021	11,463,582
NSUPL.REG.INV.001.00.30042021	30.04.2021	April 2021	12,120,199
NSUPL.REG.INV.002.00.01062021	03.06.2021	May 2021	10,168,262
NSUPL.REG.INV.003.00.01072021	02.07.2021	June 2021	10,456,264
NSUPL.REG.TCS.004.00.04082021	05.08.2021	July 2021	8,373,417

Invoice No.	Invoice Submission Date	Month	Amount (Rs.)
NSUPLREGINV005	30.08.2021	August 2021	10,089,027
NSUPLREGINV006	30.09.2021	September 2021	8,739,965
NSUPLREGINV007	29.10.2021	October 2021	10,616,112
NSUPLREGINV008	02.12.2021	November 2021	9,613,617
NSUPLREGINV009	31.12.2021	December 2021	10,543,767
NSUPLREGINV010	31.01.2022	January 2022	10,242,674
NSUPLREGINV011	05.03.2022	February 2022	12,891,879
NSUPLREGINV012	31.03.2022	March 2022	11,232,767

- k. It is stated that TSSPDCL has delayed payment of monthly tariff bills in the past and has made irregular payments to NSUPL. Accordingly, NSUPL is also entitled to LPS in terms of Clause 5.2 of the PPA for delay in payment of monthly tariff bills for the period from April, 2018 to March, 2022.
- l. It is stated that TSSPDCL has not raised any dispute towards the monthly tariff bills under Article 5.6 of the PPA. In the absence of any dispute, the bills raised by NSUPL are conclusive and binding. However, TSSPDCL has not paid the amount owed and due on its behalf to NSUPL in terms of the PPA.

Correspondences re. LPS

- m. It is stated that TSSPDCL is liable to pay LPS to NSUPL, on account of non-payment of the monthly tariff bills within the due date. On 24.02.2021, NSUPL raised a supplementary invoice (bearing no. NSUPLREGSI001) on the respondents towards the LPS amounting to Rs.30,481,360/- for the past period from April, 2018 to November, 2020 along with supporting calculations. Vide the said letter, NSUPL further stated that:
- Since the commissioning of the project, there has always been significant delay on behalf of the respondents in the disbursement of amount for the monthly energy invoices submitted.
  - As per NSUPL records, initially this delay in payment disbursement was to the tune of average 79 days for the energy invoices submitted during FY 2017-18, which increased to an average of 287 days during FY 2018-19. Such delay sustained in subsequent financial years.
  - Payment since December, 2020 was pending towards the undisputed monthly invoices and the receivable days has increased unprecedently to more than 400 days.
  - Prolonged delay in energy invoice payment poses adverse and serious financial implications on NSUPL which is also against the payment terms of the PPA, the ramifications for NSUPL could be severe vis-à-vis lender repayments, credit ratings, financial viability of the project and investor sentiment.

- (e) In terms of Article 1.19 of the PPA due date for payment by TSSPDCL to NSUPL is 30 days from the meter reading (JMR) date or from the date of presentation of the energy invoice (as the case may be). Further, Article 5.2 of the PPA provides for Late Payment Surcharge (LPS) for delayed payment beyond the due date.

Relevant Provisions of the PPA

- n. It is stated that in terms of the PPA:
- (a) Due date for the invoices shall be 30 days from the meter reading date (means 25<sup>th</sup> day of each calendar month) provided that the bill is received by TSSPDCL within 5 working days from the meter reading date.
- (b) For payments made beyond the due date, TSSPDCL shall be liable to pay interest at the prevailing base prime lending rate of the State Bank of India.
- (c) NSUPL shall furnish a bill to TSSPDCL for the billing month (25<sup>th</sup> of the calendar month and ending on the 24<sup>th</sup> of the next calendar month) on or before the 5<sup>th</sup> working day following the meter reading date.
- (d) TSSPDCL is required to pay the bills raised by NSUPL promptly. In case of dispute, TSSPDCL shall notify NSUPL in respect of any disallowed amount on account of any dispute as to all or any portion of the bill.

Relevant Articles of the PPA are reproduced below:

*“Article-1  
Definitions*

- 1.8 *“Billing Date” means the fifth (5<sup>th</sup>) Working day after the Meter Reading Date.*
- 1.19 *“Due Date of Payment” means the date on which the amount payable by the DISCOM to the solar power developer hereunder for Delivered Energy, if any, supplied during a billing month becomes due for payment, which date shall be thirty (30) days from the meter reading date provided the bill is received by DISCOM within 5 working days from meter reading date, and in the case of any supplemental or other bill or claim, if any, the due date of payment shall be thirty (30) days from the date of the presentation of such bill or claim to the designated officer of the DISCOM. If the last date of payment falls on a statutory holiday, the next working day shall be considered as last date.*
- 1.33 *“Meter Reading Date” means the 25<sup>th</sup> (twenty fifth) day of each calendar month, at 12:00 hours, at the Interconnection Point.*

*“Article-5*

*Billing and Payment*

- 5.1 *For the Delivered Energy, the solar power developer shall furnish a bill to the DISCOM calculated at the tariff provided for in Article 2, in such*

form as, may be mutually agreed upon between the DISCOM and the Solar Power Developer; for the billing month on or before the 5th working day following the Meter Reading Date.

- 5.2 The DISCOM shall be entitled to get a rebate of 1% of the total amount billed in any billing month for payments made before the Due Date of Payment. Any payment made beyond the Due Date of Payment, the DISCOM shall pay simple interest at prevailing base Prime Lending Rate of State Bank of India and in case this rate is reduced, such a reduced rate is applicable from the date of such reduction.
- 5.3 The DISCOM shall pay the bill on a monthly basis as per Clause 5.5, by opening a one month revolving Letter of Credit in favour of the Solar Power Developer, either fully or partly synchronized with the Grid in respect of contracted capacity.
- 5.4 Letter of Credit: Before 30 days prior to the due date of first monthly bill of the generating unit, the DISCOM shall cause to put in place an irrevocable revolving Letter of Credit issued in favour of the Solar Power Developer by a Scheduled Bank (the "Letter of Credit") for one month's billing value. Provided that any increase in the delivered energy on account of commissioning of additional capacity after the first month's billing or in subsequent billing months, the DISCOM shall revise the revolving letter of credit in favour of the Solar Power Developer covering the latest previous month billing upto achieving of COD.
- a. Provided further that the Letter of Credit shall not be invoked for any disputed or objected bill amount.
- b. Provided further that the Letter of Credit can be invoked only when DISCOM fails to pay the current month bill amount by the due date.
- 5.5 Payment of bills raised: The solar developer shall submit bills for the energy delivered during the billing period as per the provision of this Agreement and there upon the DISCOM shall make payment of for the eligible bill amount by the due date of payment.
- 5.6 Billing disputes: The DISCOM shall pay the bills of solar power developer promptly subject to the Clauses 5.1 and 5.2. The DISCOM shall notify the solar power developer in respect of any disallowed amount on account of any dispute as to all or any portion of the bill. The solar power developer shall immediately take up issue with the relevant and complete information with the DISCOM which shall be rectified by the DISCOM, if found satisfactory. Otherwise notify its (DISCOM's) rejection of the disputed claim within reasonable time with reasons, therefore. The dispute may also be resolved by the mutual agreement. If the resolution of any dispute requires the DISCOM to reimburse the solar power developer, the amount to be reimbursed shall bear simple interest at prevailing base Prime Lending Rate of State Bank of India and in case this rate is reduced, such a reduced rate is applicable from the date of reduction from the date of disallowance to the date of reimbursement.

#### Article 11

##### Dispute Resolution

- 11.1 Each party shall designate in writing to the other party a representative who is authorized to resolve any dispute arising under this Agreement in an equitable manner.

- 11.2 *Following the notice by one party to the other setting out the particulars of the dispute, if the designated representatives are unable to resolve a dispute under this Agreement within 15 days, such a dispute shall be referred by such representatives to a senior officer designated by the Solar Power Developer and a senior officer designated by the DISCOM, respectively, who shall attempt to resolve the dispute within a further period of 15 days.*
- 11.3 *The parties hereto agree to use their best efforts to attempt to resolve all disputes arising hereunder promptly, equitably and in good faith and further agree to provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any such dispute.*
- 11.4 *Failure to resolve the dispute in terms of clauses 11.1 to 11.3 or even otherwise, any party may approach the TSERC to resolve the dispute under Section 86 (1) (f) of Electricity Act, 2003.*
- 11.5 *In the event of any conflict of interpretation in terms and conditions between the RfS document and the PPA, the provisions of PPA shall prevail. [...]"*

Jurisdiction of the Commission

- o. It is stated that the issue in the present petition pertains to adjudication of disputes that has arisen between the parties due to non-payment/delayed payment of bills and consequent LPS in terms of the PPA. The project is setup within the state of Telangana and the entire contracted capacity that is 10 MW generated by NSUPL is tied up with TSSPDCL. It is submitted that the Commission has the jurisdiction to adjudicate on the present dispute in terms of section 86(1)(b) read with 86(1)(f) of the Act.

PPA is a statutory document and binding on both parties

- p. It is stated that the PPA executed between TSSPDCL and NSUPL for the supply of power from the project sets out the obligations of the parties with the objective of sale and purchase of power on a long-term basis.
- q. It is stated that the Hon'ble Tribunal in Gujarat Urja Vikas Nigam Limited v. Gujarat Electricity Regulatory Commission reported as 2014 SCC OnLine APTEL 168 has held that a power purchase agreement is a binding contract and rights and liabilities under it cannot be escaped by the parties. Relevant paras reproduced below:

*"123. The rights and liabilities arising from a binding contract cannot be escaped on the basis of some presumption in relation to same facts leading to the execution of the Agreement between the parties."*

- r. It is stated that further, the Hon'ble Tribunal in Essar Power Ltd. v. Uttar Pradesh Electricity Regulatory Commission, Appeal No.82 of 2011 (Judgment dated 16.12.2011) held that power procurement done pursuant to the Act is statutory in nature and have a legal sanctity. Relevant paras reproduced below:
- “135. Ongoing through these decisions cited by both, we are of the view that this proposition projected by the Noida Power is not tenable in view of the fact that the power procurement pursuant to the statutory framework constitutes a statutory contract in terms of the pre approved and finalized PPA governed by the provisions of the Act as well as the guidelines. There are specific clauses which require certain acts have to be performed mandatorily making the contract statutory.”*
- s. It is stated that NSUPL and TSSPDCL have executed the PPA for the sale and purchase of power with the intention to create binding legal obligations. Reliance in this regard is placed on Maharashtra State Electricity Distribution Company Limited v. Maharashtra Electricity Regulatory Commission and Others reported as 2021 SCC OnLine SC 913 (Para 181). Accordingly, in view of the same and the foregoing judgements, it is submitted that PPA is binding on NSUPL and TSSPDCL. Thus, the provisions regarding payment of invoices for power supplied and levy of LPS on delayed payments are also binding on TSSPDCL.
- Amounts payable to NSUPL are conclusive and admitted by TSSPDCL
- t. It is stated that TSSPDCL is obligated to pay the monthly bills by the due date under the PPA. However, despite reminders and requests, monthly bills along with LPS remain unpaid till date.
- u. It is stated that NSUPL has been validly raising bills in accordance with the provisions of the PPA and TSSPDCL is under a legal and contractual obligation to pay tariff in terms of the PPA. It is noteworthy that TSSPDCL has not challenged any of the bills raised by NSUPL nor has it denied its liability to pay the same. Article 5.6 of the PPA states that TSSPDCL shall pay the bills promptly i.e., within the due date of payment (30 days from the date of presentation of the bill). Further, TSSPDCL is under an obligation to notify NSUPL about any dispute as to all or any portion of the monthly bill. Therefore, in spite of having the opportunity to dispute the bills, TSSPDCL has failed to do so. It is submitted that such conduct is indicative that TSSPDCL has accepted

its liability in terms of the bills and that TSSPDCL continues to withhold amounts in contravention of the PPA.

- v. It is stated that NSUPL has held several meetings with TSSPDCL regarding payment of pending bills as well as LPS. It is pertinent to mention that TSSPDCL has never disputed the payments due under the said bills, which is a deemed admission of the amount due on behalf of TSSPDCL. It is stated that the invoices are sent physically and TSSPDCL accepts them and acknowledges the receipt of these invoices by way of a dated stamp. Accordingly, TSSPDCL cannot deny the acceptance and receipt of the said invoices.
- w. It is stated that the Central Electricity Regulatory Commission (CERC) by way of Order dated 28.06.2021 in IA No.64 of 2020 in Petition No.614/MP/2020 titled Adani Power (Mundra) Ltd. v. Gujarat Urja Vikas Nigam Ltd reiterated that parties are bound by the power purchase agreement and till the time the generating company (Adani) is supplying power and raising the bill in accordance with the PPA, the procurer (GUVNL) is bound to make payment. It was further held that if GUVNL purports to dispute a bill, it may be done so as per the terms of the PPA, as under:

“21. *In terms of Article 11.6.2, either party may dispute the amount payable under monthly or supplementary bills. Article 11.6.9 provides that till the time the dispute is resolved, the procurer shall be liable to pay 100% of the undisputed amount plus 85% of the disputed amount within the due date.*

22. *Admittedly, despite deductions being made by GUVNL, the power is being supplied by APMuL as per the provisions of the Bid-01 PPA and SPPA.*

23. *As power is being procured by GUVNL and is being supplied by APMuL as per the provisions of the Bid-01 PPA and SPPA, we are of the view that the parties are bound by terms of the Bid-01 PPA and SPPA and, therefore, raising of bill or any dispute thereon has to be in accordance with the terms and conditions as provided in the Bid-01 PPA and SPPA.*

[...]

25. *We are of the view that whatever the reasons of dispute may be, the provisions of Article 11.6.9 of the Bid-01 PPA are clear in this regard that provides that “Till the time a dispute is resolved as per Article 11.6 or Article 17, the Procurer shall be liable to pay 100% of the undisputed amount plus 85% of the disputed amount within the due date. ... ..*

[...]

27. *GUVNL is directed to pay 100% of the undisputed amount and 85% of the amount as disputed for all the invoices raised since signing of the*

*SPPA till the pendency of the main Petition No.614/MP/2020. Payment must be made within thirty days of this order.”*

- x. It is stated that the bills raised by NSUPL are admitted, conclusive and binding on TSSPDCL in the absence of any dispute raised by it. For the period starting from January, 2021 to March, 2022, the undisputed amount to be paid to NSUPL is Rs.160,151,849/-.
- y. It is stated that further, the Hon'ble Supreme Court in Tamil Nadu Generation and Distribution Corporation Limited v. PPN Power Generating Company Private Limited (PPN Judgement), reported as (2014) 11 SCC 53 has held that unilateral deductions from monthly bills without adjudication are illegal. Relevant paragraphs are reproduced hereunder:

*“71. The real dispute between the parties seems to be on the question whether the appellant was entitled to avail 2.5% rebate on part-payment of the monthly invoices within 5 business days. We have noticed earlier that it was a precondition under Article 10 that the payment of the monthly invoice had to be made in full. In addressing the issue of rebate, Aptel has come to the conclusion that merely because substantial payment had been made in relation to monthly invoices would not entitle the appellant to claim the rebate of 2.5% on the invoice amount. We see no reason to interfere with the findings recorded by Aptel. Under Article 10.2 (b) (i), the payments have to be made in full for every invoice by due date. Under Article 10.2(e), the payment had to be made in full when due even if the entire portion or a portion of the invoice is disputed. Under Articles 10.3 (a) to (c) of the PPA, letter of credit is to be established covering three months estimated billing, one month prior to commercial operation date. Under Article 10.3(d) of the PPA, an escrow account is to be established by the appellant in favour of the power company into which collections from designated circles are to flow in and be available as collateral security. Under Article 10.4, the Government of Tamil Nadu has guaranteed all of the financial obligations of the appellant. Under Article 10.2(e) of the PPA agreement, the right to dispute any invoice by the appellant is limited to one year from due date of such invoice. Thus it would be evident that even if the amount of invoice is disputed, the appellant is obliged to make full payments of the invoice when due and then raise the dispute. Undoubtedly, early payment is encouraged by offering rebate of 2.5% if paid within 5 days of the date of the invoice. Similarly, 1% rebate would be available if the payment of the entire invoice is made within 30 days. The rebate is in the form of incentive and is an exception to the general rule requiring payment in full on due date. Therefore, in our opinion, the appellant had no legal right to claim rebate at the rate of 2.5% not having paid the entire invoice amount within 5 days. Similarly, the appellant would be entitled to 1% rebate if payment is made within 30 days of the invoice. We are of the opinion that the findings of Aptel on this issue do not call for any interference.*

72. *In fact, in our opinion, the appellant has illegally arrogated to itself the right to adjudicate by unilaterally assuming the jurisdiction not available to it. It was required to comply with Article 10 of the PPA which provides for compensation payment and billing. We are also not able to accept the submission of Mr Nariman that invoices could not be paid in full as they were only estimated invoices. It is true that reconciliation is to be done annually but the payment is to be made on monthly basis. This cannot even be disputed by the appellant in the face of its claim for rebate at the rate of 2.5% for having made part-payment of the invoice amount within 5 days. We also do not find any merit in the submission that any prejudice has been caused to the appellant by the delayed submission of annual invoice by PSPCLs. Pursuant to the directions issued by the State Commission, the monthly invoice and annual invoice for the respective years have been redrawn as on 30th September each year. Therefore, the benefit of interest has been given on such annual invoices.”*

- z. It is stated that in terms of the above, TSSPDCL is under an obligation to make payments, within the due date on a monthly basis. In the present case, TSSPDCL has failed to raise any dispute, nor has it made any payments. Accordingly, TSSPDCL is in clear breach of the terms of the PPA. In the PPN Judgement, it has been held that unilateral deductions are not permissible and that such deductions can only be allowed after adjudication. In such a scenario, where even disputed amounts cannot be deducted by parties to a PPA, the actions of TSSPDCL in failing to make payments to NSUPL is clearly in violation of the PPA.
- aa. It is stated that the non-payment of bills by TSSPDCL is illegal and contrary to the terms of the PPA and NSUPL is constrained to approach this Hon'ble Commission seeking recovery of the aforementioned amounts. The said amounts could not have been withheld without raising a substantive dispute within the time and procedure prescribed under the PPA. Accordingly, and TSSPDCL should be directed to pay the same forthwith.  
NSUPL is entitled to LPS under the PPA dated 19.03.2015
- ab. It is stated that under the PPA, TSSPDCL is liable to pay monthly bills within 30 days from the meter reading. However, if the payment of monthly bills is not made within the due date, NSUPL is entitled to claim LPS on the unpaid bills at the prevailing base prime lending rate of the State Bank of India.
- ac. It is stated that TSSPDCL has failed to make payments towards bills generated for the supply of power by NSUPL by the due date and accordingly, TSSPDCL

is liable to pay LPS on the outstanding amounts for the period of April, 2018 to November, 2020 as under:

Meter Reading Date	Month	Invoice Submission Date	Amount (Rs.)	Delay days	LPS (Rs.)
25.04.2018	April 2018	27.04.2018	1,25,76,317	110	5,16,060
25.05.2018	May 2018	29.05.2018	1,17,64,675	169	7,49,007
25.06.2018	June 2018	27.06.2018	1,14,14,663	259	11,15,603
25.07.2018	July 2018	27.07.2018	82,19,770	292	9,06,247
25.08.2018	August 2018	28.08.2018	85,51,179	300	9,69,013
25.09.2018	September 2018	27.09.2019	1,05,22,408	301	11,96,815
25.10.2018	October 2018	30.10.2018	1,10,57,761	312	13,04,150
25.11.2018	November 2018	27.11.2018	1,26,41,083	281	13,43,003
25.12.2018	December 2018	31.12.2018	96,52,890	272	9,92,185
25.01.2019	January 2019	31.01.2019	1,25,48,757	271	12,84,064
25.02.2019	February 2019	27.02.2019	1,20,89,883	276	12,56,984
25.03.2019	March 2019	26.03.2019	1,16,03,449	280	12,17,854
25.04.2019	April 2019	27.04.2019	1,23,09,674	278	12,76,799
25.05.2019	May 2019	28.05.2019	1,22,94,516	282	12,84,726
25.06.2019	June 2019	27.06.2019	1,13,55,409	248	10,32,502
25.07.2019	July 2019	30.07.2019	1,06,87,079	277	10,81,796
25.08.2019	August 2019	29.08.2019	83,06,584	277	8,31,580
25.09.2019	September 2019	27.09.2019	96,49,445	265	9,14,344
25.10.2019	October 2019	31.10.2019	82,90,737	229	6,73,572
25.11.2019	November 2019	27.11.2019	95,35,071	204	6,62,387
25.12.2019	December 2019	31.12.2019	1,01,05,563	168	5,73,442
25.01.2020	January 2020	30.01.2020	1,04,12,857	157	5,68,371
25.02.2020	February 2020	03.03.2020	1,18,68,714	148	6,01,549
25.03.2020	March 2020	08.04.2020	1,15,32,482	210	8,13,987
31.03.2020	April 2020 (Part-1)	08.04.2020	27,71,847	322	298,300
25.04.2020	April 2020 (Part-2)	01.05.2020	93,20,792	298	9,24,022
25.05.2020	May 2020	30.05.2020	1,18,60,446	275	10,82,793
25.06.2020	June 2020	02.07.2020	1,09,08,248	237	8,57,881
25.07.2020	July 2020	05.08.2020	94,22,075	203	6,34,363
25.08.2020	August 2020	31.08.2020	85,34,643	217	6,14,389
25.09.2020	September 2020	29.09.2020	95,45,406	248	7,85,652
25.10.2020	October 2020	31.10.2020	84,18,202	305	8,52,602
25.11.2020	November 2020	28.11.2020	1,22,86,248	310	12,65,315

ad. It is stated that NSUPL is also entitled to LPS towards the monthly bills for the period December, 2020 to March, 2022 (Calculated till 30.04.2022), details of which are as under:

Meter Reading Date	Month	Invoice Submission Date	Amount (Rs.)	Delay days (Calculated till 30.04.2022)	LPS (Rs.)
25.12.2020	December 2020	05.01.2021	10,713,950	395 (calculated till 05.03.2022)	14,12,641
25.01.2021	January 2021	01.02.2021	11,074,986	424	15,70,524
25.02.2021	February 2021	02.03.2021	12,525,331	400	16,76,370
25.03.2021	March 2021	31.03.2021	11,463,582	366	14,04,524
25.04.2021	April 2021	30.04.2021	12,120,199	341	13,84,110

Meter Reading Date	Month	Invoice Submission Date	Amount (Rs.)	Delay days (Calculated till 30.04.2022)	LPS (Rs.)
25.05.2021	May 2021	03.06.2021	10,168,262	302	10,29,195
25.06.2021	June 2021	02.07.2021	10,456,264	272	9,53,926
25.07.2021	July 2021	05.08.2021	8,373,417	239	6,71,927
25.08.2021	August 2021	30.08.2021	10,089,027	219	7,42,303
25.09.2021	September 2021	30.09.2021	8,739,965	188	5,52,485
25.10.2021	October 2021	29.10.2021	10,616,112	158	5,64,631
25.11.2021	November 2021	02.12.2021	9,613,617	120	388,759
25.12.2021	December 2021	31.12.2021	10,543,767	90	319,779
25.01.2022	January 2022	31.01.2022	10,242,674	60	207,098
25.02.2022	February 2022	05.03.2022	12,891,879	27	117,298
25.03.2022	March 2022	31.03.2022	11,232,767	1	3,785

The Commission ought to direct payment of outstanding dues and LPS to NSUPL forthwith.

- ae. It is stated that the Commission ought to direct TSSPDCL for payment of outstanding dues along with LPS. It is stated that such a direction would be consistent with the findings of the Hon'ble Tribunal in its Judgment dated 27.04.2021 in Appeal No.77 of 2018 titled Maharashtra State Electricity Distribution Co. Ltd. vs. MERC & Ors. wherein the Hon'ble Tribunal held as under:

“32. *We agree that the extant practice of decision-making primarily on principles of law concerning claims is not helping in securing timely relief for the parties. It unnecessarily drags them into fresh round of proceedings before the Commission where, as experience shows – ready illustration would be Appeal no. 97 of 2020 decided by us on 05.10.2020 (supra), the party resisting the claim (unjustly) puts forward new arguments so as to distract and dilate, taking it forward by another round of appeal making it a never-ending process. This - and there can be no dispute in such regard - is neither conducive for the financial health of the sector nor in public interest in as much as the burden when it comes will, more often than not, bring along baggage in the form of carrying cost, an element that will unfortunately be met by the consumer at the end of the supply chain.*

[...]

34. *There is a need for all concerned to do a re-think on the propriety of the procedure adopted under the existing legal framework. Speaking only of a dispute involving claim for recovery of money, there is nothing stopping the party approaching the regulatory commission to not only quantify its claim but also support it not only by the principle on which it is founded but also by furnishing all necessary details and evidence so that the correctness is tested in the same adjudicatory process. If detailed averments are made in the petition, the law on pleadings would compel the opposite party to respond not only on justification but also, should*

*the claim be found justified, on the arithmetic involved. It is natural that from such pleadings issues of fact would arise for determination. The Regulatory Commissions would be obliged in law, in such a scenario, to answer all issues, not only on principle of law but also the claim on facts which are established. An effective assistance from the learned counsel for the parties would keep the Commission informed of its duty (reference to the spirit of Rule 2 of Order XIV of Code of Civil Procedure, 1908) to adjudicate on all issues in one go, rather than only on questions of law. Insistence on a comprehensive adjudicatory process before the Commissions will ensure its views on the quantification of the claim (which was rejected on principle of law) are available when denial of relief is challenged by appeal before this tribunal. Needless to add, if the appellant in such situation were to succeed on issue of law, the findings on facts can also be subjected to simultaneous appellate scrutiny by this tribunal so that the decision rendered in appeal is comprehensive and ready for execution subject, of course, to remedy of second statutory appeal before the Supreme Court. There would, in such sequence, hardly be scope for indulgence in multiplicity of proceedings respecting same dispute.*

35. *In present case, we do find that the issue involved in the dispute was of rate at which LPS is payable. There has been no denial at any stage by the appellant that it had committed series of defaults in timely payments. This indisputably rendered it liable to pay LPS. In the name of having the determination of rate, it statedly has not paid LPS even at the rate its pleadings would admit it to be liable for. The initial orders on this appeal would show that it engaged the respondent suppliers in negotiations. It is not explained as to what was the result of, or stalemate in, such negotiations. Be that as it may, the failure of the appellant to account for its liability under LPS clause is something that does not behove its status as a licensee operating in the State. The least that we would expect it to do now is to pay the liability on account of LPS to the contesting respondents forthwith, not later than four weeks from the date of this judgment. We order accordingly”*

af. It is stated that the Judgment dated 27.04.2021 of the Hon'ble Tribunal in Appeal No.77 of 2018 was confirmed by the Hon'ble Supreme Court in terms of Judgment dated 08.10.2021 in Civil Appeal No.1843 of 2021 titled Maharashtra State Electricity Distribution Company Limited vs. Maharashtra Electricity Regulatory Commission & Ors., wherein the Hon'ble Supreme Court further added that steps ought to be taken to finally put an end to litigation.

ag. It is stated that further, the Hon'ble Tribunal in the Judgement dated 04.02.2022 in Appeal No.184 of 2019 titled CLP Wind Farms (India) Pvt. Ltd. vs. M.P. Power Management Company Limited & Ars., observed that the State Commission is under an obligation to not only adjudicate disputes but also to enforce its decisions to maintain judicial discipline among entities in the State.

However, effective adjudication is missing in claims arising out of default in payments. Relevant para reproduced below:

“11. *In our view, the approach of the regulator has been hesitant. A State Commission is empowered under the Electricity Act not only to adjudicate upon such disputes but also to enforce its decision to maintain judicial discipline amongst entities within its State. It has, however, been noticed by this tribunal, almost as a pattern, that in most of such claims arising out of default in payments, effective adjudication of dispute is missing. There is a perceptible reluctance on the part of Commissions to prescribe a definite timeline for payment or to take recourse to jurisdiction under Section 142 read with Section 146 of Electricity Act.*”

ah. It is stated that in Writ Appeal Nos.383 of 2021 and batch titled M/s Walwhan Renewable Energy Limited v. State of Andhra Pradesh, Hon'ble Andhra Pradesh High Court vide its Judgment dated 15.03.2022 has held that inability or financial difficulty of Government or DISCOMs cannot be a ground to avoid payment of dues of generating companies or to reduce tariff. In the aforesaid Writ Appeals, the petitioners therein had prayed for directions to the DISCOMs to make payment of total amounts due to the petitioners therein towards principal amount for the monthly energy bills raised by them in accordance with the Power Purchase Agreements (“PPAs”) along with late payment surcharge levied as per the terms of the PPAs and direct the DISCOMs to abide by the terms of the PPAs executed with the petitioners and make timely payments therein. The operative portion of the Judgment dated 15.03.2022 in W. A. No.383 of 2021 and batch is as follows:

“19. *Whether financial difficulty of a party to the contract could be a ground for allowing the party to wriggle out of the terms of the contract, was dealt with by the Hon'ble Supreme Court in the case of Maharashtra State Electricity Distribution Company Limited vs. MERC and ors.(order dated 08.11.2021 in Civil Appeal No.1843 of 2021) wherein it has been held that inability or financial difficulty of DISCOMs cannot be a ground to avoid payment of dues of generating companies.*

20. *While the law remaining settled in the above-stated terms, it is also to be seen that APSPDCL being distribution licensee within the meaning of Section 14 of the 2003 Act, it recovers actual cost of energy from its consumers. Thus, having recovered the energy charges from the consumers, it is not open for the DISCOM to raise the plea of financial difficulty. In course of hearing of the writ appeals in Group-A, it was never stated by the learned counsel for the DISCOM that they are not recovering charges from the consumers.*

[...]

24. *Thus, the order passed by the learned single Judge fixing the interim rate or interim tariff of Rs.2.44p for solar power and Rs.2.43p for wind*

*power for payment of all pending and future bills does not appear to be proper and in accordance with law. Therefore, we set aside the said part of the order and allow the writ appeals forming part of Group-A.*

[...]

100. *Based on the above discussion, we hold that W. A. Nos.383, 384, 393, 424, 433, 435, 436, 440, 441, 447, 463, 477 of 2019, W.A.Nos.6, 70, 75, 138 of 2020 and W.A.Nos.880, 910, 935 and 936 of 2021 forming part of Group-A, are allowed and the order passed by the learned single Judge fixing the interim rate or interim tariff of Rs.2.44p for solar power and Rs.2.43p for wind power and for payment of all the pending and future bills of all the petitioners, is set aside and instead the DISCOM is directed to make payment of all pending and future bills at the rate mentioned in the PPAs. The payment of arrears/pending bills shall be made within a period of six weeks from today. ... ..”*

ai. It is stated that a recent order dated 30.03.2022, passed by Madhya Pradesh Electricity Regulatory Commission (MPERC), Bhopal, in the matter titled as M/s ReNew Power Private Limited v. The Managing Director, M.P. Power Management Company Limited, wherein ReNew Power Private Limited had filed the instant petition seeking recovery of pending amounts legally due to it in terms of the undisputed bills raised on respondent therein for supply of power. MPERC held as under:

*“(xiv) In view of foregoing observations, the Commission has noted that the outstanding amount of Rs.67.60 crores claimed in the subject petition for the period from June 2020 to April 2021 is undisputed. Therefore, the respondent is directed to make payment of aforesaid admitted outstanding amount to the petitioner in terms of the provisions of the PPAs/tariff order within 30 days. In future bills, if respondent doesn't ensure payment as per provisions of PPAs executed between both the parties, the petitioner may avail an option as provided under Articles 10.4/9.4 of the respective PPAs and Tariff Order.”*

aj. It is stated that in view of the foregoing:

- (a) The monthly bills raised on TSSPDCL by NSUPL for supply of power have not been disputed by TSSPDCL.
- (b) There has been a delay in payment of tariff for the bills raised by NSUPL for the power supplied, purchased and further distributed by TSSPDCL.
- (c) Payment of LPS is mandatory.
- (d) The Commission has the power to issue directions for immediate payment.

Accordingly, it is stated that TSSPDCL be directed to pay Rs.20,36,32,568/- as amounts due towards outstanding bills including LPS to NSUPL.

Payment of LPS is mandatory

ak. It is stated that LPS is a provision for interest to compensate for delayed payments. Further, LPS is also meant to act as a disincentive for delayed payments. The compensatory nature of LPS has been held by various decisions namely:

- (a) Judgment of the Hon'ble Supreme Court in Adoni Ginning Factory vs. Secretary, Andhra Pradesh Electricity Board & Ors., reported as AIR 1979 SC 1511 (Para 4); and
- (b) Judgment of the Hon'ble Kolkata High Court in Tapan Kumar Sinha vs. West Bengal State Electricity Board, reported as 1997 SCC Online Cal 13.

al. It is stated that payment of LPS has been held to be mandatory. In this regard, reliance is placed on the Commission's order dated 08.01.2020 in Petition 22/MP/2019 titled D.B Power Ltd. vs. TANGEDCO Ltd. wherein this Hon'ble Commission held as under:

*"10. In view of the above discussion, it is evident that respondent is under 'default of payment' towards Late Payment Surcharge in terms of the PPA. The extract of Article 8.8 of the PPA in regard to payment of Supplementary bills is as under:*

*[...]*

*11. Accordingly, respondent is directed to pay the remaining amount under Late Payment Surcharge claimed by the petitioner within three months from the date of issue of this order, after reconciliation of bills with the petitioner. However, with regard to petitioner's prayer for directing the respondent to pay the Late Payment Surcharge along with interest @18%, it is held that interest on non-paid Late Payment Surcharge is covered by the provisions of PPA as quoted above which takes care of compounding on monthly basis at the rate of SBI-PLR as quoted in PPA. Further, on repeated default of payment by the respondent, petitioner has the option to regulate the power of the respondent in terms of CERC (Regulation of Power Supply) Regulations, 2010."*

am. It is stated that the Hon'ble Tribunal in its judgement dated 04.02.2021 in Appeal No.56 of 2020 titled D.B. Power Limited vs CERC and Ors. took serious note of non-payment of LPS by the distribution licensee of Tamil Nadu and summoned the concerned official for an explanation on the payment defaults. Dismissing the reason of financial difficulty, the Hon'ble Tribunal held as under:

*"5. We are not impressed with the only plea of financial crunch or the request for TANGEDCO to be given some time to raise loan for paying up to the Appellant. Given the huge arrears that have accumulated and the delay which has occurred causing distress, in turn, to the Appellant as well, we direct the respondent TANGEDCO shall presently pay 50% of the above mentioned liability towards late payment surcharge in two*

*equal parts, first part to be paid within a week of today and the second part to be paid within the week following that.*

*[...]*

*We would expect our order to be scrupulously abided by the respondent TANGEDCO with no provision for coming up for any modification of the timelines. ... ..”*

- an. It is stated that with regard to payment of LPS, the High-Level Empowered Committee (HLEC) headed by the Cabinet Secretary in its report dated 12.11.2018 has acknowledged an existing trend whereby the State DISCOMs are delaying the payment of Monthly Bills and are not paying LPS on delayed payment, despite PPAs providing for the same. Accordingly, HLEC recommended that LPS should be mandatorily paid in the event of delay in payment by the DISCOMs. Recommendation 3.1 of the HLEC report provides as under:

*“3.1 Mandatory payment of Late Payment Surcharge (LPS)*

*It has been observed that due to delay in payment by the DISCOMs, the viability of the generators get hurt severely. As one of the roles of the regulator is to ensure sustainable operation of the power sector, the Committee recommends that Ministry of Power may advise the Regulators to monitor payments by DISCOMs and frame appropriate regulations. It has also been pointed out that frequently the DISCOMs insist that generators should forgo the LPS on the delayed payments, despite its mention in the signed PPA. This again adversely affects the viability of generators and their ability to meet its obligation to service the debt and other operating expenses. Therefore, the Committee recommends that Ministry of Power may engage with the Regulators to ensure that LPS is mandatorily paid in the event of delay in payment by the DISCOMs.”*

- ao. It is stated that thereafter, the central government recommended the constitution of a Group of Ministers (GOM) headed by the Finance Minister, Road Transport Minister, Minister of Commerce, Minister of Oil, Minister of Railways and the Minister of Power to examine the specific recommendations of HLEC which was constituted to address the issue of stressed power projects and forward their comments for consideration by the Cabinet. The GOM thereafter submitted its recommendation to the Cabinet Committee on Economic Affairs (CCEA) on 07.03.2019. The CCEA on 07.03.2019 approved recommendations of the GOM to make payment of LPS as mandatory.

ap. It is stated that on 08.03.2019, Ministry of Power (MoP) vide its office memorandum has approved the recommendations of GOM qua mandatory payment of LPS, as under:

*“3.4 Approval with regards to mandatory payment of Late Payment Surcharge (LPS): Ministry of Power may engage with the Regulators to ensure that LPS is paid in case of delay in payment by DISCOMs as per the provisions of the PPA. Appropriate Regulatory Commission may ensure compliance.”*

aq. It is stated that in view of the above, the conduct of TSSPDCL in non-payment of outstanding dues and consequent LPS on the delayed payments is in violation of the terms of the PPA dated 20.03.2015 and the express directions of the CCEA and the MOP. Therefore, the Commission ought to direct TSSPDCL to pay the applicable LPS to NSUPL at the earliest.

TSSPDCL is in violation of its contractual and statutory duties

#### Payment of Monthly Bills

ar. It is stated that TSSPDCL being a licensee under the Act, 2003 is bound by the provisions thereof. Sections 61 (b) and (c) of the Act states as follows:

*“61. Tariff regulations- The Appropriate Commission shall, subject to the provisions of this Act, specify terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:*

*(a) ... ..*

*(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;*

*(c) factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments; “*

as. It is stated that despite the express mandate of section 61, TSSPDCL has continually defaulted in meeting its legal and statutory obligation to pay bills in accordance with the PPA. The actions of TSSPDCL are a clear case of abuse of power and dereliction of statutory duties.

at. It is stated that in the present case, TSSPDCL is misusing their dominant and coercive position since NSUPL has dedicated 100% of its capacity to TSSPDCL, and it is arbitrarily and without basis withholding payments legally due to NSUPL.

#### Letter of Credit not opened

au. It is stated that the PPA prescribes a mandatory payment security mechanism to be set up by TSSPDCL under Article 5.4 of the PPA. The intent behind the

same is to secure payment of bills and to enable NSUPL to recover amounts due in the event of non-payment. However, it is stated TSSPDCL has not put the payment security mechanism in place and as a consequence, NSUPL is unable to recover accepted and admitted claims. In this connection, NSUPL has requested TSSPDCL and TSTRANSCO from time to time, to set up payment security mechanism in terms of PPA.

- av. It is stated that setting up of payment security mechanism is a material obligation under the PPA. The violation of this material obligation is immensely detrimental to the financial health of NSUPL.
- aw. It is stated that clause 6.2 (2) of the National Tariff Policy, 2016 requires the DISCOMs to ensure availability of adequate and bankable payment security arrangement with regards to payment of agreed Tariff under the PPA. Clause 6.2(2) of the Tariff Policy is reproduced as below:

*“6.2 Tariff structuring and associated issues*

- (2) Power Purchase Agreement should ensure adequate and bankable payment security arrangements to the Generating companies. In case of persisting default on payment of agreed tariff as per PPA in spite of the available payment security mechanisms like letter of credit, escrow of cash flows etc. the generating companies may sell such power to other buyers.”*

- ax. It is stated that the PPA between NSUPL and TSSPDCL has been entered pursuant to the Competitive Bidding Guidelines (CBG). Clause 4.1 of the CBG provides that Tariff for power procured under the CBG shall be paid and settled for each payment period (not exceeding one month). Further, in terms of Clause 4.10, the DISCOMs have been mandated to provide adequate payment security mechanism by way of Letter of Credit and in case of default in payment of monthly Tariff by the DISCOMs the Seller i.e., NSUPL is permitted to take recourse to the payment security mechanism by encashing the letter of credit. Relevant provisions of the CBG are reproduced as below:

*“4. Tariff Structure*

- 4.1 For procurement of electricity under these guidelines, tariff shall be paid and settled for each payment period (not exceeding one month). A multi-part tariff structure featuring separate capacity and energy components of tariff shall ordinarily form the basis for bidding.*

*[...]*

- 4.10 Adequate payment security shall be made available to the bidders. The payment security may constitute:
  - (i) Letter of Credit (LC)**

(ii) *Letter of Credit (LC) backed by credible escrow mechanism. In the case the seller does not realize full payment from the procurer by the due date as per payment cycle, the seller may after 7 days, take recourse to payment security mechanism by encashing the LC to the extent of short fall or take recourse to escrow mechanism. The procurer shall restore the payment security mechanism prior to the next date of payment. Failure to realize payment even through payment security mechanism shall constitute an event of payment default.”*

ay. It is stated that despite the same, TSSPDCL has failed to provide payment security as mandated under the PPA. Further, most DISCOMs have not provided payment security mechanisms envisaged under PPAs, and taking note of the same, the Ministry of Power issued a notification dated 28.06.2019, making the following observations:

- (a) Despite provisions in the PPAs for adequate payment security mechanisms like Letters of Credit, the DISCOMs have failed to provide the same and there are huge outstanding amounts on account of unpaid bills.
- (b) NLDC/RLDC have been directed to despatch power only after it is intimated that a Letter of Credit, for the particular period and quantum of power to be supplied, is in place.
- (c) Once the quantity equivalent to value of Letter of Credit is supplied, the despatch will be stopped.
- (d) Concerned generating company is entitled to encash the Letter of Credit after expiry of grace period.
- (e) In the event the power is not dispatched for any reason given above, the Distribution licensee shall continue to pay the Fixed Charge to the Generating Company.

az. It is stated that on 23.07.2019, Ministry of Power issued notification clarifying that Letter of Credit has to be opened against power purchases made from 01.08.2019 onwards.

ba. It is stated that for renewable energy companies like NSUPL, Ministry of Power issued a clarification on 31.07.2019, indicating that, instead of capacity charges, they will receive full payment of tariff when power is not dispatched as a result of failure to open and maintain a Letter of Credit, as under:

“3. *It is hereby clarified that Fixed Charge as referred to in paragraph 2 above, in cases of Solar, Wind and Small Hydro Power, would constitute the following:*

*“For the purpose of Clause 5 (vi) of the Ministry of Power’s order no. 23/22/2019-R&R dated 28 June 2019, the Fixed Charge in the cases of Solar, wind and Small Hydro Power will be the tariff on which the power is being purchased by the distribution licensee as it reflects the cost of installation, operation and maintenance of the power plant. The energy generated during the non-dispatch period, as stated in Clause 5 (vi) of the order referred above, shall*

*be calculated on the basis of Capacity Utilization Factor as declared by the Generators in Power Purchase Agreements (PPAs), and for projects having more than one year operation, the power not-dispatched shall be calculated on the basis of pro-rated actual energy generated in the last twelve months.”*

- bb. It is stated that in view of the above, TSSPDCL has failed to fulfil its contractual and statutory obligation to open and maintain Letter of Credit in favour of NSUPL. DISCOMs/TSSPDCL have accounted for cost of power procurement from NSUPL in their ARR and are recovering cost of power from consumers in State of Telangana.
- bc. It is stated that as per the Commission's order on tariff for retail sale of electricity during FY 2018-19 dated 27.03.2018 (Tariff Order 2018), as extended by order dated 27.03.2021 in I.A.No.4 of 2021 in O.P.Nos.21 and 22 of 2017, the TSDISCOMs, including TSSPDCL have allowed cost recovery of purchase of power from renewable sources. The Commission has allowed recovery of costs corresponding to 3634.21 MUs (Table 3.25) and total requirement from non-conventional energy sources of Rs.2021.51 Crores as against 4223.47 MUs and Rs.2478.27 Crores claimed by the TSDISCOMs (Table 3.25).
- bd. It is stated that as is evident from above, the TSDISCOMs, including TSSPDCL are recovering from consumers of the state of Telangana, the cost of procurement of power supplied by solar generators like NSUPL. It is submitted that the cost of procurement of power from NSUPL has most likely been accounted for in the tariff being charged by the DISCOMs from its consumers. TSSPDCL is put to strict proof to prove otherwise. It is stated that despite recovering these amounts, payments to NSUPL are being withheld.
- be. It is stated that this not only amounts to unjust enrichment of TSSPDCL but is also contrary to the TSSPDCL's legal obligation to remit such monies to the NSUPL. It is stated that this is not only a fraud on the consumers bearing the burden of this cost, but is also illegal, unfair and arbitrary.
- bf. It is stated that further, TPSNDCL's arbitrariness is evident from its prior conduct wherein, despite the PPA providing for payments of bills by the due date (30 days from issuance of bill by NSUPL), TSSPDCL has not made payments in the stipulated time. On the contrary, past payments have been made at irregular intervals, complete amounts have been withheld and delayed payment surcharge has not been paid. Being a public entity, it is incumbent

upon TSSPDCL to act in a non-arbitrary manner and the same has been upheld by the Hon'ble Supreme Court in:

(a) *Shrilekha Vidyarthi (Kumari) v. State of Uttar Pradesh* reported as (1991) 1 SCC 212:

“24. *The State cannot be attributed the split personality of Dr Jekyll and Mr Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.”*

(b) *UNITECH Ltd. &Ors. v. Telangana State Industrial Infrastructure Corporation & Ors* reported as 2021 SCC OnLine SC 99

“46. ... .. *The State and its instrumentalities are duty bound to act fairly under Article 14 of the Constitution. They cannot, even in the domain of contract, claim an exemption from the public law duty to act fairly [Indsil Hydropower v. State of Kerala, Civil Appeal Nos.5943-5945 of 2019 (Supreme Court of India), para 33; ABL International Ltd. v. Export Credit Guarantee Corporation of India, (2004) 3 SCC 553, para 23; Central Bank of India v. Devi Ispat Ltd., (2010) 11 SCC 186, para 28]. The State and its instrumentalities do not shed either their character or their obligation to act fairly in their dealings with private parties in the realm of contract. Investors who respond to the representations held out by the State while investing in public projects are legitimately entitled to assert that the representations must be fulfilled and to enforce compliance with duties which have been contractually assumed.”*

Conduct of TSSPDCL is contrary to principles for promotion of renewable energy as per the Electricity Act, 2003 and this Hon'ble Commission ought to direct TSSPDCL to pay all future invoices as per the terms of the PPA.

- bg. It is stated that, in terms of sections 61(h) and 86 (1) (e) of the Act, 2003 there is a statutory obligation on this Hon'ble Commission to ensure promotion of generation of electricity from renewable sources. This view has been endorsed by the Hon'ble Tribunal in the following decisions:
- (a) M.P. Biomass Energy Developers Association v. MERC and Anr, 2017 ELR (APTEL) 0377.
  - (b) Judgment dated 28.04.2016 in Appeal No.16 of 2015 titled Green Energy Association vs. Madhya Pradesh Electricity Regulatory Commission and Ors.
- bh. It is stated that further, the National Electricity Policy and the Tariff Policy formulated and notified by the Central Government in exercise of powers under Section 3 of the Act also lays emphasis on promotion of renewable energy. The Hon'ble Supreme Court in Energy Watchdog (Para 18, 57) has held that the Tariff Policy has statutory force and hence is binding on all.
- bi. It is stated that, under the Act, 2003 as well as the National Electricity Policy, there is an express mandate on the State Government to promote renewable energy and to gradually progress to satisfying the energy demands by way of renewable energy sources. This position has also been affirmed by the Hon'ble Supreme Court in the case of Gujarat Urja Vikas Nigam Ltd v. Solar Semiconductor Power Co. (India) Pvt. Ltd. reported as (2017) 16 SCC 498 (Para 31). However, on the contrary, TSSPDCL is denying payments to NSUPL despite being mandated and obligated to ensure promotion of and generation from renewable sources.
- bj. It is stated that further, NSUPL has been incorporated as a joint venture between Edelweiss Infrastructure Yield Plus backed Sekura Energy Pvt. Ltd. and Solairedirect Energy India Pvt. Ltd. for the implementation of the Project and NSUPL has dedicated 100% of its capacity to TSSPDCL. It is submitted that TSSPDCL has consistently failed to make timely payments of bills under the PPA which has impacted NSUPL's Project and its ability to continue to generate power. Given that power generated by NSUPL is supplied by TSSPDCL to consumers in the State of Telangana, it is in public interest that necessary directions be issued to TSSPDCL, directing TSSPDCL to abide by the terms of the PPA. In this regard, reliance is placed on the Judgement dated 02.12.2021 passed by the Hon'ble High Court of Karnataka in Writ Petition No.5703 of 2020 titled ReNew Power Private Limited vs. State of Karnataka &

Ors. (and batch matters). Considering both, public interest and interest of all generating companies, Hon'ble High Court of Karnataka has held as under:

“8.

... ..

*Re: Point No.4*

(i) *The last question that arises for consideration is with regard to the relief's sought for by the petitioners and the orders to be passed/directions to be issued in the petitions. As stated supra, petitioners seek directions to the respondent No.2-ESCOMs to pay the outstanding dues covered under the subject bills/invoices to the petitioners as well as continue to pay all the amounts in respect of the bills/invoices raised by the petitioners in future also as per the PPAs in addition to directions to be issued to open irrevocable and revolving letters of credit in favour of the petitioners towards the payments/dues payable by the ESCOMs. In this context, learned Senior Counsel for the petitioners submitted that in the interest of all power generating companies as well as the public at large, it is essential that general guidelines and suitable/appropriate directions are issued to all the ESCOMs in the State of Karnataka to honour, discharge and fulfil their obligations and duties under the PPAs.*

[...]

(vi) *In view of the aforesaid facts and circumstances, I am of the considered opinion that the petitioners are entitled to the relief's sought for by them in the petitions and consequently, respondent No.2-ESCOMs are to be directed to honour and discharge all their obligations and liabilities under the PPAs including making payment of the outstanding dues to the petitioners and to continue to make timely and prompt payments henceforth in the future also in; so also, the ESCOMs are to be directed to open/renew irrevocable and revolving monthly letters of credit in favour of the petitioners so as to ensure prompt, timely and regular payments being made to the petitioners. Further, general guidelines are also to be issued to all the ESCOMs in the State of Karnataka to honour and discharge all their obligations and liabilities under the PPAs entered into with anyone including making payments, opening/renewing letters of credit etc., in favour of all the power generators.*

Accordingly, Point No.4 is answered in favour of the petitioners by holding that the petitioners are entitled to the relief's sought for in the petitions and necessary directions and guidelines are to be issued to the ESCOMs.”

bk. It is stated that accordingly, the Commission may also pass similar directions in the present petition.

Non-payment of pending bills and LPS is causing financial hardship to NSUPL.

- bl. It is stated that NSUPL is facing financial constraint and hardship on account of non-payment of dues by TSSPDCL. This has impacted NSUPL's operational expenditure and ensuring supply of uninterrupted power under the PPA.
- bm. It is stated that actions of TSSPDCL, are unreasonable and illegal. It is stated that non-payment/delay in payment of outstanding dues and consequent LPS has had a cascading effect on all suppliers/stakeholders such as NSUPL's O & M Contractors, Vendors etc.
- bn. It is stated that the Hon'ble Tribunal in its order dated 05.12.2018 in the case of TANGEDCO v Central Electricity Regulatory Commission (IA No.1428 of 2018 in Appeal No.289 of 2018), directed TANGEDCO to pay 80% of its dues and held as under:
- "4.12 So far as who will suffer irreparable loss or hardship, admittedly, the issues are answered in favour of the second respondent not only by the Commission, but also by this Tribunal in earlier judgments dated 14-8-2018. It is the generators who are facing financial stress on account of various issues including delay in payment of amounts due to them. The Appellant has long term agreement with the second respondent. If the amounts due are not paid, the respondent would suffer irreparable injury and therefore justice requires rejection of stay application and direction in favour of second respondent. Hence, the Appellant is directed to immediately pay 80% of Rs.70.17 crores which is calculated up to July 2018. They shall continue to pay 80% of claims under different Heads in future also as and when bills are raised so far as the above-mentioned claims which are already allowed by the Commission. In case the issues are answered in favour of Appellant on merits in the appeal, the same can be adjusted towards monthly tariff charges to be paid to the second respondent since Appellant has long term PPA with second respondent."*
- bo. It is stated that similarly, even the Commission has passed similar orders directing distribution licensees to make payment of outstanding dues in accordance with the terms of the PPA. In this regard, reliance is placed on Ld. CERC's Order dated 26.11.2018 in the case of GMR Warora Energy Limited v MSEDCL (IA No.77 of 2018 in Petition No.284/MP/2018) (Para 8), wherein Ld. CERC directed MSEDCL to pay the outstanding dues in view of the fact that GMR Warora Energy Limited had been supplying power regularly and was facing financial difficulties in arranging for working capital.
- bp. It is stated that in light of the foregoing submissions and the admitted status of the monthly bills and pending amounts, it is evident that the balance of convenience lies in favour of the petitioner, NSUPL. It is stated that TSSPDCL

has never alleged any contravention of the provisions of the PPA by NSUPL. Further, TSSPDCL has not disputed its liability to make payment towards pending bills along with LPS. It is stated that if the admitted liability is not paid to NSUPL and the reliefs sought herein are not granted, irreparable loss shall be caused to NSUPL. In view of such facts and circumstances, the Commission may be pleased to direct TSSPDCL to pay the pending amounts expeditiously.

#### Summary of Claims

<b>Claim of unpaid bills and LPS as on under PPA dated 29.03.2015</b>	<b>Amount (Rs.)</b>
Total amount due towards unpaid bills for the period January 2021 to March 2022	16,01,51,849
Total LPS for the period April 2018 to November 2020	3,04,81,360
Total LPS for the period December 2020 to March 2022	1,29,99,359
<b>Total</b>	<b>20,36,32,568</b>

2. The petitioner has sought the following prayer in the petition.
  - “(i) to direct the respondent No.1 to pay Rs.16,01,51,849/- towards pending bills due forthwith to NSUPL;
  - (ii) to direct the respondent No.1 to pay Rs.3,04,81,360/- towards LPS on delayed payment of monthly bills for the period April, 2018 to November, 2020;
  - (iii) to direct respondent No.1 to pay Rs.1,29,99,359/- (calculated till 30.04.2022) towards LPS on delayed payment of monthly bills for the period December, 2020 to March, 2022;
  - (iv) to direct respondent No.1 to make payment of such LPS amount, for the period beyond 30.04.2022 till the date of actual payment of the respective monthly bills;
  - (v) to direct respondent No.1 to set up letter of credit as a payment security mechanism under the PPA;
  - (vi) to direct respondent Nos.1 to 3 to pay future bills and accrued LPS in timely manner in accordance with the power purchase agreement dated 20.03.2015.”
  
3. The petitioner has also filed an application for interim orders. The averments of the application are extracted below:
  - a. It is stated that the applicant, NSUPL owns and operates a 10 MW solar power project (project). Pursuant to the Request for Selection dated 27.08.2014 (RfS) NSUPL was selected as a successful bidder to supply power to TSSPDCL at a quoted tariff of Rs.6.89 per kWh, in terms of the PPA dated 20.03.2015 for a period of 25 years.
  - b. It is stated that the project achieved commercial operation date on 25.06.2016 and supply of power in respect of the PPA commenced therefrom. NSUPL has been raising bills in terms of the PPA on a monthly basis. Further, all invoices

are submitted to and processed by TSTRANSCO and TSPCC. However, since the commissioning of the Project, there have been significant delays by TSSPDCL in payment of monthly bill. As on date, TSSPDCL has failed to make payments within the due dates with effect from April, 2018. Accordingly, in terms of the PPA, NSUPL is entitled to the following amounts:

Sl. No.	Particulars	Period	Amount Due (Rs.)	Amount Pending (Rs.)
(a)	Undisputed Monthly Bills	January 2021 to March 2022	160,151,849	160,151,849
(b)	LPS	April 2018 to November 2020	30,481,360	30,481,360
(c)	LPS	December 2020 to March 2022	12,999,359	12,999,359
<b>Total</b>			<b>20,36,32,568</b>	<b>20,36,32,568</b>

- c. It is stated that in terms of Article 1.19 of the PPA due date for payment by TSSPDCL to NSUPL is 30 days from the meter reading (JMR) date or from the date of presentation of the energy invoice (as the case may be). Further, Article 5.2 of the PPA provides for Late Payment Surcharge (LPS) for delayed payment beyond the due date. It is pertinent to state that TSSPDCL has not raised any dispute towards the monthly tariff bills under Article 5.6 of the PPA. In the absence of any dispute, the bills raised by NSUPL are conclusive and binding. However, despite reminders and requests, monthly bills along with LPS remain unpaid till date.
- d. It is stated that the applicant, NSUPL has filed the present application directions to the respondents to pay 80% of the pending amounts to NSUPL within one week and deposit the balance 20% of the pending amounts with the Commission, pursuant to the supplementary invoice dated 24.02.2021 and the monthly bills for the period January, 2020 to March, 2022 raised on the respondents. NSUPL fulfils all necessary criteria for the interim relief viz., prima facie case, balance of convenience and irreparable loss and injury.
- e. It is stated that NSUPL has been supplying power to TSSPDCL consistently since COD. However, TSSPDCL has regularly delayed payment of monthly tariff bills. As on date, payment towards monthly energy bills with effect from January 2021 amount to Rs.160,151,849/- is due and payable by TSSPDCL to NSUPL.

- f. It is stated that TSSPDCL has delayed payment of monthly tariff bills in the past and has made irregular payments to NSUPL. Accordingly, NSUPL is also entitled to LPS in terms of clause 5.2 of the PPA for delay in payment of monthly tariff bills for the period from April, 2018 to March, 2022 amounting to Rs.4,34,80,719/-.
- g. It is stated that NSUPL has been validly raising bills in accordance with the provisions of the PPA and TSSPDCL is under a legal and contractual obligation to pay tariff in terms of the PPA. It is noteworthy that TSSPDCL has not challenged any of the bills raised by NSUPL nor has it denied its liability to pay the same. Article 5.6 of the PPA states that TSSPDCL shall pay the bills promptly that is within the due date of payment (30 days from the date of presentation of the bill). Further, TSSPDCL is under an obligation to notify NSUPL about any dispute as to all or any portion of the monthly bill. Therefore, in spite of having the opportunity to dispute the bills, TSSPDCL has failed to do so. It is submitted that such conduct is indicative that TSSPDCL has accepted its liability in terms of the bills and that TSSPDCL continues to withhold amounts in contravention of the PPA.
- h. It is stated that in the absence of any dispute, the bills raised by NSUPL are conclusive and binding, therefore, there exists a prima facie case in favour of payment of outstanding dues to NSUPL.
- i. It is stated that in light of the aforesaid, there exists a prima facie case in favour of payment of outstanding dues to NSUPL.
- j. It is stated that there is strong balance of convenience in favour of NSUPL. Non-payment by TSSPDCL of the legitimate dues of NSUPL, is not only contrary to the terms of the PPA as well as judgments of the Hon'ble Supreme Court and Hon'ble Appellate Tribunal for Electricity (Tribunal) and the Electricity Act, 2003 (Act, 2003).
- k. It is stated that despite the express mandate of section 61, TSSPDCL has continually defaulted in meeting its legal and statutory obligation to pay bills in accordance with the PPA. The actions of TSSPDCL are a clear case of abuse of power and dereliction of statutory duties. TSSPDCL is misusing their dominant and coercive position since NSUPL has dedicated 100% of its capacity to TSSPDCL, and it is arbitrarily and without basis withholding payments legally due to NSUPL.

- i. It is stated that NSUPL and TSSPDCL have executed the PPA for the sale and purchase of power with the intention to create binding legal obligations. Reliance in this regard is placed on Maharashtra State Electricity Distribution Company Limited v. Maharashtra Electricity Regulatory Commission and Others reported as 2021 SCC OnLine SC 913 (Para 181). Accordingly, in view of the same and the foregoing judgements, it is submitted that PPA is binding on NSUPL and TSSPDCL. Thus, the provisions regarding payment of invoices for power supplied and levy of LPS on delayed payments are also binding on TSSPDCL.
- m. It is stated that the Central Electricity Regulatory Commission (CERC) by way of order dated 28.06.2021 in I.A.No.64 of 2020 in Petition No.614/MP/2020 titled Adani Power (Mundra) Ltd. v. Gujarat Urja Vikas Nigam Ltd (Paras 21 to 27) reiterated that parties are bound by the power purchase agreement and till the time the generating company (Adani) is supplying power and raising the bill in accordance with the PPA, the procurer (GUVNL) is bound to make payment.
- n. It is stated that in Writ Appeal Nos.383 of 2021 and batch titled M/s Walwhan Renewable Energy Limited v. State of Andhra Pradesh (Para 19, 20, 24 and 100), Hon'ble Andhra Pradesh High Court vide its Judgment dated 15.03.2022 has held that inability or financial difficulty of Government or DISCOMs cannot be a ground to avoid payment of dues of generating companies or to reduce tariff. In the aforesaid Writ Appeals, the petitioners therein had prayed for directions to the DISCOMs to make payment of total amounts due to the petitioners therein towards principal amount for the monthly energy bills raised by them in accordance with the Power Purchase Agreements along with late payment surcharge levied as per the terms of the PPAs and direct the DISCOMs to abide by the terms of the PPAs executed with the petitioners and make timely payments therein.
- o. It is stated that LPS is a provision for interest to compensate for delayed payments. Further, LPS is also meant to act as a disincentive for delayed payments. The compensatory nature of LPS has been held by various decisions namely:
- (a) Judgment of the Hon'ble Supreme Court in Adoni Ginning Factory vs. Secretary, Andhra Pradesh Electricity Board & Ors., reported as AIR 1979 SC 1511 (Para 4); and

- (b) Judgment of the Hon'ble Kolkata High Court in Tapan Kumar Sinha vs. West Bengal State Electricity Board, reported as 1997 SCC Online Cal 13.
- p. It is stated that PPA prescribes a mandatory payment security mechanism to be set up by TSSPDCL under Article 5.4 of the PPA. The intent behind the same is to secure payment of bills and to enable NSUPL to recover amounts due in the event of non-payment. However, it is stated TSSPDCL has not put the payment security mechanism in place and as a consequence, NSUPL is unable to recover accepted and admitted claims. It is stated that setting up of payment security mechanism is a material obligation under the PPA. The violation of this material obligation is immensely detrimental to the financial health of NSUPL.
- q. It is stated that in view of the aforesaid, there is a strong balance of convenience in favour of the Applicant/NSUPL for grant of interim relief.
- r. It is stated that grave prejudice and irreparable loss will be caused to NSUPL if the interim payment is not allowed. It is stated that non-payment of the legitimate dues payable to NSUPL by the respondents is arbitrary and contrary to the provisions of the PPA and the Act, 2003.
- s. It is stated that prolonged delay in energy invoice payment poses adverse and serious financial implications on NSUPL which is also against the payment terms of the PPA. The ramifications for NSUPL could be severe vis-à-vis lender repayments, credit ratings, financial viability of the project and investor sentiment.
- t. It is stated that NSUPL is facing financial constraint and hardship on account of non-payment of dues by TSSPDCL. This has impacted NSUPL's operational expenditure and ensuring supply of uninterrupted power under the PPA. It is stated that actions of TSSPDCL, are unreasonable and illegal. That non-payment/delay in payment of outstanding dues and consequent LPS has had a cascading effect on all suppliers/stakeholders such as NSUPL's O & M contractors, vendors etc.
- u. It is stated that further, as regards interim directions for payment of outstanding dues from DISCOMs, the Hon'ble Tribunal and Hon'ble CERC have passed the following orders directing for interim payment to be made forthwith:
- (a) TANGEDCO v Central Electricity Regulatory Commission (I.A.No.1428 of 2018 in Appeal No.289 of 2018) (Para 4.12), wherein Hon'ble Tribunal

directed TANGEDCO to pay 80% of its dues, in view of the financial stress faced by the generating company.

- (b) Order dated 26.11.2018 in the case of GMR Warora Energy Limited v MSEDCL (I.A.No.77 of 2018 in Petition No.284/MP/2018) (Para 8), wherein Ld. CERC directed MSEDCL to pay the outstanding dues in view of the fact that GMR Warora Energy Limited had been supplying power regularly and was facing financial difficulties in arranging for working capital.

4. The petitioner has also filed an application seeking the following prayer:

- “(i) to grant ad-interim relief to NSUPL and direct respondents No.1 to 3 to pay 80% of the pending amounts to NSUPL within one week.  
(ii) to direct respondents No.1 to 3 to deposit the balance 20% of the pending amounts with the Commission.”*

5. The respondents have not filed its counter affidavit to the petition despite giving ample opportunity, but the respondent No.1 has filed an affidavit on 25.10.2022 stated as below:

- a. That on 30.09.2022 during the course of hearing on submission made on behalf of respondents stating that respondent N. 1 has made arrangement for payment of amount due, in 12 to 48 instalments through Power Finance Corporation Limited (PFC) and Rural Electrification Corporation Limited (REC) and that the respondent has passed on required information of all the petitioners including the petitioner herein who filed similar petitions that outstanding dues along with bank details to PFC and REC for arranging payment of agreed amount as per PPA directly to the petitioners.
- b. It is submitted that respondent No.1/TSDISCOMs have entered into loan agreement with REC Limited and PFC limited facilitating financial assistance for clearance of dues.
- c. That the Commission directed this respondent to file specific affidavit indicating the amount that is to be paid by the said corporations on behalf of respondents as per the agreement.
- d. It is submitted that payments are being arranged to the petitioners in 12 equal instalments and out of which 3 instalments have already been paid. Balance 9 instalments will be paid on 5th of every month.
- e. It is submitted that the late payment surcharge is under reconciliation and the same is in process. The details of monthly bills covered in the financial assistance scheme extended by PFC and REC is submitted below:

Name of the petitioner (s)	Amount covered under REC/PFC payments to be made in 12 instalments (Rs)	Installments already paid (Amount in Rs./Date of Payment) 22.09.2022/23.09.2022/06.10.2022		
M/s Nirjara Solaire Urja Private Limited	14,76,42,195	12303516	12303516	12303516”

6. During the course of hearing on 12.01.2023. the petitioner has filed an affidavit as stated below:

- a. It is stated that the captioned petition has been filed by the petitioner seeking recovery of its outstanding monthly tariff payment and Late Payment Surcharge (LPS) due and payable by the TSSPDCL/respondent No.1 for supply of power to TSSPDCL under the PPA dated 20.03.2015.
- b. It is stated that the Commission vide record of proceedings (RoP) for hearing held on 31.10.2022 had directed the parties that is TSSPDCL and NSUPL to reconcile the outstanding principal amount and LPS due and payable by TSSPDCL before the next date of hearing i.e., 21.11.2022. Pursuant thereto on 10.11.2022 the petitioner had written to TSSPDCL seeking appointment for carrying out joint reconciliation as directed by the Commission. However, neither appointment nor the requisite details/information was provided by TSSPDCL and hence reconciliation could not be completed. Subsequently, the Commission vide RoP for hearing dated 21.11.2022 again directed TSSPDCL to submit the requisite information/details by 15.12.2022 with a copy to the petitioner.
- c. It is stated that on 08.12.2022 the petitioner had written to TSSPDCL seeking details of the outstanding dues along with LPS by 15.12.2022. However, till date TSSPDCL has not provided the requisite details to the petitioner.
- d. It is stated that on 06.12.2022, Telangana State Power Coordination Committee (TSPCC) issued a notice to the petitioner under Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 dated 03.06.2022 (LPS Rules 2022) inter-alia stating that:
  - (i) Power purchase dues totalling to Rs.14,76,42,195/- (Rupees Fourteen Crores Seventy-Six Lakhs Forty-Two Thousand One Hundred and Ninety Five only) for the period from March 2021 to April 2022 due by 03.06.2022 are covered under LPS Rules 2022 and are being released by PFC Ltd & REC Ltd from 05.08.2022 onwards.
  - (ii) Dues of Rs.14,76,42,195/- is agreed to be paid in twelve (12) equated monthly instalments.

- (iii) Amount pertaining to four EMIs has already been credited to the designated bank account of the generating company.
  - (iv) The petitioner shall adjust the paid amount against the power purchase dues of TSSPDCL and not to levy any LPS on the said energy bills with effect from 03.06.2022 in terms of the LPS Rules 2022.
- e. It is stated that in the present case there is no dispute with respect to TSSPDCL's liability to pay LPS for the delayed payment of monthly tariff bills during the period in question. In terms of its letter dated 06.12.2022 TSSPDCL has accepted its liability to pay LPS. The only issue which remains to be decided by the Commission is computation of the outstanding principal amount and the corresponding LPS payable by TSSPDCL to the petitioner. Accordingly, the petitioner is filing the present affidavit for placing on record submission and details pertaining to the outstanding LPS payable by TSSPDCL, the applicable rate of LPS and the period for which LPS is payable by TSSPDCL.
- f. It is stated that in terms of the PPA dated 20.03.2015, the respondent/DISCOM is liable to pay monthly bills within 30 days from the meter reading. However, if the payment of monthly bills is not made within the due date, the petitioner is entitled to LPS on the unpaid bills at the prevailing base prime lending rate (BPLR) of the State Bank of India. Clause 5.2 of the PPA which prescribes the rate of LPS is as under:
- "5.2 The DISCOM shall be entitled to get a rebate of 1% of the total amount billed in any billing month for payments made before the Due Date of Payment. Any payment made beyond the Due Date of Payment, the DISCOM shall pay simple interest at prevailing base Prime Lending Rate of State Bank of India and in case this rate is reduced, such a reduced rate is applicable from the date of such reduction."*
- g. It is stated that the PPA executed between the petitioner and TSSPDCL for the supply of power from the project sets out the obligations of the parties with the objective of sale and purchase of power on a long-term basis. The PPAs are thus binding contracts and rights and liabilities under it cannot be escaped by the parties:
- (i) Hon'ble Supreme Court in Maharashtra State Electricity Distribution Company Ltd v. Maharashtra Electricity Regulatory Commission & Ors, (2022) 4 SCC 657 held that when parties to a power purchase agreement have mutually agreed to incorporate BPLR as notified by SBI from time to time, as the rate for levy of LPS, the same by virtue of doctrine of incorporation, gets incorporated in the power purchase agreements and is binding on the parties. In such case no other rate of LPS shall be applicable:

“181. As observed above, the Parties to the Power Purchase Agreements have mutually and consciously agreed to the incorporation of the PLR as notified by SBI from time to time, as the rate for levy of LPS. Therefore, by virtue of the doctrine of incorporation, the PLR as notified by SBI each year gets incorporated in the Power Purchasing Agreements, as binding between the parties. Thus, any other system notified by the Reserve Bank of India by its circulars has no bearing on the terms of the Power Purchase Agreement and cannot be deemed to be incorporated in the Power Purchase Agreement, except in case of mutual agreement between the parties, in the event of absence of SBI PLR, and approved by the MERC.”

- (ii) Gujarat Urja Vikas Nigam Limited v. Gujarat Electricity Regulatory Commission, 2014 SCC OnLine APTEL 168 (Para 123);
- (iii) Judgment dated 16.12.2011 in Appeal No.82 of 2011 titled Essar Power Ltd. v. Uttar Pradesh Electricity Regulatory Commission (Para 135).

h. It is stated that accordingly, in terms of Clause 5.2 of the PPA, for all payment made beyond the due date, TSSPDCL is mandated to pay LPS at prevailing BPLR of State Bank of India.

i. It is stated that TSPCC vide its notice dated 06.12.2022 has stated that the petitioner shall not levy LPS from 03.06.2022 onwards on the amount of Rs.14,76,42,195/- liquidated in terms of Rule 5(1) of the LPS Rules 2022.

j. It is stated that the salient features of LPS Rules 2022 are as under:

- (i) *LPS Rules 2022 have been made applicable to outstanding dues of generating companies [Rule 1(2) and (3)]*
- (ii) *‘Outstanding dues’ has been defined to mean the dues of a generating company, electricity trading licensee, or a transmission licensee, not stayed by a competent court or Tribunal or dispute resolution agency as designated in the PPA which remains unpaid by beneficiary beyond due date and includes amount of instalment not paid after re-determined due date under Rule 5 [Rule 2(i)].*

(iii) *Revised Schedule of Liquidating Arrears:*

- (a) *Total outstanding dues including LPS upto 03.06.2022 shall be rescheduled and due dates re-determined for payment by distribution licensee in maximum number of equated monthly instalments, viz. [Rule 5(1)]:*

<i>Outstanding dues (in Rs.Crores)</i>	<i>Maximum no. of equated monthly instalments (months)</i>
<i>Up to 500</i>	<i>12</i>
<i>501 – 1,000</i>	<i>20</i>
<i>1,001 – 2,000</i>	<i>28</i>
<i>2,001 – 4,000</i>	<i>34</i>
<i>4,001 – 10,000</i>	<i>40</i>
<i>&gt; 10,000</i>	<i>48</i>

- (b) *Distribution licensee shall communicate to generating company, the outstanding dues and number of instalments in which*

*outstanding dues would be paid within 30 days of 03.06.2022 i.e., by 03.07.2022 [Rule 5(2)].*

- (c) *If distribution licensee fails to communicate as per Rule 5(2), rescheduling of dues shall not be applicable. [1st Proviso to Rule 5(2)].*
- (d) *Notwithstanding Rule 3, if distribution licensee agrees to payment of arrears dues as per instalment fixed under the rule and makes timely payment of these instalments then LPS shall not be payable on outstanding dues from 03.06.2022. [Rule 5(3)].*
- (e) *In case of delay in payment of instalment as per Rule 5(1), LPS shall be payable on entire outstanding dues as on 03.06.2022. [Rule 5(4)].*
- (f) *In case of non-rescheduling of arrears as per Rule 5, all payments made by Discom shall first be adjusted against arrears. [Rule 5(5)]*

k. It is stated that in the present case the respondent distribution licensee:

- (a) Has issued the Notice under Rule 5(2) of LPS Rules 2022 for liquidation of arrears only on 06.12.2022 with delay of 155 days. Hence, in terms of 1st Proviso to Rule 5(2), rescheduling of dues/liquidation of arrears shall not be applicable for TSSPDCL.
- (b) Vide its Notice dated 06.12.2022, has only quantified payment of outstanding principal amount of Rs.14,76,42,195/- which does not include the outstanding LPS as on 03.06.2022. Hence, liquidation of arrears as done by TSPCC vide its Notice dated 06.12.2022 is contrary to the mandate of Rule 5(1) of LPS Rules 2022 in terms of which total outstanding dues including LPS upto 03.06.2022 shall be rescheduled and due dates re-determined for payment by distribution licensee in equated monthly instalments.

l. It is stated that in view of the above, the TSSPDCL is not entitled to exemption [envisaged under Rule 5(3) of LPS Rules 2022] from payment of LPS on the outstanding dues with effect from 03.06.2022. Accordingly, in terms of Rule 5(4) and Rule 5(5) of LPS Rules 2022, LPS will continue to accrue on the total outstanding amount even after 03.06.2022.

m. It is stated that it is also highlighted that even though payment against regular monthly invoices of the recent period (other than months considered for EMI disbursement under the LPS Rules of Mar-21 to Apr-22) are being made by the DISCOM, there is significant delay beyond the due date for such payment. The delay in these payments vary from 30 to 40 days beyond the prescribed due date as per PPA. This shows a scenario where delayed payment by DISCOM still continues and LPS towards such delay as well is accruing.

n. It is stated that the total outstanding LPS payable by TSSPDCL to the petitioner is as under:

- (i) LPS payable in terms of the rate prescribed under the PPA i.e., @ BPLR and computed from COD/1st month of invoicing till 31.12.2022 is Rs.5,90,23,652/.
- (ii) LPS payable in terms of the rate prescribed under the LPS Rules 2022 and computed from COD/1st month of invoicing till 06.12.2022 (i.e., date of notice by TSPCC under LPS Rules) is Rs.5,65,17,038/-.

It is stated that the LPS computation provided in the present affidavit are without prejudice.

- o. It is stated that the petitioner is also entitled to interest (on the outstanding amount) up to the date of actual payment by the respondent/DISCOM.
- p. It is stated that in view of the above, respondent/DISCOM may be directed to:
  - (i) Pay the outstanding amount forthwith;
  - (ii) Set up Letter of Credit as a payment security mechanism under the PPA; and
  - (iii) Pay future bills and accrued LPS in a timely manner in accordance with the Power Purchase Agreement dated 20.03.2015.

7. The respondent No.1 has filed a common additional submission in support of its case, which is extracted below:

- a. It is stated that the petitioner, in the subject Petition (Petition filed under the Section 86(1)(f) of the Electricity Act 2003) has prayed the Commission to issue directions to the respondents for payment of outstanding sums to it under the bills raised by it along with Late Payment Surcharge (LPS) for the period April 2016 to March 2022 in terms of the provisions of the PPA subsisting with it.
- b. It is stated that as per the law settled by the Hon'ble Supreme Court in several Electricity matters, the rights and obligations of the Parties shall have to be read together with the statutory provisions and the claims of the petitioner have to be examined in accordance with statutory provisions/law settled also.
- c. It is stated that the Case law, (2016) 3 SCC 468 (APPCC Vs LANCO Kondapalli Power Ltd., Hon'ble Supreme Court's judgment dated 16th October 2015 in Civil Appeal No.6036 of 2012 & batch), wherein it was held, as extracted below:

"... .."

30. ... .. We hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court.  
... .. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect its judicial power under clause (f) of subsection (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions, which may be administrative or regulatory.

... .."

- d. In terms of the aforesaid case law, the principles of Limitation Act, 1963 shall apply to the claims sought to be adjudicated by this Hon'ble Commission under Section 86(1)(f) of the Electricity Act, 2003.
- e. It is further submitted that the Article 55 of the first Schedule of the Limitation Act 1963 has stipulated that in case of breach of Contract, the limitation period for filing a Suit is 3 years from the date of cause of action.
- f. Since the petitioner's claims are pertaining to the period from (September 2017) to (March 2022) and the petition was filed before the Commission on as per list enclosed, therefore the outstanding claims beyond 3 years prior to the date of filing of the Petition ought to be rejected since these were barred by time in terms of the law settled by the Hon'ble Apex Court.
- g. It is also submitted that the Hon'ble Apex Court also held in a catena of the judgments that "exchange of Communications do not extend the period of limitation provided by law".
- h. Further, the Commission is requested to examine clauses on delayed payment surcharge in different PPA's which is conflicting with the present method of interest rates. The attention of Hon'ble Commission is drawn to the fact that from 2016 all the banks have switched over to MCLR i.e. Marginal Cost of Fund Based Lending Rate.

*In certain PPA's clause 5.2 Clause - "The DISCOM shall be entitled to get a rebate of 1% of the total amount billed in any billing month for payments made before the Due Date of Payment. Any payment made beyond the Due Date of Payment, DISCOM shall pay interest at prevailing SBI bank rate and in case this rate is reduced, such reduced rate is applicable from the date of reduction". (Annexure – 2)*

*In certain PPA's 5.2 Clause – "The DISCOM shall be entitled to get a rebate of 1% of the total amount billed in any billing month for payments made before the Due Date of Payment. Any payment made beyond the Due Date of payment, the DISCOM shall pay simple interest at prevailing base prime lending rate of State Bank of India and in case this rate is increased/reduced, such an increased/reduced rate is applicable from the date of such notification."*

*And in certain PPA's 5.3 Clause - "For default in payment beyond 30 days from the date of billing, a surcharge at the rate of nationalized bank rate (Prime Lending Rate) per month or part thereof shall be levied on the billed amount."*

- i. The application of the different rates to different generators is totally ambiguous and contrary to the present system of applying interest rates by the lenders (MCLR).

- j. The “change in law” means any change or amendment to the provisions of electricity law in force, regulations, directions, notifications issued by the competent authorities and Government of India (GoI), Government of Telangana State (GoTS) including the erstwhile Government of Andhra Pradesh (GoAP) from time to time. (Annexure – 3)
- k. The change in method of lending is subservient to the change in law article, therefore the Hon’ble Commission is requested to examine and give standard rate of interest i.e., MCLR to be applied to all the generators. Therefore, there will be uniformity and aligned to the present method of lending.
- l. In light of the above, the Commission is prayed to examine the claims of the petitioner duly taking into account the law settled by the Hon’ble Supreme Court in the interest of justice in respect of time barred debts.
- m. It is requested to examine the application of uniform Delayed Payment Surcharge i.e., MCLR to all the solar generators aligning with the present method of interest application envisaged by RBI w.e.f. 01.04.2016.  
Hence it is prayed that the Hon’ble Commission may be pleased to pass appropriate orders.”
8. The petitioner has also filed reply written submissions rebutting the additional submissions filed by the respondent, which are extracted below:
- a. It is stated that after hearing both the parties, the Commission vide record of proceedings dated 12.01.2023 had reserved order in the matter while observing that:
- (i) Provisions of the PPA as explained by the petitioner would call for payment of LPS.
  - (ii) respondent has failed to comply with Commission’s directions qua providing details of the outstanding amount payable to the petitioner towards monthly bills and LPS.
- b. It is stated that after Orders being reserved in the matter, the respondent has filed Additional Submissions on 01.02.2023 (served on the petitioner vide this Hon’ble Commission Notice, received on 27.03.2022) stating that:
- (i) The petitioner’s claim for LPS beyond 3 years prior to the date of filing of the present Petition (i.e., for the period April 2018 to April 2019) is barred by limitation and ought to be rejected.
  - (ii) LPS shall be allowed at the rate of Marginal Cost of Fund Based Lending Rate (MCLR) as opposed to the Base Prime Lending Rate (“BPLR”) provided under the PPA.

- c. It is stated that during the proceeding of the present petition the respondent never disputed its liability to pay LPS as claimed by the petitioner. As a matter of fact, in the present proceedings, the respondent has admitted its liability to pay LPS to the petitioner on various occasions, viz:
- (i) In affidavit dated 21.10.2022, the respondent categorically stated that LPS payable to the petitioner is under reconciliation.
  - (ii) Vide notice dated 06.12.2022 the respondent invoked the provisions of Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 dated 03.06.2022 (LPS Rules 2022) seeking to make payment of the outstanding dues of the petitioner in 12 monthly installments. In terms of LPS Rules 2022, 'outstanding dues' includes the outstanding principal amount as well as LPS as of 03.06.2022. Thus, the respondent has admitted to its liability to make payment of LPS as claimed by the petitioner in the present Petition.
- d. It is stated that after categorically admitting its liability to pay LPS (as claimed in the Petition) and after the order being reserved in the matter, the respondent has now filed the additional submissions dated 01.02.2023 alleging that petitioner's claim for LPS for the period April 2018 to April 2019 is barred by limitation. It is stated that the ground of limitation being raised at this juncture is nothing but an afterthought to delay the present proceedings, deny the legitimate claims of the petitioner and to renege from their statutory liability, which ought not be permitted by the Commission.
- e. It is stated that it is trite law that payment of LPS for delayed payment of bills is mandatory. In this regard, reliance is placed on the following:
- (i) Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission & Ors., (2022) 4 SCC 657.
  - (ii) Judgment dated 08.06.2020 passed by the Hon'ble Appellate Tribunal for Electricity (Hon'ble Tribunal) in Appeal No.56 of 2020 titled DB Power Limited vs CERC and Ors. (Para 5).
  - (iii) Order dated 08.01.2020 passed by this Ld. Central Electricity Regulatory Commission (Ld. CERC) in Petition No.22/MP/2019 titled DB Power Ltd. vs. TANGEDCO Ltd. (Para 10, 11).
  - (iv) Report dated 12.11.2018 of the High-Level Empowered Committee (HLEC) headed by the Cabinet Secretary (Para 3.1).
  - (v) Office Memorandum dated 08.03.2019 issued by the Ministry of Power (Para 3.4).
  - (vi) Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 (LPS Rules, 2022).
- f. It is stated that any averments set out in the additional submissions dated 01.02.2023 filed by the respondents, which are contrary to or at variance with

the submissions/statements made in the Petition, Affidavit dated 11.01.2023 and the present reply, are denied except to the extent specifically admitted. The submissions made in the appeal and affidavit dated 11.01.2023 should be read along with the present reply and the same are not repeated for the sake of brevity. The petitioner is filing an issue wise reply and seek leave to file a para-wise reply, if required. It is stated that the Limitation Act 1963 does not apply to the claims raised by petitioner in the present Petition.

- g. It is stated that the respondents in additional submissions dated 01.02.2023 have inter alia contended that:
- (i) The petitioner by way of the present petition has sought payment of outstanding sums under monthly tariff bills and LPS for the period April 2016 to March 2022.
  - (ii) In terms of Hon'ble Supreme Court Judgment in APPCC v. LANCO Kondapalli Power Ltd. (2016) 3 SCC 468 (Para 30), principles of Limitation Act, 1963 (Limitation Act) would apply to the claims sought by the petitioner under the present Petition.
  - (iii) Article 55 of First Schedule of the Limitation Act stipulates that in case of breach of Contract, limitation period for filing a suit is 3 years from the date of cause of action.
  - (iv) The petitioner's claim for LPS pertain to the period September 2017 to March 2022. The present petition was filed before this Hon'ble Commission in May 2022. Therefore, claims beyond 3 years prior to the date of filing of the petition ought to be rejected, being barred by limitation.
- h. It is stated that the aforesaid contentions are incorrect and denied. None of the claims raised by the petitioner are time barred.
- i. It is stated that at the outset, the respondents have erroneously stated that petitioner's claims in the petition pertains to the period April 2016 to March 2022. The petitioner claims inter alia pertains to:
- (i) Undisputed Monthly Bills for the period January 2021 to March 2022; and
  - (ii) LPS for the period April 2018 to March 2022.
- j. It is stated that the respondents have relied upon Andhra Pradesh Power Coordination Committee & Ors v. Lanco Kondapalli Power Limited & Ors (2016) 3 SCC 468 ("Lanco Judgment") to contend that:
- (i) The underlying principles of Limitation Act, 1963 applies to Regulatory Commission when it performs its adjudicatory functions in disputes between licensees and generating companies.

(ii) Since the Petition was filed in May 2022, petitioner's claim for LPS for the period prior to May 2019 (i.e., 3 years prior to the date of filing of the Petition) is barred by limitation and ought to be rejected.

k. It is stated that the Hon'ble Supreme Court in Lanco Judgment has restricted the applicability of Limitation Act only to adjudicatory powers and functions of the State Commission under Section 86 (1) (f) of the Act. It may be noted that the Hon'ble Supreme Court held that principles of Limitation Act would not apply to powers and functions of the Regulatory Commission which are administrative and regulatory in nature. The relevant extract of the judgment is reproduced below:

"28. *Coming back to the issues relating to limitation, in view of law noticed above and for the reasons noted in M.P. Steel Corpn., we respectfully concur and hold that by itself the Limitation Act will not be applicable to the Commission under the Electricity Act, 2003 as the Commission is not a court stricto sensu. ... ..*

31. *We have taken the aforesaid view to avoid injustice as well as the possibility of discrimination. We have already extracted a part of para 11 of the judgment in State of Kerala v. V.R. Kalliyankutty [State of Kerala v. V.R. Kalliyankutty, (1999) 3 SCC 657] wherein the Court considered the matter also in the light of Article 14 of the Constitution. In that case the possibility of Article 14 being attracted against the statute was highlighted to justify a particular interpretation as already noted. It was also observed that it would be ironic if in the name of speedy recovery contemplated by the statute, a creditor is enabled to recover claims beyond the period of limitation. In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) also appears to be for speedy resolution so that a vital developmental factor — electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the civil court. Evidently, in the absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence, we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court. But in an appropriate case, a specified period may be excluded on account of the principle underlying the salutary provisions like Section 5 or Section 14 of the Limitation Act. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory."*

- l. It is stated that the ratio of Lanco Judgment with respect to Limitation Act not being applicable to administrative and regulatory functions of Regulatory Commission was reiterated by Hon'ble Appellate Tribunal for Electricity (Tribunal) in Judgment dated 02.11.2020 in Appeal No.10 of 2020 and batch titled Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd. (Udupi Power Judgment):

*"127. ... .. Pertinently, even in Lanco, the Supreme Court qualified the conclusion by observing that "such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory".*

- m. It is stated that the proceedings initiated by the petitioner before the Commission by way of the present petition is inter alia for recovery of its outstanding monthly tariff payment and LPS due and payable by the respondents for supply of power under the PPA. Such determination is based on the principles and methodology provided under the PPA and Electricity Act and falls within the ambit of Regulatory functions of this Hon'ble Commission under Section 86(1)(b) of the Act, 2003.

- n. It is stated that the Tribunal in Udupi Power Judgment (while adjudicating an identical issue that is limitation period for claiming LPS) has categorically held that LPS has statutory character. Hence, determination of liability to pay LPS is regulatory in nature and simply because an appeal can be filed against such determination made by the Regulatory Commission does not make it a judicial consideration of an adjudicatory issue:

*"89. ... .. The provision for LPSC is part of the regulatory regime. Simply because an appeal is provided against a tariff order or determination of liability to pay LPSC it does not make it a judicial consideration of an adjudicatory issue.*

*94. The above discourse reinforces the view that LPSC is part of tariff and, therefore, regulatory in nature.*

*108. Unlike "interest", it would be extremely rare to find it occurring amongst the financial terms of commercial contracts as a levy voluntarily undertaken as a consequence flowing from defaults in financial obligations. Power Purchase Agreements (PPAs) are also commercial contracts, but given the fact that they are governed by the special law in force (Electricity Act, 2003), they also have a statutory flavour, the duties, rights, obligations and responsibilities thereby created being enforceable in light of and guided by law and applicable statutory Regulations.*

113. *In light of the above, we have no hesitation in concluding that LPSC is a levy entirely distinct from the liability towards interest. Unlike “Interest” (under the contract), it (LPSC) is a statutory liability and as held in Bisra Lime Stone Co. Ltd. v. Orissa SEB (supra) and D.C.M. v. Rajasthan State Electricity Board (supra) its nature “in substance” is that of “a super-added charge, a charge over and above the usual or current dues” or “an addition to the stipulated rates of tariff. Given such nature, LPSC is essentially part of tariff and thus merges in dues towards tariff infusing in it a statutory character.”*
- o. It is stated that the Udupi Power Judgment was challenged before the Hon’ble Supreme Court in Civil Appeal No.838 of 2021 titled Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd. Hon’ble Supreme Court vide Order dated 08.02.2022 dismissed the Civil Appeal holding that there exists no substantial question of law which merit consideration. Accordingly, Udupi Judgment holds the field with respect to law pertaining to limitation period for claiming LPS.
- p. It is stated that there is a distinction between “regulatory” and “adjudicatory” powers of the Commission. It is submitted that the Hon’ble Supreme Court in PTC India Ltd. v. Central Electricity Regulatory Commission, (2010) 4 SCC 603 (“PTC Judgment”) has held that tariff determination/fixation by the Electricity Regulatory Commission is legislative in nature (Para 26, 50 & 78). The determination of LPS payable by the DISCOM for delay in payment of monthly tariff bills, by the Commission, is done in exercise of legislative/regulatory function and not adjudicatory functions under Section 86 (1) (f) of the Act, 2003. Mere raising of objections by the respondents does not convert the matter into “adjudicatory”. For example, the Commission invites objections in proceedings for determination of tariff. However, the process of tariff determination itself is legislative/regulatory function of the Commission and not adjudicatory in nature. As such, raising of objections is not a conclusive of a matter being adjudicatory.
- q. It is stated that merely because the matter involves a monetary claim, it does not automatically convert the matter into dispute under Section 86 (1) (f) of the Act, 2003. This position has been upheld by the Hon’ble Tribunal in Judgment dated 24.09.2019 passed in Appeal No.31 & 32 of 2017 titled as M/s Ramnad Renewable Energy Ltd vs. Tamil Nadu Electricity Regulatory Commission & Ors wherein it was held that it would not be appropriate to treat a petition as a

dispute resolution petition because it involves monetary claims between the licensee and the generator.

- r. It is stated that the present petition has been filed by the petitioner for enforcement of its statutory rights that is payment of outstanding tariff and LPS by the respondent DISCOM. As upheld by the Hon'ble Tribunal determination of liability to pay LPS is regulatory in nature.
- s. It is stated that in view of the above, the present petition falls under the regulatory regime of the Commission. Therefore, principles of Limitation Act would not apply, and petitioner's claims are not barred by limitation.
- t. It is stated that without prejudice to the above, petitioner's claim for LPS for the period April 2018 to April 2019 is not barred by limitation since:
  - (i) The Hon'ble Supreme Court vide Order dated 10.01.2022, has excluded the period from 15.03.2020 till 28.02.2022 for the purposes of computing limitation. In case limitation expired during this period, parties would have a period of 90 days from 01.03.2022 i.e., till 30.05.2022 to file the claim.
  - (ii) The petition was filed on 20.05.2022 seeking LPS for the period April 2018 till March 2022. Even assuming 01.04.2018 as the date on which the LPS claim arose, the 3-year period expired on 01.04.2021. Therefore, the petitioner had until 30.05.2022 to file the present Petition.
  - (iii) The limitation period for claiming LPS commences from the date of receipt of complete payment of the monthly tariff Invoices by the respondent DISCOM i.e., the date on which respondent's liability to pay LPS gets crystallised.
  - (iv) The right to sue/cause of action accrued in favour of the petitioner to file the present Petition seeking payment of LPS only after denial/deemed denial by the respondent DISCOM of its liability to pay LPS i.e., subsequent to petitioner's letter/Invoice dated 24.02.2022; and
  - (v) The respondents' failure to pay LPS constitutes a "continuing breach" giving rise to a fresh cause of action every day, till the breach continues. Thus, there exists a continuing cause of action.
- u. It is stated that the Hon'ble Supreme Court, after considering the difficulties posed by the Covid-19 pandemic, has passed an Order dated 10.01.2022 (in continuation of its earlier orders dated 23.03.2020, 08.03.2021, 27.04.2021 and 23.09.2021) in M.A No.21/2022 in M.A No.665/2021 in Suo Motu Writ Petition (Civil) No.3/2020 (Order dated 10.01.2022) holding that:
  - (i) The period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of computing limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

- (ii) The balance period of limitation remaining as on 03.10.2021, shall become available with effect from 01.03.2022.
  - (iii) In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022 i.e., till 30.05.2022.
- v. It is stated that the relevant findings of Hon'ble Supreme Court Order dated 10.01.2022 are reproduced as under:
- “5. *Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A.No.21 of 2022 with the following directions:*
- I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi- judicial proceedings.*
  - II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
  - III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*
  - IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”*
- w. It is stated that the limitation period of 3 years for the purpose of claiming LPS commences from the date of receipt of complete payment by the respondent DISCOM of such monthly tariff Invoices i.e., the date on which respondent's liability to pay LPS towards such Invoice gets crystallised. The details of petitioner's LPS claim qua Invoices for the period April 2018 to April 2019 is tabulated below:

Month	JMR Date	Invoice	Due Date	Date of final payment of Invoice	Total delay (in. days)	LPS (in. Rs)	Limitation Period of 3 years ended on
April 2018	25.04.2018	27.04.2018	25.05.2018	11.09.2018	110	5,16,060	11.09.2021
May 2018	25.05.2018	29.05.2018	25.06.2018	10.12.2018	169	7,49,007	10.12.2021
June 2018	25.06.2018	27.06.2018	25.07.2018	09.04.2019	259	11,15,603	09.04.2022
July 2018	25.07.2018	27.07.2018	24.08.2018	11.06.2019	292	9,06,247	11.06.2022
August 2018	25.08.2018	28.08.2018	24.09.2018	20.07.2019	300	9,69,013	20.07.2022
September 2018	25.09.2018	27.09.2018	25.10.2018	21.08.2019	301	11,96,815	21.08.2022
October 2018	25.10.2018	30.10.2018	24.11.2018	01.10.2019	312	13,04,150	01.10.2022
November 2018	25.11.2018	27.11.2018	25.12.2018	01.10.2019	281	13,43,003	01.10.2022
December 2018	25.12.2018	31.12.2018	30.01.2019	28.10.2019	272	9,92,185	28.10.2022
January 2019	25.01.2019	31.01.2019	02.03.2019	27.11.2019	271	12,84,064	27.11.2022
February 2019	25.02.2019	27.02.2019	27.03.2019	27.12.2019	276	12,56,984	27.12.2022
March 2019	25.03.2019	26.03.2019	24.04.2019	28.01.2020	280	12,17,854	28.01.2023
April 2019	25.04.2019	27.04.2019	25.05.2019	26.02.2020	278	12,76,799	26.02.2023

x. It is stated that in terms of Hon'ble Supreme Court order dated 10.01.2022, petitioner's claim for LPS with respect to Invoices for the period April 2018 to April 2019 is within limitation, since:

- (i) The limitation period for claiming LPS with respect to Invoices for the months of April 2018 and May 2018 expired on 11.09.2021 and 10.12.2021 that is within the exclusion period specified by Hon'ble Supreme Court. Accordingly, in terms of Hon'ble Supreme Court Order dated 10.01.2022, the period of limitation of 90 days for the purpose of claiming LPS for the said invoices is to be calculated from 01.03.2022, in terms of which limitation would have expired on 30.05.2022. Therefore, the petitioner had until 30.05.2022 to file the present Petition. The petitioner filed the Petition on 20.05.2022. Hence, petitioner's claim is within the limitation period.
- (ii) The cause of action for claiming LPS with respect to Invoice for the month of June 2018 commenced on 09.04.2019 and the limitation period of 3 years expired on 09.04.2022. In terms of Hon'ble Supreme Court Order dated 10.01.2022, the period from 15.03.2020 till 28.02.2022 shall be excluded for the purposes of computing limitation and the balance period of limitation remaining as on 03.10.2021, shall become available with effect from 01.03.2022. The petition was filed on 20.05.2022. Hence, petitioner's claim of LPS is within limitation.
- (iii) The limitation period for claiming LPS with respect to Invoices from July 2018 to April 2019 expired during 11.06.2022 to 26.02.2023 i.e., after filing of the present Petition. The Petition was filed on 20.05.2022 (i.e., within 3 years from the date of receipt of final payment of these Invoices). Hence, petitioner's claim is within the limitation period.

y. It is stated that without prejudice to the above, the Hon'ble Tribunal in Udupi Power Judgment held that:

- (i) *There is no specific limitation period specified for claiming LPSC in Schedule to the Limitation Act, 1963. Accordingly, the period of limitation for LPS claims shall be governed by Article 113 of Limitation Act, 1963 (Part X- Suits for which there is no prescribed period), which provides the limitation period as three years computed from the date on which the “right to sue accrues” which is same as the date on which the “cause of action” arises.*
- (ii) *The date on which the DISCOM disputes its liability to pay LPS is the date when right to sue/cause of action effectively accrues in favour of the Generating Company to file Petition before the Regulatory Commission and the period of three years for the purpose of limitation will begin from this date. The relevant extract of the Judgment is as under:*

*“175. The argument that Article 25 occurring in Part-I of the Schedule to Limitation Act, 1963 applies to the present dispute involving specific issue of LPSC itself is wrong. There is no specific limitation period specified for claiming LPSC in Schedule to the Limitation Act, 1963. Accordingly, even in cases where there is no running account, the period of limitation for LPSC claims will have to be governed by Article 113 of Limitation Act, 1963 (Part X- Suits for which there is no prescribed period), which provides the limitation period as three years computed from the date on which the “right to sue accrues” which is same as the date on which the “cause of action” arises.*

*176. The chronology speaks for itself. The respondent Udupi Power has kept the ESCOMs informed since 2011 about the amount of LPSC payable by them at the end of each financial year, due to delay in payment of monthly bills. Even on 01.04.2016 and 01.07.2017, Udupi Power raised consolidated bills for LPSC for the period from 11.11.2010 till 31.03.2016 and from 11.11.2010 till 31.03.2017 respectively. It was only on 05.06.2018 that PCKL/ESCOMs, for the first time, disputed their liability to pay LPSC. It is on that date (05.06.2018) that the right to sue PCKL/ESCOMs effectively accrued in favour of Udupi Power.*

*[...]*

*179. ... .. The acts of the appellants disputing the liability to pay LPSC on 05.06.2018 is what gave rise to the cause of action in favour of the second respondent to approach the CERC by the two petitions which have resulted in the impugned order. Till then, the twin pre-requisites of “a party capable of suing and a party liable to be sued”, postulated by Lord Denning (as quoted earlier), had not been met, it being (borrowing his words) “most unjust that time should run against (the claimant) when there (was) no possibility of bringing an action to enforce it” prior to the said date. In view of these facts, the plea of limitation bar is unacceptable, the claim being within the prescribed period of three years.”*

- z. It is stated that since commencement of supply of power, the respondents have not been making timely payment of the monthly bills raised by the petitioner.

Accordingly, payment of monthly bills for the period April 2018 to April 2019 was made by the respondent with substantial delay in tranches/piecemeal manner. As a matter of fact, complete payment of monthly bill raised by the petitioner for the power supplied during the month of April 2019 was made by the respondent only on 26.02.2020.

- aa. It is stated that in terms of Article 5.2 of the PPA, LPS accrues automatically on delayed payments made by the respondent after expiry of Due Date of the invoice. Accordingly, after the liability of LPS for the period April 2018 to April 2019 was crystallised, the petitioner issued a Supplementary Invoice to the respondent along with a letter on 24.02.2022 seeking payment of LPS against delayed payment of monthly invoices for the period in dispute.
- ab. It is stated that despite several meetings between the parties and continuous follow-ups by the petitioner, the respondent DISCOM did not make payment of the outstanding LPS amount as claimed by the petitioner on 24.02.2022. Thus, considering respondent's failure to make payment of LPS for a period of almost 3 months (from invoice dated 24.02.2022) as its deemed denial of its liability towards LPS, the petitioner was constrained to file the present Petition before this Hon'ble Commission.
- ac. It is stated that in view of the above, the right to sue/cause of action accrued in favour of the petitioner to file the present petition seeking payment of LPS only after respondent's failure to pay LPS pursuant to petitioner's letter/Invoice dated 24.02.2022. Hence, the period of limitation (i.e., three years) for the purpose of petitioner's claim of LPS for the period April 2018 to April 2019 will be covered from petitioner's letter/Invoice dated 24.02.2022, which was not adhered by the respondent. Hence, the present Petition filed on 20.05.2022 is within the period of limitation.
- ad. It is stated that respondent's failure to pay LPS constitutes a "continuing breach" giving rise to fresh cause of action till the breach continues. Thus, the bar of limitation will not apply in the present case since respondent has not paid LPS, till date, for the delayed payment of invoices raised by the petitioner for the power supplied during April 2018 to March 2022. In this regard, reliance is placed on the following judgments of the Hon'ble Supreme Court:
  - (i) Lata Construction v. Rameshchandra Ramniklal Shah (Dr), (2000) 1 SCC 586 (Para 4).

- (ii) CWT v. Suresh Seth, (1981) 2 SCC 790 (Para 11, 17).
- (iii) Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan, 1959 Supp (2) SCR 476 (Para 31).

ae. It is stated that the Hon'ble Tribunal in Udupi Power Judgment while adjudicating an identical issue (i.e., limitation period for claiming LPS) held that:

- (i) The commercial arrangement for twenty-five years under the PPA constitutes a continuing nature of the relationship.
- (ii) A "continuing wrong" constitutes two elements. It is an act which creates (i) a continuing source of injury and (ii) renders the doer of the act responsible and liable for the continuance of the said injury. Every time a breach is committed, the aggrieved party gets a fresh cause of action to invoke appropriate judicial proceedings.
- (iii) If the denial of a benefit occurs every month, then such denial gives rise to a fresh cause of action every month based on a continuing wrong.
- (iv) There is no obligation on the generating company to specifically claim LPS by raising invoices since neither Regulations nor PPA envisage anything but its accrual which is automatic.
- (v) Default of the Distribution Licensee to pay LPS partakes the character of a "continuing breach" as contemplated under Section 22 of the Limitation Act, 1963. Thus, "a fresh period of limitation begins to run at every moment of time during which the breach continues".
- (vi) Since the breach continues on account of continued refusal to discharge liability towards LPS, a fresh cause of action is constituted so long as the breach is recurrent and continues. Relevant extract of Udupi Power Judgment is as under:

*"203. We do not find substance in any of the submissions of the appellants in context of factual matrix at hand. It is a settled position of law that a "continuing wrong" constitutes two elements. It is an act which creates (i) a continuing source of injury and (ii) renders the doer of the act responsible and liable for the continuance of the said injury. Every time a breach is committed, the aggrieved party gets a fresh cause of action to invoke appropriate judicial proceedings.*

*204. The respondent refers to the case of State of M.P. & Ors. vs. Yogendra Srivastava (2010) 12 SCC 538, wherein it was held that if the denial of a benefit occurs every month, then such denial gives rise to a fresh cause of action every month based on a continuing wrong:*

*"18. ... ... Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong."*

*[...]*

*207. We uphold the submission that, in the facts and circumstances presented before us, the elements of "continuing breach" are satisfied. Indisputably, there have been breaches of the contract on account of the non-payment of regular monthly bills and*

*invoices towards infirm power and LPSC by the ESCOMs in terms of the PPA as well as Regulations. Each 'breach' by the ESCOMs resultantly burdened Udupi Power with additional working capital cost till it gets paid by the ESCOMs. As such, the breach creates a continuing source of injury, thereby satisfying the first element of 'continuing breach'. Since ESCOMs have consistently defaulted in paying charges and LPSC, there has been a continuous and recurring disobedience and non-compliance of applicable law. The 'breach' being recurring, the second element of 'continuing breach' is satisfied. There is no obligation on the part of Seller to specifically claim LPSC by raising invoices since neither Regulations nor PPA envisage anything but its accrual which has to be automatic.*

208. *For the foregoing reasons, we uphold the submission of the second respondent that the default of ESCOMs in paying against monthly tariff bills as well as LPSC partakes the character of a "continuing breach" as contemplated under Section 22 of the Limitation Act, 1963. Thus, "a fresh period of limitation begins to run at every moment of the time during which the breach ... continues". Since the breach continues on account of continued refusal to discharge liability towards LPSC, a fresh cause of action is constituted so long as the breach is recurrent and continues."*

- af. It is stated that in view of the above stated position of law, the respondent's liability to pay LPS accrues automatically in terms of Article 5.2 of the PPA, if payment of Monthly Invoices is made after expiry of the Due Date. Therefore, respondent's failure to pay LPS for delayed payment of Invoices raised for the period April 2018 to March 2022 constitutes a "continuing breach" as contemplated under Section 22 of the Limitation Act. Thus, a fresh cause of action arises every day during which the breach continues on account of continued refusal by the respondent DISCOM to discharge liability towards LPS. In the present case since the respondents have not paid LPS till date, there exist a continuing cause of action and petitioner's claim for LPS for the period prior to May 2019 (i.e., April 2018 to April 2019) is not barred by limitation.
- ag. It is stated that notwithstanding the above, the respondent has made payment of monthly Invoices for the period April 2018 to April 2019 with substantial delay and in tranches, thereby attracting levy of LPS. Each instance of payment of such invoices by the respondent amounts to acknowledgment of its debt, giving rise to a fresh cause of action for claiming LPS from the date of payment. It is submitted that the respondent DISCOM cannot be permitted to approbate and

reprobate at the same time. The respondent DISCOM having taken the benefit under the LPS Rules, 2022 are bound to pay the entire LPS accrued as of 03.06.2022.

ah. It is stated that by way of additional submissions dated 01.02.2023, respondents have inter alia contended that:

- (a) The rate of interest for payment of LPS ought to be considered at Marginal Cost of Fund Based Lending Rate (MCLR) as opposed to the base Prime Lending Rate (BPLR) provided under the PPA since:
  - (i) From 01.04.2016 all the banks have switched over to MCLR.
  - (ii) The Hon'ble Commission ought to examine the clause on LPS in different PPAs, which is conflicting with the LPS rate under the PPA dated 20.03.2015.
  - (iii) The application of different rates to different generators is ambiguous and contrary to the present system of applying interest rates by lenders (i.e., at MCLR).
- (b) The change in method of lending is subservient to the Change in Law article, therefore a standard rate of interest that is MCLR is to be applied to all the generators.

ai. It is stated that the aforesaid contentions advanced by respondents is incorrect and denied.

aj. It is stated that in terms of the PPA dated 20.03.2015, the respondent DISCOM is liable to pay monthly bills within 30 days from the meter reading. However, if payment of monthly bills is not made within the due date, the petitioner is entitled to LPS on the unpaid bills at the prevailing base Prime Lending Rate (BPLR) of the State Bank of India. Article 5.2 of the PPA which prescribes the rate of LPS is as under:

*"5.2 The DISCOM shall be entitled to get a rebate of 1% of the total amount billed in any billing month for payments made before the Due Date of Payment. Any payment made beyond the Due Date of Payment, the DISCOM shall pay simple interest at prevailing base Prime Lending Rate of State Bank of India and in case this rate is reduced, such a reduced rate is applicable from the date of such reduction."*

ak. It is stated that it is a settled law that PPA is a binding contract entered into between the Parties and the rights and obligations of the Parties flow from the PPA. respondents' contention that rate of interest for payment of LPS under the PPA ought to be considered at MCLR, is contrary to the provisions of PPA, which mandates payment of LPS at prevailing BPLR. The respondent cannot be permitted to unilaterally amend the terms of the PPA or re-write a contract, which has been executed between the parties after mutual agreement.

al. It is stated that the Hon'ble Supreme Court, while adjudicating a similar issue in Maharashtra State Electricity Distribution Company Ltd v. Maharashtra Electricity Regulatory Commission & Ors, (2022) 4 SCC 657 held that:

- (i) Once a party has breached the contract i.e., failed to make payment of Invoices within the Due Date, it is liable to pay LPS to the other party in terms of the contract; and
- (ii) When parties to a power purchase agreement have mutually agreed to incorporate BPLR as notified by SBI from time to time, as the rate for levy of LPS, the same by virtue of doctrine of incorporation, gets incorporated in the power purchase agreements and is binding on the parties. Therefore, in such case no other rate of LPS shall be applicable. Relevant extract of the Judgment is as under:

*"181. As observed above, the Parties to the Power Purchase Agreements have mutually and consciously agreed to the incorporation of the PLR as notified by SBI from time to time, as the rate for levy of LPS. Therefore, by virtue of the doctrine of incorporation, the PLR as notified by SBI each year gets incorporated in the Power Purchasing Agreements, as binding between the parties. Thus, any other system notified by the Reserve Bank of India by its circulars has no bearing on the terms of the Power Purchase Agreement and cannot be deemed to be incorporated in the Power Purchase Agreement, except in case of mutual agreement between the parties, in the event of absence of SBI PLR, and approved by the MERC.*

[...]

*190. In this case, the appellant admittedly did not pay the bills raised by the power generating companies within time. The power purchase agreements provided for late payment surcharge on the presumption that delayed payment of bills causes prejudice and loss to the seller whose bill remains outstanding. Accordingly, the appellant also imposes delayed payment charges on its consumers, who pay their bills after the stipulated due date for payment of the bills @ 1.5% per month and/or in other 18% p.a. LPS rate of 2% above the SBAR is neither unreasonably exorbitant nor arbitrary. It cannot be said that the LPS agreed upon is not a genuine pre-estimate of damages."*

am. It is stated that the petitioner and respondent DISCOM have executed the PPA for the sale and purchase of power with the intention to create binding legal obligations. Accordingly, the PPA is binding on the petitioner and respondent DISCOM. Thus, the provisions regarding payment of invoices for power supplied and levy of LPS on delayed payments are also binding on respondent DISCOM. respondent DISCOM having executed the PPA and acted upon such PPA over a long period, bind them to the rights and obligations stated in the PPA. respondent DISCOM, cannot be permitted to alter/avoid the provisions of

the PPA on presumptions or assumptions or them having a second thought that it may not be beneficial to them at a subsequent stage. This view has been upheld by the Hon'ble Supreme Court in Judgment dated 13.04.2023 in Civil Appeal Nos.3480-3481 of 2020 titled Gujarat Urja Vikas Nigam Ltd. & Ors. v. ReNew Wind Energy (Rajkot) Pvt. Ltd. & Ors., as under:

“51. ... .. This court held that once agreements were signed and were enforceable in law, such enforceable obligations could not be frustrated. The court also negated the arguments on behalf of the power generator that they had been subjected to coercion or duress. The observations of this court in this regard are pertinent in this regard and are extracted below:

“39. [...] In the present case the order dated 20-6-2001 was fully accepted by the parties without any reservation. After the lapse of more than reasonable time of their own accord they voluntarily signed the PPA which contained a specific stipulation prohibiting sale of generated power by them to third parties. The agreement also had a renewal clause empowering TRANSCO/APTRANSCO /Board to revise the tariff. Thus, the documents executed by these parties and their conduct of acting upon such agreements over a long period, in our view, bind them to the rights and obligations stated in the contract. The parties can hardly deny the facts as they existed at the relevant time, just because it may not be convenient now to adhere to those terms. Conditions of a contract cannot be altered/avoided on presumptions or assumptions or the parties having a second thought that a term of contract may not be beneficial to them at a subsequent stage. They would have to abide by the existing facts, correctness of which, they can hardly deny. Such conduct, would be hit by *allegans contraria non est audiendus*.”

- an. It is stated that the respondents' contention that the change in method of lending is subservient to the Change in Law article, therefore a standard rate of interest that is MCLR is to be applied to all the generators, is untenable as the said contention has been rejected by the Hon'ble Supreme Court in MSEDCL Judgment (Para 161).
- ao. It is stated that accordingly, in terms of Article 5.2 of the PPA, for all payments made beyond the due date, the respondent is mandated to pay LPS at prevailing Base Prime Lending Rate of State Bank of India.
- ap. It is stated that in light of the foregoing submissions and the admitted status of the monthly bills and pending amounts, the respondents ought to be directed to pay the outstanding amounts to the petitioner in terms of the PPA, as under:

<b>Claim of unpaid bills and LPS under PPA dated 20.03.2015</b>	<b>Amount (Rs.)</b>
Total amount due towards unpaid bills for the period December 2021 to February 2023	8,47,68,376
Total LPS for the period April 2018 to November 2020	3,03,44,862
Total LPS for the period December 2020 to March 2023	2,89,54,669
<b>Total</b>	<b>14,40,67,907</b>

9. It is stated that in view of the foregoing, the contentions advanced by the respondents by way of the additional submissions dated 01.02.2023 ought to be rejected and the present Petition filed by the petitioner be allowed.

10. The Commission has heard the parties to the present petition from time to time and it was ultimately reserved for orders on 12.01.2023. Subsequent to reserving the matter for orders by the Commission, the respondent has filed common additional submissions in this matter as well as in other similar matters on 28.01.2023 raising several contentions, which required an examination by the Commission and also the submission of the petitioner on the same for ascertainment and for a detailed hearing. Even though the respondent did not seek reopening the matter, but due to various averments made in the common additional submissions by the respondent, the Commission opined that the matter required for reopening for fresh consideration and accordingly the Commission de-reserved the matter and posted it for hearing on 24.04.2023. The Commission has heard the parties and also considered the material available to it. Record of proceedings on various dates including that of 24.04.2023 are extracted for ready reference.

Record of proceedings dated 18.08.2022:

*“... .. The counsel for petitioner stated that the petition is filed for recovering the amounts due towards power generation supplied to the respondent. Also, the petitioner has filed an interlocutory application for payment of part amount pending disposal of the original petition. The representative of the respondent stated that the matter is coming up for the first time and he needs further time for filing counter affidavit. The Commission upon insistence of the counsel for petitioner for interim directions or disposal of the petition itself on the same lines as has been decided by the Commission in similar cases, had observed that the Commission is inclined to pass orders, however, an opportunity is being given to the respondent for filing counter affidavit. The Commission having noticed that the matter is coming up today for the first time for filing counter affidavit, while making it clear that the licensee shall file the counter affidavit expeditiously and the petitioner is at liberty to file rejoinder, if any upon filing counter affidavit by the respondent, adjourned the matter.”*

Record of proceedings dated 05.09.2022:

*“... .. The counsel for petitioner stated that no counter affidavit is filed so far despite granting time for the said purpose. Again, time is being sought inspite of the fact that the Commission had already considered similar matters and disposed them. The representative of the respondent stated that the Commission may consider granting further time for filing counter affidavit while conceding the fact that sufficient time has already been given. The Commission expressed its distress that the licensee is placing the Commission in a peculiar situation of not disposing of the matter despite it being the similar to earlier batch of cases. However, in view of the request of the representative of the respondent, the matter is adjourned.”*

Record of proceedings dated 30.09.2022:

*“... .. The counsel for petitioner stated that the petition is filed for recovering the amounts due towards power generation supplied to the respondent. Even till today, no counter affidavit is filed, nor any commitment is given as regards payment to be made or not before this Commission. The representative of the respondent stated that the respondent has made arrangements for payment of amount due in 12 to 48 instalments through Power Finance Corporation Limited and Rural Electrification Corporation Limited. The respondent has passed on the information required to them and they will directly arrange payment of the amount as agreed between the respondent and the said corporations. In support of his submissions, he has sought to file the agreement entered by them for payment of the amount due to the petitioner. Therefore, he sought further time to report in the matter. The counsel for petitioner stated that the petitioner is in dark about the same. Unless the respondent comes up with an affidavit to that effect, the petitioner will not be in a secured position. He has required the Commission to direct the respondent to file an affidavit detailing the amounts indicated to the said corporations in respect of each of the cases by filing separate affidavits as the petitioner is entitled to the original amount as also the late payment surcharge.*

*The Commission, considering the submissions made by the parties, has directed the respondent to file specific affidavit in respect of the each of the petitions indicating the amount that is to be paid by the respondent including LPS and to be facilitated by the said corporations under the agreement before the Commission. Such an affidavit shall be filed on or before 22.10.2022 with a copy to the petitioner's counsel. The Commission will consider the matter on the next date of hearing depending the developments in the matter. Accordingly, the matter is adjourned.”*

Record of proceedings dated 31.10.2022:

*“... .. The counsel for petitioner stated that the petition is coming up for counter and hearing. The Commission had earlier required the respondent to file an affidavit indicating the amounts that are being paid through the financial agencies as also the quantum of instalment for the benefit of the petitioner. Though the Commission directed that such an affidavit be filed by 22.10.2022, the respondent has filed the same only the other day when it has been served on the petitioner. Even now, the respondent did not mention the LPS amount*

*that is being considered for reimbursement alongwith the principal amount and no details are mentioned in the affidavit despite the fact that in the earlier round of cases, the Commission had specifically pointed out that LPS amount is liable to be paid to the petitioner and directed accordingly while passing orders in the said batch of cases. According to the PPA, the respondent has to clearly identify and pay the LPS amount the moment the payment of principal amount has been delayed upon submission of invoice for the purpose by the petitioner beyond the stipulated time. While explaining the provisions in the PPA with regard to billing and payment, it is stated that the DISCOM is entitled to rebate only when it has made payment of the original amount within the stipulated time, but, is liable to pay the LPS amount on delaying the payment of original amount beyond the period stipulated in the PPA. Contrary to the said provision, it is noticed that in some cases, the respondent has indicated a lesser amount of the total payment due inspite of the figures mentioned by the petitioner in its petition. This amounted to reduction of the net payment and claiming rebate at a higher percentage than that is accepted in favour of DISCOM for early payment. To rebut the figures of the respondent, the petitioner, on its side, is filing the details of calculations as also the amount due to it to enable the Commission to direct specifically the amounts to be paid by the licensee. The counsel for petitioner made brief written submission highlighting the decisions of the Hon'ble ATE alongwith the background of the case reflecting the events in the matter. He also filed notes on the issues arising in the petition with due reference to the calculations, decisions of the superior fora as also the policy decisions of the government.*

*The representative of the respondent stated that they have filed the affidavit clearly indicating the amount that is proposed to be disbursed through the arrangement made with the financial institutions. The payment is particularly with reference to the principal amount. He has no instructions on the aspect of LPS amount, which is the bone of contention of the petitioner apart from the principal amount. He needs time to seek instructions as also clarification from the management on the aspect of LPS payment to the generators apart from the principal amount committed in the affidavit.*

*The Commission expressed its dismay that the respondent filed affidavit without giving the complete picture of the payments sought to be made and which are not sought to be made. It is also noticed by the Commission that there is no clarity on the aspect of payment of LPS from the respondent. Therefore, it desired that the licensee shall place before the Commission the relevant particulars with regard to the principal amount as also LPS in respect of each of the generators. The Commission also enquired about undertaking any conciliation process before initiating the proceedings. The counsel for petitioner replied emphatically that no steps as provided in the PPA were initiated nor any communication was received from the respondent. Since the statement made by the licensee is insufficient and inadequate, the Commission desired the licensee to place proper information with regard to all the payments due including the subsequent period and the petitioner to corroborate by way of reply as to the details if any are missing in the statement of the licensee. In the circumstances, the matter is adjourned for further hearing including required corroboration of the figures by either side.”*

Record of proceedings dated 21.11.2022:

“... .. The counsel for petitioner stated that the Commission had specifically recorded in the proceedings on the earlier date of hearing that the action required to be taken by the respondent in the matter on payment of amounts duly identifying the same. However, no action including the filing of any information has come forth from the respondent, even after lapse of 21 days. In fact, the Commission had already considered the issues and disposed of several similar cases and what remains to be examined, is with reference to the amounts due on different heads. The representative of the respondent stated that though Commission required furnishing of details of the payments as contemplated in the matter, however, the issue is not merely of the petitioner alone, but there are about 200 generators in whose cases, the exercise has to be undertaken. As such, the matter has been entrusted to a group of auditors, who have been tasked to calculate the amounts in respect of all the generators and it will take a period of one month. This work is entrusted to the auditors as the company staff are not able to concentrate on the matter and they are also busy with several topics including the litigation before the Hon'ble Supreme Court on their service issues. He needs atleast one month to complete the exercise and report the same to the Commission. He also emphasized that the payment of amounts relates to not only one or two months, but the period to be considered is about 5 years in many cases.

The counsel for petitioner vehemently opposed the proposal made by the representative of the respondent and stated that the Commission may consider reserving the matter and give liberty to the respondent to file the required information before it within a period of one week or ten days as may be appropriately considered. The Commission is concerned about the inaction on the part of the licensee and observed that what all the petitioner required them to do is to identify and intimate the amount that will be paid towards principal and late payment surcharge, which has not been done by the licensee. As such, there is no case for granting further time, however, keeping in view the magnanimity of the issue, the Commission is inclined to grant time for filing the required information. At this juncture, the counsel for petitioner stated that the required information may be filed at the earliest within a period of fifteen days and thereafter give time for corroborating the same.

The Commission considering the submissions has fixed the time period for filing the information as sought by it to be filed on or before 15.12.2022 with a copy to the counsel for petitioner and thereafter, the Commission will hear the parties on the next date of hearing. It is made clear that if no information is filed, the Commission will proceed to hear the matter on merits. The time is being granted solely to enable effective resolution of the issue. It is emphasized that the licensee shall atleast furnish information in the case without fail as stipulated above. Keeping in view the above situation, the matter is adjourned.”

Record of proceedings dated 12.01.2023:

“... .. The counsel for petitioner stated that the Commission had specifically recorded in the proceedings on the earlier date of hearing that the action required to be taken by the respondent in the matter on payment of amounts duly identifying the same. However, no action including the filing of any

information has come forth from the respondent even after lapse of the period till the date of hearing. In fact, the Commission had already considered the issues and disposed of several similar cases and what remains to be examined, is with reference to the amounts due on different heads. The issue of LPS is not adverted to anywhere nor any information is coming forth from the respondent. It is appropriate that the respondent places the information both in respect of LPS as well as principal amount, though the principal amount is being reimbursed in terms of the mechanism stated earlier. The petitioner is also in receipt of current payments, but the issue of LPS as also opening of letter of credit has not taken place. Insofar as LPS is concerned, the provisions of PPA require that the amount should be calculated and paid for as and when the amount became due and not paid in time. The counsel highlighted the provisions in the PPA with regard to the same. In support of his case, he has filed an affidavit explaining the provisions of the PPA, the amounts due alongwith calculations and the findings of the Hon'ble Supreme Court and ATE as also filed the same before the Commission for undertaking proper adjudication in the matter.

The representative of the respondent stated that in terms of the directions of the Commission, arrangements have been made for payment of the amount due. The arrangements have already been made for payment of the arrears, but there is no issue of LPS in these cases and no quantification is required to be made. The petitioner is at liberty to approach the respondent for payment of LPS in terms of the PPA. The respondent having considered and made arrangement for payment of arrears as well as current liability is not required to make any other payment. The licensee is ready to comply with the provisions of the PPA, however, the Commission may consider the unreasonable argument with reference to payment of LPS despite the fact that the payment is being effected in a timely manner.

The Commission noticed that the provisions in the PPA as explained by the petitioner would call for payment of LPS as also incentive. However, as the licensee has failed to comply with the directions as also did not place any information on the amounts due, no further time can be considered in the matter. Accordingly, the matter is reserved for orders.

Record of proceedings dated 24.04.2023:

"... .. The counsel for petitioner stated that the main issue in this petition is with regard to payment of arrears due along with interest and late payment surcharge. The details were earlier not forthcoming from the respondent. Moreover, the petitioner has claimed the bills towards power supply and the same have not been honoured as such interest is liable to be paid for the same and further as the amount is paid belatedly, as per the provisions of the PPA the respondent is liable to pay late payment surcharge also. One contention that has been raised by the respondent is that the claims are beyond the period of limitation, which cannot be accepted as it is a continuous process as and when the payment gets delayed, it will attract such consequence as are provided in the PPA. Therefore, the respondent cannot contend that the limitation has expired.

The counsel for petitioner stated that even if the contention is to be accepted insofar as limitation is concerned the claims would survive for the reason that the Hon'ble Supreme Court in suo motu proceedings in W. P. No.3 of 2020 had

extended the limitation period for the issues where the limitation had expired between 15.03.2020 to 28.02.2022 by its orders from time to time. It is also made clear there that the limitation would start running from 01.03.2022 and would be expiring after 90 days. It is also submitted that the Hon'ble Supreme Court had occasion to consider the issue of limitation in the matters of A. P. Power Coordination Committee Vs. Lanco Kondapalli Limited reported in 2016 (3) SCC 468, which is not applicable to the facts of the case. Reliance is also placed by the respondent in the matter of Power Company of Karnataka Limited Vs. Udupi Power Corporation Limited reported in 2020 SCC On Line APTEL 94, which is of no help to the respondent. In fact, the said appeal would support the contents of the petitioner that the respondent is bound to pay the LPS. The Commission has extensive power on regulation in respect of PPAs executed and it can pass such necessary orders.

The counsel for petitioner stated that the respondent has committed itself to release the payments in 9 or 12 instalments upto 36 instalments of the amounts due through an affidavit filed by the respondent. They now cannot contend different aspects contrary to their own submissions that arrangements have been made for liquidating the arrears of amounts due. The Commission may consider the approbating and reprobating of submissions made by the respondent. The Commission may not consider the arguments raised now in the additional submissions in view of the specific affidavit submitted by the respondent earlier.

The representative of the respondent stated that the aspect of LPS cannot be agitated as there was no issue on the same. Therefore, the respondent has specifically adverted to in the additional submissions pointing out the provisions in the PPA alongwith the relevant law. In the contentions raised by the petitioner, the amounts have been quantified only for a specific period and nothing is made out for a period prior to the period mentioned in the PPA or the petition. In any case as the respondent has made arrangement for payment of the principal amount, payment of interest or late payment surcharge would not arise. One specific issue that requires consideration is that of change of applicability of interest rate which was mentioned as prime lending rate, which has been changed by the banking regulator for consideration of interest as marginal cost lending rate (MCLR), which needs to be examined, as it stands contrary to the provisions of PPA. Therefore, the Commission may consider refusing the said prayer.

The counsel for petitioner stated that the amounts due is a continuous exercise and every month when the amount is becoming due it will attract not only interest but also late payment surcharge unless the respondent has disputed the bill and communicated the same before the due date. Inasmuch as, the Government of India had notified the late payment surcharge rules. Such rules have been held to be part of the agreement on and from the date of their notification. Therefore, the respondent could not have raised the contention with regard to applicability of the late payment surcharge and as also question of limitation attracting it. The counsel for petitioner referred to several provisions and judgements rendered by the Hon'ble ATE as also the Hon'ble Supreme Court on the question of limitation, continuity of liability and treatment of modifications made by the government policies as change in law. The contention that the calculation of interest based on prime lending rate has been

*changed to MCLR do constitute a change in law and the licensee should have taken steps to amend the agreement.*

*The counsel for petitioner stated that the Commission may not consider any of the submissions made by the licensee as the law is settled against them. Also, the Commission had already disposed of a batch of cases on the similar subject. Therefore, there is nothing further to be considered for deviation from the earlier decision of the Commission.*

*The Commission felt it appropriate that the parties to the petition may consider undertaking conciliation of the matter towards LPS amount amicably. In view of the submissions made by the parties, the matter is reserved for orders.”*

11. The Commission considers that the Transmission Corporation of Telangana Limited (TSTRANSCO, the other Respondent) is the STU and is concerned with only transmission lines business. It is neither authorized nor has authority to procure power nor to do retail sale of such procured power. Therefore, it is unnecessary to have it as party to this proceeding. Also, the Telangana State Power Coordination Committee (TSPCC, another respondent) is not a statutory body and is not recognized under the Act, 2003. The said Committee has been created by G.O. referred by the petitioner only to co-ordinate the power procurement and allied activities to have a single window to favour generators. Therefore, the TSPCC cannot be a party to the proceedings, even though it is created by the Government. It is also relevant that just because correspondence is being done by TSPCC, it has no authority to contest or defend for the lapses or omissions committed by TSDISCOM. Thus, the Commission consider to drop both the respondents from the array of the respondents. Thus, the distribution licensee is sole respondent in this case.

12. Though the Commission was considerate and magnanimous in granting time for filing the counter affidavit, the respondent has failed to respond to the petition through a proper counter affidavit. However, it had filed an affidavit setting out certain details as to the action taken by it towards arranging payment for the amounts due in the petition. Further, the Commission has specifically posted the matter for hearing and after hearing the parties on the basis of additional submissions made by the respondent, required the parties to undertake conciliation of the LPS amount. However, the respondent did not initiate any action in the matter and no information has been placed by the parties in this regard. The Commission has no other option but to decide the matter on the prayer of the petitioner in this context.

13. From the pleadings it is noticed that the petitioner is having a long-term Power Purchase Agreement with the respondent vide NCE Solar PPA No.211 dated 20.03.2015 (PPA) for setting up of the Solar Power Project of 10 MW capacity at Ramayanapet, Medak District connected to at 33 kV side of 132/33 kV Ramayanapet substation, for sale of Solar Power to the respondent for a period of 25 years from the Date of Commercial Operation. The terms & conditions of the PPA stipulates that –

- 5.1 *For the Delivered Energy, the Solar Power Developer (petitioner) shall furnish a bill to the DISCOM (respondent) for the billing month on or before the 5<sup>th</sup> working day following the Meter Reading Date;*
- 5.2 *Any payment made beyond the Due Date of Payment, the respondent shall pay simple interest at prevailing base Prime Lending Rate of State Bank of India; [Late Payment Surcharge (LPS)]*
- 5.3 *The respondent shall pay the bill on a monthly basis by opening a one month revolving Letter of Credit in favour of the petitioner.;*
- 5.4 *The respondent shall cause to put in place an irrevocable revolving Letter of Credit issued in favour of the petitioner by a Scheduled Bank for one month's billing value;*
- 5.5 *The respondent shall make payment for the eligible bill amount by the due date of payment;*
- 5.6 *The respondent shall pay the bills of petitioner promptly;*
- .....
- 11.4 *... .. any party may approach TSERC to resolve the dispute under Section 86(1)(f) of the Electricity Act, 2003;*

14. Prima facie, the prayer in this petition is with regard to action of the respondent in not making the payment in accordance with the provisions of the PPA. The petitioner has identified the outstanding amount due against monthly delivered energy bills for the period upto March 2023, which includes LPS amount, the details which are shown in the averments of the reply, to additional submissions filed by the respondent, as Rs.14,40,67,907/-. The petitioner further contended that the respondent is yet to open the Letter of Credit as provided in clause 5.4 of Article 5 of the PPA, as such, it is unable to recover the outstanding due or any part thereof. Therefore, in the prayer it is sought not only for release of payments due along with interest thereon for late payment (late payment surcharge, LPS) but also for directions to the respondent for opening of irrevocable revolving Letter of Credit in favour of petitioner and for making all future payments in a timely manner, though there is no mention of the amount for subsequent period.

15. The Commission is of the view that in the absence of any contest made by the respondent as to the veracity of the claims made by the petitioner, there is no dispute

on the amounts payable by the respondent to the petitioners. However, as per the provisions of the PPA, when the petitioner has complied with its part to the PPA by delivering the electricity energy to the respondent, the respondent is bound to make payment without any demur. Further, in terms of the PPA such occurrence and continuation of event of non-payment of dues by the respondent to the petitioner and when the petitioner is unable to recover the outstanding amount, shall constitute "*DISCOM (respondent) Event of Default*". Further, as the PPA provides for payment of interest, it is bounden duty of respondent to pay the interest in terms of the PPA. Since the respondent did not pay the amounts towards delivered energy bills raised by the petitioner, it is liable to pay interest as claimed by the petitioner to that extent as also further LPS for the amounts which are not paid till date.

16. The petitioner sought to rely on the minutes of GoM as also the directions thereof by the GoI with regard to payments of due as well as LPS. Inasmuch as the PPA as also the subsequent rules notified in the year 2022 on the subject matter are binding on the respondent and as such, it cannot escape from the liability.

17. The petitioner sought to rely on Judgments of the Hon'ble Supreme Court, Hon'ble APTEL and Hon'ble High Courts referred in the pleadings of the petitioner with regard to payment of amounts due by the respondent. Without reiterating the relevant observations of those Judgements, which are already extracted in the pleadings, the Commission is in complete agreement with the submission of the petitioner. Moreover, the decisions referred thereof are binding on this Commission. Therefore, it cannot extricate itself from the findings thereof and is accordingly, inclined to accept the submissions of the petitioner. Further the references made to orders of the other Commissions are of persuasive value and are not binding on this Commission.

18. The petitioner also relied on the Judgments of the Hon'ble Supreme Court in the matter of unjust enrichment and public authority must act fairly. Even in the case of these judgments as referred by the petitioner, since the respondent did not comply with the provisions of the PPA and did not make timely payment of the invoices, the natural understanding would be that the respondent has unjustly enriched itself by withholding the amounts due to the petitioner and its actions are not in consonance with the principles of public authority must act in fair manner. From the pleadings, there appears to be a certain extent force in the contention of the petitioner insofar as the

above two aspects are concerned, but the Commission views that such application is subject to reasonable benefit of regulatory oversight in favour of the petitioner.

19. The respondent relied on the Judgment of the Hon'ble Supreme Court in respect of the observations made in the matter of M/s A.P.Power Coordination Committee on the aspect of limitation. Contra argument is also placed by the petitioner on the same aspect by placing reliance on the judgment of the Hon'ble APTEL in the matter of Power Company of Karnataka Vs. Udupi Power Corporation Limited. While it is not denied that the observations of the Hon'ble Supreme Court qua limitation are binding on the Commission as the petition is filed under Section 86(1)(f) of the Act, 2003, at the same time, the decision of the Hon'ble APTEL places importance on the aspect of 'continuous breach'. This case squarely falls within the aspect of continuous breach. Therefore, the contention of the respondent regarding limitation aspect or delayed filing of the petition cannot be accepted.

20. The respondent contended that since the method of calculation of interest is proposed to be changed, it amounts to 'Change in Law'. The contention of the respondent appears to be based on misunderstanding. The method of calculation of interest cannot be deviated upon as provided in the PPA. At the same time, if the competent authority under the financial laws had changed the method of calculation of interest, nothing precluded respondent to initiate appropriate proceedings before the Commission for amendment of the provisions in the PPAs in line with such modifications in financial laws. Having not done so, it cannot now take defence that the same is change in law. For this reason, the contention of the respondent fails and is rejected.

21. The Commission had occasion to consider a judgment rendered by the Hon'ble APTEL in the matter of Bangalore Electricity Supply Company Ltd. Vs. Devangere Sugar Company Limited in Appeal No.176 of 2009. The observations made by the Hon'ble APTEL are extracted below:

- “23. *Besides this, there is one more breach. Under Clause 6.6, the Corporation (Appellant) shall establish and maintain transferable, sustainable and irrevocable revolving Letter of Credit (LOC) in favour of the company (Respondent)*
25. *In the instant case, admittedly, neither the amount due were paid in time, nor the penal interest was paid as per clause 6.3 of the contract, nor the LOC was established within the stipulated time as per Clause 6.6 of the*

*Contract.*

26. *In every Power Purchase Agreement (PPA), the opening of a LOC is a vital part of the contract. It is fundamental financial obligation cast upon the Appellant by the contract to honour the same. In other words, to open an LOC forms an integral part of the contract. It is, therefore, clear that there is a failure on the part of the Appellant to honour its obligation under the contract. ... ..”*

22. Thus, it is seen that the present case also provides for Letter of Credit and the same is not complied with according to the pleadings. In the absence of any statement from the respondent as to the reasons or compliance of providing Letter of Credit in terms of the PPA, the Commission has no other option to infer that the respondent did not provide Letter of Credit to the petitioner, which it is required to comply with. The Commission opines that the respondent complying with the said provision in order to safeguard the interest of the petitioner, is appropriate in the interest of justice.

23. The Commission also considers it appropriate to observe that the respondent shall comply with the terms of the PPA without any demur and also honour all the payments in future towards the invoices to be raised by the petitioner, though it had made arrangement for payment of the earlier invoices and LPS as the case may be.

24. In view of the above, the petition is allowed and the respondent shall comply with this order within a period of four (4) weeks from the date of receipt of the order. While complying with the order, the respondent would ensure that the amounts are settled completely and shall endeavour to make payment of the eligible amount of the bills raised by the petitioner promptly in accordance with the provisions of the PPA.

25. The original petition is disposed in terms of the observations made supra, without any costs. Since the original petition is itself being disposed of, the Interlocutory Applications would not survive and accordingly stand closed.

**This Order is corrected and signed on this the 16<sup>th</sup> day of December, 2023.**

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

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