

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 153/MP/2018  
Petition No. 154/MP/2018**

**Coram  
Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member**

**Date of Order: 4<sup>th</sup> February 2021**

**In the matter of:**

Petition under Section 79 of the Act to adjudicate the dispute between the Petitioner and the Respondent, Electricity Department of Dadra and Nagar Haveli, as per the Bulk Power Transmission Agreement dated 6.9.2011.

**And**

**In the matter of:**

Maharashtra State Electricity Transmission Company Limited  
Prakashganga, Plot No. C-19, E-Block,  
Bandra Kurla Complex, Bandra (E),  
Mumbai-400 051

**....Petitioner**

**Versus**

The Executive Engineer  
Electricity Department of Dadra & Nagar Haveli,  
66 kV Amla Road, Via Vapi,  
Silvasa –396 230

Maharashtra State Electricity Distribution Company Limited  
Prakashgad, Plot No- G-9, Anant Kanekar Marg  
Bandra (E0, Mumbai- 400051

Western Regional Power Committee  
F-3, MIDC Area, Marol, Opp Seepz  
Central Road, Andheri East  
Mumbai-400093

Ratnagiri Gas and Power Private Limited  
NTPC Bhawan, Core-7, Scope Complex,  
7, Institutional Area, Lodhi Road  
New Delhi- 110003

**....Respondents**

**Petition No. 154/MP/2018**

**In the matter of**

Petition under Section 79 of the Act to adjudicate the dispute between the Petitioner and the Respondent, Electricity Department of Dadra and Nagar Haveli, as per the Bulk Power Transmission Agreement dated 21.11.2011.

**And**

**In the matter of:**

Maharashtra State Electricity Transmission Co. Ltd.  
Prakashganga, Plot No. C-19, E-Block,  
Bandra Kurla Complex, Bandra (E),  
Mumbai-400 051.

**...Petitioner**

Vs.

State of Goa  
The Chief Engineer (Electrical)  
Goa Electricity Department,  
Vidyut Bhavan, 3rd Floor,  
Panjim, Goa

Maharashtra State Electricity Distribution Company Limited  
Prakashgad, Plot No- G-9, Anant Kanekar Marg  
Bandra (E0, Mumbai- 400051

Western Regional Power Committee  
F-3, MIDC Area, Marol, Opp. Seepz  
Central Road, Andheri East  
Mumbai-400093

Ratnagiri Gas and Power Private Limited  
NTPC Bhawan, Core-7, Scope Complex,  
7, Institutional Area, Lodhi Road  
New Delhi- 110003

**....Respondents**

**Parties Present:**

Shri Sudhanshu S. Choudhari, Advocate, MSETCL  
Shri Yogesh S Kolte, Advocate, MSETCL  
Shri M. G. Ramachandran, Advocate, RGPPL  
Ms. Poorva Saigal, Advocate, RGPPL  
Ms. Swapna Seshadri, Advocate, EDN  
Ms. Poonam Verma, Advocate, ED, Goa  
Ms. Sakshi Kapoor, Advocate, ED, Goa  
Shri Arvind Jhalani, RGPPL  
Shri Arshad Jilani, RGPPL

## **Order**

The present Petitions i.e. Petition Nos.153/MP/2018 and 154/MP/2018 have been filed by Maharashtra State Electricity Transmission Company Limited (MSETCL) against Electricity Department of Dadra & Nagar Haveli (DNHED) and Electricity Department of Goa (GED), respectively seeking direction to the Respondents to pay outstanding dues and further direction to continue paying the transmission charges as per Western Regional Power Committee (WRPC) letter dated 17.8.2010, notwithstanding the non-availability of power from Ratnagiri Gas and Power Private Limited (RGPPL).

Since the issues involved in these Petitions are similar, the same are being dealt with together.

2. The Petitioner has made the following prayers:

### **Petition No.153/MP/2018**

*“a) direct the Respondent to pay the outstanding amount, as on 2.4.2018, amounting to Rupees 20,35,24,120/- (Rupees Twenty Crores Thirty five Lakh Twenty four Thousand One hundred & Twenty Rupees only) to the Petitioners herein;*

*b) direct the Respondent to continue paying the transmission charges as per the letter of WRPC, No. WRPC/Comml-I/4/2010/1052 dated 17.08.2010, notwithstanding the non-availability of power from RGPPL;*

*c) direct the respondent to pay interest at the rate of 9 % p.a. on amount of Rs 20,35,24,120/- since the date of filing this petition till realization of amount; and*

*d) direct the respondent to pay costs of this litigation to the Petitioner.”*

### **Petition No. 154/MP/2018**

*“a) direct the Respondent to pay the outstanding amount, as on 02.04.2018, amounting to 16,23,79,547/- (Rupees Sixteen Crores Twenty Three Lakh Seventy Nine Thousand Five Hundred and Forty seven only).to the Petitioner herein;*

*b) direct the Respondent to continue paying the transmission charges as per the letter of WRPC, No. WRPC/Comm-I/4/2010/1052 dated 17.08.2010, notwithstanding the non-availability of power from RGPPL; and*

*c) direct the Respondent to pay interest at the rate of 9 % p.a. on amount of Rs16,23,79,547/-since the date of filing this petition till realization of amount.*

*d) direct the Respondent to pay costs of this litigation to the Petitioner.”*

### **Submissions of the Petitioner**

3. The Petitioner has made the following submissions:

a) The Petitioner had provided transmission facility to DNHED and Electricity Department of Goa, for transmission of power from RGPPL, Dabhol and accordingly, a Bulk Power Transmission Agreement (BPTA) was entered into with DNHED on 6.9.2011 and with GED on 21.11.2011. The transmission charges towards wheeling of power from RGPPL to DNHED and GED through the Petitioner’s network were calculated by the WRPC vide letter dated 17.8.2010 and the same was continued thereafter as discussed in 64<sup>th</sup> and 65<sup>th</sup> Commercial Committee Meeting (CCM) of WRPC. Since September 2013, RGPPL has not declared any availability of power to DNHED or GED. However, as per the BPTA, the Petitioner has continued to raise bills upon the Respondents towards payment of wheeling charges power.

b) The above issue came up for discussion in the 64<sup>th</sup> CCM of WRPC on 1.2.2013, wherein DNHED and GED intimated that MSETCL was billing transmission charges based on wheeling charges calculated by WRPC, although there was no actual transmission of electricity. However, it was clarified to the representatives of DNHED and GED that the wheeling charges would have to be paid by them irrespective of the availability of their share from

RGPPL till the wheeling agreement is in place. The representatives of DNHED and GED duly accepted and agreed to the said clarification in the 64<sup>th</sup> CCM.

c) During the proceedings of the 65<sup>th</sup> CCM held on 18.10.2013, the representatives of DNHED and GED informed the committee that due to shortage of APM domestic gas, RGPPL was declaring the capacity to the extent possible. It was further intimated that the major beneficiary, Maharashtra State Electricity Distribution Company Limited (MSEDCL), who had 95% share in the plant, was not scheduling its share. The representative of MSEDCL stated that even though it was not scheduling power as per its entitlement in RGPPL, it was paying the capacity charges as per its entitlement.

d) The Petitioner vide letter dated 22.5.2014 informed GED that in pursuance to the non-payment of the dues, the letter of credit is liable to be encashed for the outstanding amount of dues which were not paid by GED. Subsequently, GED filed a Civil Suit No. 24 of 2014 in the Court of the Principal District Judge, North Goa, Panjim, seeking for an injunction restraining the Petitioner from encashing the letter of credit issued in the Petitioner's favor by the Respondent payable at SBI, Goa. The Court granted an interim injunction to the Respondent thereby restraining the Petitioner from encashing the said letter of credit. Thereafter, the period of the said LC lapsed during the operation of the interim injunction order, thereby resulting in making the LC infructuous and as a result the Petitioner could not encash the same in settlement of the liabilities against GED towards charges of wheeling and suffered huge losses.

e) The Petitioner has fulfilled its obligations as mentioned in the BPTA and has duly complied with its obligation under Article 3 of BPTA. Therefore, the Petitioner is entitled to payment in terms of Article 7 of BPTA. The last bill paid by DNH was on 17.1.2014 against bill for the month of October 2013 and that by GED was on 16.9.2013 against bill for the month of August 2013. The total amount due to the Petitioner by DNHED and GED are Rs. 20,35,24,120/- and Rs. 16,23,79,547/-, respectively.

f) The charges towards wheeling are not contingent upon the actual availability of electricity to be transmitted, which is a matter purely between the Respondents and RGPPL.

4. During the hearing dated 20.3.2019, learned counsels for DNHED and GED requested to implead Maharashtra State Electricity Distribution Company Limited (MSEDCL), WRPC and Ratnagiri Gas and Power Private Limited (RGPPL) as parties to the Petitions. Accordingly, the Commission vide RoP (Record of Proceedings) of hearing dated 20.3.2019 directed the Petitioner to implead MSEDCL, WRPC and RGPPL as parties to the both Petitions.

**Reply of DNHED, Respondent No 1 in Petition No. 153/MP/2018**

5. Electricity Department of Dadra & Nagar Haveli i.e. Respondent No.1 in Petition No. 153/MP/2018 has, vide its affidavit dated 23.1.2019, submitted as under:

a) The entire revenue requirements of the Petitioner are recovered from the four distribution licensees in the State of Maharashtra, namely, MSEDCL, Tata Power – Distribution, Reliance Infra – Distribution and BEST. Out of the total revenue requirements of the transmission licensees in Maharashtra, 83.05% of the total transmission charges for all the transmission licensees is paid by MSEDCL alone, being the primary distribution licensee in the State of Maharashtra. The charges paid by other customers would only reduce the transmission charges already recovered by the Petitioner from MSEDCL, in addition to the other distribution licensees.

b) RGPPL had entered into PPA with four distribution licensees, namely, MSEDCL, DNHPDCL, distribution licensee of Daman & Diu and distribution licensee for the State of Goa. Out of these four distribution licensees, the share of MSEDCL from the capacity of RGPPL is 95%, while the balance 5% is divided among the other distribution licensees. There have been disputes and differences between RGPPL and MSEDCL on the rights and obligations of the

parties for procurement of power by MSEDCL using RLNG. In the circumstances, MSEDCL stopped scheduling electricity from RGPPL.

c) The subject transmission line of the Petitioner for the transmission of electricity from the generating station of RGPPL to DNHED has not been used since September 2013. This is purely on account of the failure of MSEDCL to schedule power from RGPPL and the consequent inability of RGPPL to supply power to other beneficiaries including DNHED by operating the generating station at 5% capacity.

d) DNHED has on 28.8.2016 terminated the PPA with RGPPL, which has not been challenged by RGPPL.

e) Unlike the transmission charges levied and collected by transmission licensees for which the tariff is determined by the Commission and the levy of transmission charges in terms of the Regulations based on capacity allocated irrespective of use of the transmission system, the billing and recovery of the transmission charges for the system of the Petitioner is based on use of the transmission system and the actual drawl of power. The transmission charges are determined based on the contract path method and not in terms of the Regulations of the Commission.

f) As per Article 7.2.1 of the BPTA, both access and use of the transmission system is an essential pre-condition for the billing and recovery of transmission charges by the Petitioner.

g) The entire transmission system of the Petitioner is for benefit of the distribution licensees in the State of Maharashtra, which also pay the entire revenue requirements of the Petitioner. The additional transmission charges, if any, recovered by the Petitioner for use of its transmission network by any other third party such as DNHED would be additional revenue which would go on to reduce the transmission charges for the distribution licensee in the State of Maharashtra. The Petitioner has also not made out a case that the transmission system in issue has been kept reserved to the exclusion of others and,

therefore, the system has been lying idle for which charges are to be paid. Even assuming that the Petitioner has kept capacity allocated and reserved for DNHED, the non-use of the transmission system is on account of force majeure events as a result of which the power from RGPPL is not being available to DNHED. In terms of Article 11.5 of the BPTA, there shall be no breach of the obligations on the part of DNHED as the system in issue cannot be used on account of there being no power available from RGPPL.

h) The charges determined are only based on the estimated use of the transmission calculated on the basis of energy drawn by each beneficiary. In the circumstances, when there has been no drawl of power by DNHED, the question of payment of transmission charges does not arise. This is particularly when the inability of RGPPL to supply power to DNHED has resulted in the inability of DNHED to use the transmission system of the Petitioner and that such a situation had arisen due to non-scheduling of power from RGPPL by MSEDCL. The Petitioner having already recovered the transmission charges for the line from MSEDCL, it is not correct on the part of the Petitioner to seek the recovery of transmission charges from DNHED.

i) The Petitioner has filed the present Petition to recover amounts as far back as from November, 2013, whereas, the present Petition has been filed only on 10.5.2018, which is beyond the prescribed period of limitation and therefore the claims of the Petitioner are not maintainable, being barred by limitation.

### **Reply of GED, Respondent No. 1 in Petition No. 154/MP/2018**

6. GED, vide affidavit dated 30.1.2019, has submitted as under:

a) Out of total installed capacity of 1967 MW of RGPPL, 1% share i.e. 19.67 MW is allocated by Ministry of Power to GED. PPA with RGPPL was executed on 29.4.2011 and actual power was available from April 2012. MSEDCL stopped scheduling its share which accounted for 95% of the RGPPL's power. Since, MSEDCL is not scheduling its share of allocated power



(95%), RGPPL vide letter dated 4.10.2013 informed GED that RGPPL will not be able to generate power. RGPPL stated that this was because the balance allocation of power (5%) being scheduled by distribution licensees of Daman and Diu, DNHED and GED was below the technical minimum requirement to operate any gas turbine at its facility.

b) RGPPL continued declaring its generating capacity in terms of the fuel charges allowed by this Commission. RGPPL also continued raising the capacity (fixed) charges bills without supply of actual power. Since no power was actually supplied, the bills raised merely on account of declaring capacity were not paid by GED. Subsequently, RGPPL encashed the Letter of Credit amounting to Rs.3.41 crore.

c) For the last five years, the matter has regularly been taken up before the Ministry of Power, WRPC and in Commercial Committee Meetings of WRPC. However, till date there has not been any resolution of the same and MSETCL continues to raise bills on GED for the power that was not supplied. MSETCL continues to raise invoices on GED despite its objections to make payments in view of non-existence of any liability under the BPTA.

d) Merely because the transmission capacity is available does not entitle MSETCL for payment of transmission charges towards wheeling of power from RGPPL irrespective of usage of transmission capacity. MSETCL was under an obligation as per the BPTA to make available the transmission capacity not only for the purpose of access to GED but also in terms of effective use by GED. Thus, MSETCL has failed to fulfill its obligations in operation and maintenance of the transmission system as prescribed under the BPTA and, therefore, any claim for payment by MSETCL under Article 7 of the BPTA does not sustain.

e) Clause 7.2.1 of the BPTA clearly provides that the charges for the access and 'use' of the Intra-State Transmission System shall be determined and settled on monthly basis. MSETCL was responsible for determination of the charges and these transmission charges were essentially required to be

reviewed on year to year basis based on the calculations of WRPC as envisaged under the BPTA.

f) On one hand, MSEDCL is not scheduling power, while on the other hand MSETCL is claiming transmission charges for usage of the line, on which power, was never supplied. MSEDCL and MSETCL are sister concerns, being under the control and supervision of one holding company being M.S.E.B. Holding Co. Ltd.

g) GED has regularly paid the transmission charges as per the monthly invoices raised by MSETCL in terms of Clause 7.2 of the BPTA and WRPC's letter dated 17.8.2010, as per flow of power. However, RGPPL has not been declaring full availability of power to GED with effect from 2.3.2013 and had stopped generation and supply of power to GED from August 2013 resulting in non-usage of the MSETCL's transmission network. Therefore, GED cannot be made liable to pay any further transmission charges in absence of any use of the transmission network of the MSETCL.

h) GED is obliged to pay for actual use of transmission system which is also evident from the definition of 'long term transmission customer' in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 which stipulates that transmission charges are payable only when the customer uses transmission system and not otherwise. The aforesaid position is further clarified by use of the term 'use' in clause 7.2.1 of the BPTA.

i) MSETCL has failed to consider the difference between the terms 'use' and 'access' as used under Clause 7.2.1 of the BPTA. The access is obtained so that GED can use the MSETCL's transmission system. However, use of the transmission system will happen only if there is flow of power using the transmission system to the beneficiary. The transmission charges for wheeling of power from RGPPL to GED are payable by GED if there is actual use of transmission system and not merely for the grant of access.

j) MSETCL's claims violate the principles set out in Sections 61 and 62(6) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') as well as the scheme of open access and levy of charges for the same under the Act, which mandate that wheeling charges should be based on use of the system for conveyance of electricity to the consumer taking power under open access.

k) The objective of the Act is to protect the interest of the consumers and aims and objectives of the Tariff Policy and National Electricity Policy are to ensure the financial and commercial viability of the electricity sector as well as protection of the consumer interest. With the stated objectives of the Act read with the National Electricity Policy and Tariff Policy, considering only the interest of the transmission licensee avoiding the impact of the same on the consumers and the Utility will affect the power sector as whole and ultimately result in huge tariff shock for the consumers.

l) MSETCL has wrongly contended that the wheeling charges are payable till the subsistence of Wheeling Agreement irrespective of the availability of the share of GED from RGPPL. Clause 6.2.2. of the BPTA reads as under:

*"6.2.2. Notwithstanding anything contained herein before, definitions, interpretations and the methods of calculations of Availability given above, shall not conflict with any orders of the Maharashtra Electricity Regulatory Commission (MERC) issued from time to time in this regard. **In case there is any discrepancy between the provisions of this Agreement and any orders of MERC issued from time to time, the provisions of MERC orders shall prevail.**"*

m) In the 56<sup>th</sup> CCM, the wheeling charges calculated and levied by WRPC vide letter dated 17.08.2010 were discussed and approved. Further, it was also noted that the wheeling charges calculated were valid for the year 2010-11 (up to March 2011) and thereafter the wheeling charges for use of the MSETCL transmission system shall be governed as per the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010. However, MSETCL has been billing transmission charges to GED based on wheeling charges calculated by WRPC. Since the wheeling

charges were calculated for the year 2010-11, the same needs to be revised and the wheeling charges should be billed to GED based on the revised rates.

n) GED has made payments towards wheeling charges for March 2013 'under protest' based on the calculation worked on the anticipation/ average drawl by GED for the financial year 2010-11. GED has not paid to MSETCL since September 2013 and has persistently objected to the bills raised on account of failure of MSETCL to formulate charges for subsequent financial years in consultation with WRPC.

o) The period in question for which MSETCL is raising invoices is not sustainable since (i) RGPPL has not been supplying power (since September 2013) and; (ii) the distribution company, MSEDCL being the major beneficiary of the RGPPL's plant was not scheduling power. The power supply to GED started in April 2012 and since September 2013, GED has not made any payment due to non-utilization of the transmission system/non-availability of power by RGPPL.

### **Reply of RGPPL**

7. Ratnagiri Gas and Power Private Limited (RGPPL), Respondent No. 4 in Petition No. 153/MP/2018 and Petition No. 154/MP/2018 in its reply vide affidavits dated 27.6.2019 and 22.11.2019, respectively has submitted as under:

a) The relief sought for by the Petitioner is and can be only against DNHED and GED and cannot be against RGPPL. RGPPL is, therefore, neither a necessary party nor a proper party to the present proceedings and is required to be deleted from the array of parties for this reason.

b) The contract entered into between RGPPL and DNHED and that between RGPPL and GED is for the generation and delivery of the power at the bus bar of the RGPPL's generating station premises at Ratnagiri in the State of Maharashtra. Up to the delivery point, there is no involvement of MSETCL or the use of any part of the transmission system of MSETCL. The relationship of

RGPPL and DNHED/ GED is governed by the Power Purchase Agreements dated 10.5.2011 (DNHED) and 29.4.2011 (GED) entered into between them.

c) It is the responsibility of RGPPL to make available the power at bus-bar of its generating station and thereafter, it is the responsibility of DNHED and GED to evacuate the power and pay charges for utilization of transmission system used by them. In terms of the PPAs, RGPPL has been declaring the capacity available for supply to DNHED from time to time and has been raising bills for such declaration on a monthly basis.

d) DNHED and GED have entered into BPTA with the Petitioner for evacuation and conveyance of power from the bus-bar of the RGPPL generating station. The BPTA is a bilateral contract for transmission of electricity from the bus bar of the generating station of RGPPL to DNH and GED. RGPPL is neither a party to the BPTA nor has entered into any other obligation with either the Petitioner or DNHED or GED to arrange for or be responsible in regard to the evacuation or the use of the transmission system of the Petitioner.

### **Rejoinder of the Petitioner to the replies of Respondents**

8. The Petitioner in its rejoinder vide affidavit dated 11.10.2019 to the reply filed by DNHED has submitted that the Petitioner has been maintaining the required transmission system throughout the agreement period as per clause 3.1 of the BPTA and has ensured availability of the system as set out in clause 6 of the said BPTA. Hence, as per the terms of clause 7 of the BPTA, DNHED is liable to make payment of monthly charges including late payment charges, arrears and any other charges as may be applicable. The BPTA has no reference at all towards so called non-levying of charges in case of non-usage as claimed by DNHED. On the contrary, clause 7.2.1 of the BPTA provides for charges on a monthly basis to be recovered

from DNHED towards excess and use of the intra-State transmission system. With respect to the limitation, the Petitioner has submitted that it has been raising monthly bills and the late payment surcharge on the outstanding monthly bills along with the outstanding surcharge every month. Hence, the liability gets invoked every month upon the monthly bills raised by the Petitioner. Therefore, the reference towards Limitation Act, 1963 has no context or relevance as claimed by DNHED. With respect to force majeure, the Petitioner has submitted that failure of RGPPL in supplying power to DNH can in no way be considered as Force Majeure.

9. The Petitioner in its rejoinder vide affidavit dated 11.10.2019 to the reply filed by GED has submitted that the obligation of the Petitioner is to ensure that the transmission system is being made available for use as prescribed by the Act irrespective of whether GED draws power through the transmission system. It is not dependent on the PPA entered between GED and RGPPL as the Petitioner was not a signatory to the said PPA. The Petitioner had absolutely no control on the chain of events described by GED in relation to the said PPA. As per the terms related to payment set out in the BPTA, GED is liable to make the payment irrespective of whether electricity is drawn through the said transmission system. The dispute pertaining to the present Petition was already discussed in various Commercial Committee meetings of WRPC held in the past and GED was directed to fulfill its obligation under the BPTA. However, GED has been raising irrelevant contentions that have nothing to do with the BPTA which is still in force. Thus, the non-payment of transmission charges by GED is in contravention of the objective and spirit of the Act.

## **Written submissions of DNHED**

10. DNHED vide affidavit dated 27.8.2020 has filed written submissions and has mainly reiterated its earlier submissions. It has additionally submitted as under:

(a) Since several disputes and differences arose between RGPPL and MSEDCL, the PPA entered into between the parties was terminated by MSEDCL. Due to the disputes between RGPPL and MSEDCL, PPA between RGPPL and DNHED became impossible to perform. Therefore, DNHED terminated the PPA with RGPPL on 25.8.2016 and the BPTA became impossible of performance.

(b) Insofar as the BPTA is concerned, unlike the agreement entered into by the Central Transmission Utility which reserves transmission capacity on the long term and medium term open access applications received, the transmission charges under the present BPTA were to be made applicable only from the date of scheduling of the power and the charges were also only for access and use of the intra-State transmission system of MSETCL.

(c) The BPTA does not provide for payment of transmission charges irrespective of whether the transmission capacity is used or not. Further, the transmission charges are based on the actual drawal of power by DNHED. This is also the rationale of determining the transmission charges based on the contract path method and not as per the regulations of this Commission.

(d) As per the agreement between the parties, both access and use of the transmission system are essential precondition for the billing of recovery of transmission charges by MSETCL. Since the entire transmission system of MSETCL is in any case being serviced by the distribution licensees in the State of Maharashtra, any additional transmission charges recovered from third parties would be an additional revenue only. Therefore, it is not the case that MSETCL has not recovered transmission charges for any capacity which was reserved or allocated to DNH.

(e) Only two transmission lines of MSETCL were identified for conveyance of RGPPL power to DNHED as follows:

- (a) Dabhol – Nagothane line (commissioned in 2000)
- (b) Nagothane – Padghe line (commissioned in 2001)

(f) Both these transmission lines are more than 20 years old and the capital cost would have already been recovered by MSETCL. Further, the same lines are still being used to supply power from RGPPL to the Indian Railways for which MSETCL has entered into two BPTAs, one for conveyance of power within the State of Maharashtra and other for conveyance of power outside the State. Both BPTAs are on the basis of the Dabhol-Nagothane and Nagothane – Padghe lines only and no other system has been built by MSETCL.

(g) The alternate argument is that the non-use of transmission system is on account of force majeure events and as per Article 11.5 of the BPTA, there shall be no breach of the obligation on the part of DNH if the transmission system cannot be used on account of there being no power available from RGPPL.

(h) As regards DNHED not terminating the BPTA, when a contract is impossible of being performed, there is no need to specifically terminate it. Impossibility of performance is a mode of discharge of contract. Reference in this regard is made to the judgments of Hon'ble Supreme Court in Satyabrata Ghose v. Mugneeram Bangur & Co. [1954 SCR 310: AIR 1954 SC 44] and in Sushila Devi v. Hari Singh [(1971) 2 SCC 288].

### **Written submissions of GED**

11. GED vide affidavit dated 28.8.2020 has filed written submissions and has reiterated its earlier submissions. It has additionally submitted as under:

- (a) Availability/ access of the transmission network does not entitle MSETCL for payment of transmission charges towards wheeling of RGPPL



power. Rather use of the transmission network is a must for claiming transmission charges and the same is provided in Article 7.2.1(f) of the BPTA.

(b) On reading of the Clause 7.2.1 of the BPTA, the emphasis is laid on the conjunction 'and' which makes it amply clear that MSETCL was under an obligation as per the BPTA to make available the transmission capacity not only for the purpose of access to GED, but also in terms of effective use by GED. In this regard, reliance is placed on judgment of Hon'ble Supreme Court in *Hyderabad Asbestos Cement Products v. Union of India*, [(2000) 1 SCC 426] wherein the term "and" was interpreted. Hence, both "access" and "use" of the transmission system are essential pre-conditions for the purpose of billing of transmission charges under the terms of the BPTA.

(c) Having agreed to the terms of the Clause 7.2.1 of the BPTA, MSETCL cannot now contend that "use" of transmission system was never meant to be a pre-condition for billing the transmission charges. Reliance is placed on judgment of Hon'ble Supreme Court in the matter of *Life Insurance Corporation of India v. Dharam Vir Anand* [(1998) 7 SCC 348].

(d) Under Clause 7.2.1 of the BPTA, "and" has to be given its actual meaning and cannot be ignored by MSETCL while interpreting the clause to suit its case. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in *M. Arul Jothi v. Lajja Bal* [(2000) 3 SCC 723].

(e) Appellate Tribunal for Electricity (APTEL) in its judgment dated 17.2.2016 in *M/s. Lanco Kondapalli Power Limited vs. Andhra Pradesh Electricity Regulatory Commission & Ors.* in Appeal No. 69 of 2014 has held that the appellant therein was not liable to pay any further transmission charges for the Western and Northern regions in the absence of any use of the capacity of the said Western and Northern regions. Civil Appeal. No. 004539 / 2016 against the aforesaid judgment of APTEL is pending before Hon'ble Supreme Court and there is no stay in operation of the judgment of APTEL.

(f) GED has made payments towards wheeling charges for March 2013 'under protest' and the same was also stated in its letter to MSETCL dated 31.5.2013. GED has time and again highlighted the issue before the CCMs. In this regard, reliance is placed on the 64<sup>th</sup> and 65<sup>th</sup> CCM held on 29.5.2013 and 25.9.2013 respectively wherein GED had raised issue regarding the bills being raised by MSETCL in spite of non-utilisation of MSETCL's transmission network by GED. GED by its very conduct has, therefore, protested the bills raised by MSETCL and cannot be said to have acquiesced to the same. Hence, the contention raised by MSETCL in its Petition that GED has acquiesced to the payments under the BPTA and hence is bound to pay even without the use of the transmission network, is erroneous.

(g) Ministry of Power and WRPC are trying to resolve the billing dispute. In this regard, Ministry of Power and WRPC convened meetings on 4.12.2018 and 14.12.2018 respectively. However, no settlement was reached between MSETCL and GED.

### **Written submissions of the Petitioner**

12. The Petitioner in its written submission vide affidavit dated 27.8.2020 in Petition No. 154/MP/2018 has submitted as under:

(a) Once access to its transmission system is provided by the Petitioner without any encumbrances, the "use" of such transmission system completely rests with the distribution licensee and it is for them to ensure that there is valid PPA in place and that timely procurement of power is made from the generator so that the transmission system is being 'used' for actual transmission of power. The Petitioner being a transmission company cannot be held responsible for the alleged non-usage which is absolutely out of its purview and control. Further, BPTA provides for payment of transmission tariff as set out in clause 7. The said clause nowhere mentions non-levying of charges in case of non-usage by GED due to non-availability of power. The Petitioner has been maintaining the transmission system as per the obligation set out in clause 3.1 of BPTA. Hence, GED has to fulfill its contractual obligation towards payment. The word 'and' is used only in clause 7 pertaining to billing. The only intention

of using the word 'and' is to ensure that the monthly bill charged would entail them and subsume charges towards both 'access and use' of the transmission system. The intent of 'and' is that the Petitioner is prevented from charging separately for the 'usage' of the transmission system.

(b) Since BPTA is still in force, the Petitioner has been reserving the said transmission capacity exclusively for GED throughout the agreement period and could not accept any other application(s). Thus, there has been continuous allocation and, therefore, usage of the transmission capacity by GED since the beginning of the BPTA.

(c) Similar view was taken by the APTEL in its judgment dated 13.10.2015 in Appeal No. 6 of 2015 [Gujarat Electricity Transmission Corp. Ltd. (GETCO) vs. GERC and OPGS Power Gujarat Pvt. Ltd. (OPGS)] wherein it was held that *"the Respondent no. 2 is bound by the terms and conditions of the BPTA. Under the BPTA Respondent no. 2 reserved capacity of 275 MW on the Intra-State Transmission Network. Respondent no.2 has not terminated the BPTA or surrendered the capacity. The above capacity has been blocked for the Respondent no. 2 by the Appellant and cannot be given to others. In terms of the Open Access Regulations, Respondent no. 2 is liable to pay the transmission charges as determined by the State Commission based on per MW capacity booked irrespective of the actual use of the transmission line. Respondent no. 2 is bound to pay the transmission charges as per the Regulation irrespective of whether it had used the transmission or not."*

13. The Petitioner in its written submissions dated 27.8.2020 in Petition No. 153/MP/2018 has made similar submissions as in Petition No. 154/MP/2018 stated above.

### **Analysis and Decision**

14. We have considered the submissions of the Petitioner and Respondents and perused all relevant documents on record. Before dealing with specific issues, we would like to discuss preliminary issue related to non-rejoinder of parties.

15. The Petitioner has filed the instant Petitions for seeking direction to the Respondents to pay outstanding dues and to continue to pay the transmission charges, irrespective of non-availability of power from RGPPL. In Petition No. 153/MP/2018, the Petitioner has sought direction to DNH to pay the outstanding amount, as on 2.4.2018, amounting to ₹ 20,35,24,120/- and in Petition No. 154/MP/2018, the Petitioner has sought direction to DNH to pay the outstanding amount, as on 2.4.2018, amounting to ₹16,23,79,547/-.

16. Respondents i.e. DNH and GED had raised a preliminary objection on the ground of non-joinder of necessary parties as the Petitioner has not impleaded MSEDCL, WRPC and RGPPL as parties to the petition. During the hearing dated 20.3.2019, after recording the objections of DNH and GED, the Commission directed the Petitioner to implead MSEDCL, RGPPL and WRPC as parties. The Petitioner has impleaded MSEDCL, RGPPL and WRPC as respondents and has filed revised memo of parties to that effect in both the Petitions.

17. We are of the view that since all concerned parties have been impleaded, issue of non-joinder of parties has been resolved.

18. Having dealt with the preliminary issue, the following issues arise for our consideration:

**Issue No.1: Whether the present Petition is admissible in light of prayers made by the Petitioner?**

**Issue No.2: Whether the present Petition is barred by limitation?**

**Issue No.3: Whether the Petitioner is entitled to payment of transmission charges under BPTA regardless of the fact that no power is being wheeled from RGPPL's generating station to DNHED and GED?**

We deal with the issues one by one in the following paragraphs.

**Issue No.1: Whether the present Petition is admissible in light of prayers made by the Petitioner?**

19. Though the parties have not raised the issue of jurisdiction of the Commission to adjudicate the matter, we consider it appropriate to deal with the issue since the power is being wheeled through intra-State network of MSETCL. The Petitioner has executed BPTA with DNHED and GED on 6.9.2011 and 21.11.2011, respectively for wheeling of power from RGPPL's generating station through transmission network of the Petitioner. The Petitioner has filed the instant Petition seeking direction to the DNHED and GED to pay outstanding dues in respect of transmission charges and also a direction to continue to pay the transmission charges to the Petitioner till the duration of BPTA irrespective of power not being availed by DNHED and GED from RGPPL's generating station.

20. The transmission charges towards wheeling of power from RGPPL's generating station to DNHED and GED through MSETCL network were calculated by the WRPC vide letter dated 17.8.2010 and the same was continued thereafter as discussed in 64<sup>th</sup> and 65<sup>th</sup> Commercial Committee Meeting. The calculation of transmission charges by WRPC for year 2010-11 is stated to be in line with the methodology given by the Commission in its Order dated 3.2.2009 in Petition No.

64/2008 and in Petition No. 67/2008. The relevant extracts of WRPC letter dated 17.8.2010 is reproduced as under:

*"7. The following methodology adopted for calculation of transmission charges for transmission of, RGPPL power to Goa, DD & DNH through MSETCL transmission system for year 2010-11:*

*(a) WRPC have calculated the transmission charges in respect of MSETCL Transmission System which is incidental for transmission of Central Sector Power to Goa for the year 2010-11 in line with the methodology given by Commission in petition No. 64/2008 and in Petition No. 67 / 2008 in the matter of fixation of and adjudication on the transmission charges for use of the Gujarat transmission system for conveyance of Central Sector power to Union Territory of Daman & Diu (DD) and to Union Territory of Dadra and Nagar Haveli (DNH) respectively vide CERC order dated 3rd February 2009.*

*Following contract paths have been considered:*

***RGPPL power to Goa***

*400 kV RGPPL-New Koyna  
400 kV New Koyria-Karad  
400/220 kV ICTs at Karad  
220 kV Karad-Kolhapur  
220 kV Kolhapur-Amona*

***RGPPL power to DD & DNH***

*400 kV RGPPL-Nagothane  
400 kV Nagothane-Padghe"*

21. In the instant case, power from RGPPL's generating station located in Maharashtra has to be wheeled to DNHED and GED through intra-State transmission network of the Petitioner. We observe that BPTA dated 6.9.2011 signed between the Petitioner and DNHED (BPTA dated 21.11.2011 between the Petitioner and GED is similarly worded) provides as follows:

*"AND WHEREAS*

*a) Electricity Department, Dadra and Nagar Haveli, Government of India, having its Head Office at Amla, Silvassa - 396 230. (hereinafter called "EDDNH" or Transmission System User), which expression shall unless repugnant to the context or meaning thereof shall include its successors and permitted assigns as party of first part having Power Purchase Agreement (PPA)(PPA dated 29.04.2011) with M/s. Ratnagiri Gas and Power Private Limited (Generation Company) (herein called as "RGPPL") to purchase 2% power of Ex-Bus declared capacity of RGPPL (Generation Company) through transmission network of MSETCL.*

b) *Electricity Department, Dadra and Nagar Haveli, Government of India, having its Head Office at Amla, Silvassa- 396 230. (hereinafter called "ED-" DNH" or Transmission System User), which expression shall unless repugnant to the context or meaning thereof shall include its successors and permitted assigns as party of first part agrees to pay the transmission charges of Rs. 29.17 Lacs per month for 2% of RGPPL power as per the transmission charges calculated by WRPC vide Letter No. WRPC/(Comml-J)/4/Corr/2010- 1038 Dated 17/08/2010. These transmission charge will be valid for the Financial Year 2011~12 and subsequently will be reviewed on year to year basis based on the calculations of WRPC.*

.....

e) *This BPTA is executed as per the directives of Western Regional Power Committee (WRPC) and in accordance with the record notes of discussions of the meeting held on 02/06/2011 at WRPC Mumbai to review status of scheduling of RGPPL."*

As per above, it is noted that BPTA has been executed as per the directives of WRPC and in accordance with record notes of discussions of the meeting held on 2.6.2011 at WRPC. The BPTA provides for transmission charges payable for the year 2011-12 and that the same shall be reviewed year on year on the basis of calculation of WRPC.

22. The BPTA further provides for handling of disputes as under:

*"8. HANDLING DEFAULT AND DISPUTES*

*The default in payment of monthly Transmission Charges bill by "ED-DNH" Transmission System User (TSU) and dispute if any in this regard shall be referred to Grid Co-ordination Committee (GCC) in the meeting held every month and shall be dealt with as per decision of Grid Co-ordination Committee (GCC)."*

23. We observe that neither the Petitioner has brought anything on the record to state that it approached GCC for resolution of the dispute nor the Respondents have raised this issue. However, since the Petitioner has filed these Petitions, we proceed to analyse whether the Commission can adjudicate the dispute in the instant cases.

24. A similar question arose before APTEL in I.A. No.206 and 207 in Appeal No.150 of 2007 (Electricity Department, Govt. of Goa versus Maharashtra Electricity Regulatory Commission & Ors.) wherein the Appellant, Electricity Department, Govt.



of Goa challenged the legality of the order dated 28.6.2006 passed by the Maharashtra Electricity Regulatory Commission (MERC) in case No. 49 of 2005 filed by Maharashtra State Electricity Transmission Company Limited in the State of Maharashtra for the purpose of determination of its Annual Revenue Requirement for the financial year 2006-07. MERC did not consider intervening transmission line of MSETCL as a part of inter-State transmission for wheeling power from Western Regional pool or Central Generating Stations to the State of Goa. APTEL in its judgment dated 17.12.2007 held as under:

*“4. It is admitted by the parties that the electricity is transmitted to Goa from Central Generating Stations and / or WREB pool of power located outside Goa and the intervening transmission lines of MSETCL along with transmission lines of PGCIL are being used for such transmission. Accordingly, the transmission of power from Central Generating units to Goa is an inter-State transmission in terms of Section 2(36) of the Act. The use of transmission lines of MSETCL is incidental to the transmission of power from Central Generating Station to Goa. The determination of tariff for inter-State transmission as per the provisions of Section 79 of the Act is vested with CERC and is beyond the jurisdiction of MERC, Section 79(c) and (d) are extracted below.*

*“79. Functions of Central Commission-(1) The Central Commission shall discharge the following functions, namely:-*

*(a) .....*

*(b) .....*

*(c) to regulate the inter-State transmission of electricity;*

*(d) to determine tariff for inter-State transmission of electricity;*

*.....*

*5. We, therefore, find that firstly MERC has no jurisdiction to determine tariff of inter-State transmission line including the intervening lines of MSETCL and, therefore, the directions of MERC to make inter-State transmission tariff applicable to quantum of electricity transmitted to Goa is in contravention to the provisions of the Act. The learned counsel for the respondent Commission has also fairly conceded the legal position as explained above”.*

25. In a subsequent matter, Gujarat Energy Transmission Corporation Limited approached this Commission through the Petition Nos. 64/2008 and 67/2008 for fixation of transmission charges for use of transmission system in the State of Gujarat for conveyance of Central sector power to Union Territories of Daman & Diu and Dadra and Nagar Haveli. The Commission in its order dated 3.2.2009 in Petition



Nos. 64/2008 and 67/2008, relied upon judgment of APTEL dated 17.12.2007 held that the Commission has jurisdiction for fixation of transmission charges for use of Gujarat transmission system for conveyance of Central sector power to Union Territories of Daman & Diu (DD) and Dadra and Nagar Haveli (DNH). The Commission vide order dated 3.2.2009 held as under:

*“11. The petitioner has, therefore, approached this Commission for exercising the jurisdiction to determine the tariff for conveyance of electricity through its transmission system from the State of Gujarat to Respondents Nos 1 and 2 for the period 28.2.2006 and onwards.*

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*14. Respondents have also pointed out that the Commission, in its order dated 14.11.2004, in the matter of ‘Open Access in inter-State transmission’ has held that assets owned by STU to the extent they facilitate an inter-State transmission transaction fall within the jurisdiction of the Central Commission. It has also been pointed out that Maharashtra State Regulatory Commission, vide order dated 28.6.2006, had ordered for application of the State transmission system charges for conveying power to Goa. Aggrieved by this order, Goa filed Appeal No. 150 of 2007 before the Appellate Tribunal. The latter vide order dated 17.12.2007 set aside order of MERC so far as it relates to recovery of transmission charges for the intervening transmission system of MSETCL when it is used as inter-State transmission line.*

*24. We have no doubt that this is clearly a case of determination of transmission charges for inter-State transmission system. This aspect has been settled vide the Appellate Tribunal’s judgment dated 17.12.2007 in Appeal No. 150 of 2006 referred to above. Apparently, in view of this, none of the parties has disputed the jurisdiction of the Commission. Therefore, we do not find any need to go into the issue of jurisdiction and straight away proceed to the issues pertaining to determination of transmission charges for the system in question.”*

26. From a combined reading of the judgment of APTEL dated 17.12.2007 (in I.A. No. 206 and 207 in Appeal No.150 of 2007) and the Commission’s order dated 3.2.2009 (in Petition No. 64/2008 and Petition No. 67/2008), we infer that determination of tariff for use of the transmission network of a State for the purpose of wheeling of electricity to another State is within jurisdiction of the Commission in terms of Section 79(1)(c) and (d) read with Section 2(36) of the Act. That being so, the Commission also has jurisdiction to adjudicate the dispute under Section 79(1)(f) of the Act.

27. In the instant matter, power is being transmitted to DNHED and GED from RGPPL located in the State of Maharashtra using intra-State transmission network of MSETCL and inter-State network of PGCIL and is thus, inter-State transmission of power. Therefore, adjudication of dispute in the present Petitions lies within the jurisdiction of the Commission.

**Issue No.2: Whether the present Petition is barred by limitation?**

28. DNHED in Petition No. 153/MP/2018 has contended that the Petitioner has sought to recover amounts as far back as from November 2013, whereas the present Petition has been filed only on 10.5.2018, which is beyond the prescribed period of limitation and therefore, the claims of the Petitioner are not maintainable, being barred by limitation.

29. *Per contra*, the Petitioner has submitted that the Petitioner has been raising monthly bills and the late payment surcharge on the outstanding monthly bills along with surcharge every month. Therefore, Limitation Act, 1963 has no context or relevance in the present case.

30. We have gone through the submissions of the parties. Neither the Act nor the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 prescribe for any limitation period for filing the Petition for adjudication of the disputes. However, the Hon'ble Supreme Court in Andhra Pradesh Power Coordination Committee Vs. Lanco Kondapalli Power Limited [(2016) 3SCC 468] has held that the claims coming for adjudication before the Commission cannot be entertained or allowed if otherwise the same is not recoverable in a regular suit on

account of law of limitation. The relevant extract of the said judgment is reproduced as under:

*“30...In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.”*

The limitation period for filing a recovery suit is three years and thus, in terms of the above-mentioned judgment of the Hon'ble Supreme Court, a suit filed beyond the period of three years is barred by limitation.

31. According to the Petitioner, the Limitation Act, 1963 is not applicable in the present matter as it has been raising monthly bills and the late payment surcharge on the outstanding monthly bills along with surcharge every month. The said contention needs to be adjudicated in the context of Section 22 of the Limitation Act, 1963 wherein, in case of a continuing breach of contract, or a case of continuing tort, fresh limitation period begins every moment of such continued breach. Section 22 of the Limitation Act, 1963 is extracted as under

*“In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.”*

32. In this context, it would be pertinent to consider the present matter on the pedestal of the findings of APTEL in its judgment dated 2.11.2020 in Appeal No 10 of 2020 & batch matters wherein the APTEL adjudicated the dispute with regards to payment of Late Payment Surcharge by Karnataka Discoms to Udupi Power Corporation Ltd. and applicability of Section 22 of the Limitation Act, 1963 as under:

*“On “Continuing cause of action”*

181. *It is the submission of Udupi Power that its LPSC claim pertains to an ongoing dispute for the consequential LPSC arising out of illegitimate withholding of dues by ESCOMs and the same cannot be barred by limitation. Section 3 of the Limitation Act, 1963 which relates to “Bar of Limitation” is subject to Section 22 of the Limitation Act, 1963 (quoted earlier) which specifically provides breach of a continuing nature as an exception to the rule of limitation.*

182. *It is argued by the appellants that the claim of Udupi Power as to the applicability of Section 22 of the Limitation Act and the decision in the impugned order is misplaced and fallacious. Reliance is placed on Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneswar Maharaj Sansthan, AIR 1959 SC 798, wherein the Supreme Court held that “(if) the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue.”*

183. *It is submitted by the appellants that there is no running account between the parties. Merely because the PPA between the parties is for a period of twenty-five years, the same would neither result in a running account nor a continuing cause of action. It is stated that Article 6.4(b) of the PPA, which has been relied upon by Udupi prescribes the method of calculation of LPSC but does not indicate that there is a continuing cause of action or a running account between the parties. The appellants further argue that even when there is a running account between the parties, the same has no bearing on the issue of limitation as regards any claim for interest for delayed payment of the principal amounts.*

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185. *The expression “running account” is defined (by Black’s Law Dictionary) as “an open unset-tied account, as distinguished from a stated and liquidated account”. It further explains that “running accounts mean mutual accounts and reciprocal demands between the parties, which accounts and demands remain open and unsettled”. It is also described as “revolving credit facility offered by a seller under which an approved buyer may continually obtain goods or services up to the agreed limit ... amount paid by the buyer makes the same sum available again for purchases” (see <http://www.businessdictionary.com>).*

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189. *It is noteworthy that there is a continuing nature of the relationship, it being a commercial arrangement for twenty-five years under the PPA coupled with a clear case of running account which itself leads us to consider it a case of continuing cause of action. Pertinently, Article 6.4(b) of the PPA stipulates, albeit in the context of interest liability, that amount payable “shall accrue from day to day and shall be calculated on a 365-day year basis”.*

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191. *Be that as it may, even from the details submitted by PCKL/ESCOMs, it is clear that there have been numerous and continuous defaults by ESCOMs in making payment of monthly and infirm power charges of Udupi Power on time or in full. The range of such delays, as shown by data submitted by the appellants themselves,*

extends from a period of one month to even a year in some instances. In fact, defaults seem to be the rule, timely payments an exception.

192. The details submitted by the appellants demonstrate that the ESCOMs have treated their respective arrangement for procurement of electrical supply from the respondent Udupi Power as running accounts wherein the demands raised by the seller through bills/invoices issued on monthly basis could be satisfied by payments made, on account, for reconciliation/adjustment in due course, such part payments/instalments/tranches being piecemeal and in sums unilaterally decided as per convenience or sweet will of the procurer(s), the drawal of electricity having continued unabated despite such defaults consistently indulged in.

193. The above can be illustrated by reference to various instances. The details pertaining to CESCO show that against the invoice amount of Rs. 10,77,80,583/- for the month of May 2011 issued on 03.06.2011 with due date of 03.08.2011, payments were made in three parts on 01.07.2011, 26.07.2011 and 03.10.2011 in the amounts of Rs. 30,81,367/-, Rs. 30,00,000/- and Rs. 19,79,363/- respectively. Similar is the pattern of payments for several months including December 2010, March 2011, April 2011, December 2011, January 2012, April 2012, July 2012, September to December 2012, January to April 2013, June 2013, April to August 2014, October to December 2015, January 2016, March 2016, June 2016 to April 2017, March to June 2018. So much so, that the CESCO took liberties to pay the invoice for July 2016 in as many as ten instalments starting with 17.12.2016 and ending with the last on 13.1.2017 even though the amount claimed by the Bill was same as admitted liability and the due date of payment was 03.10.2016. The mode of payment against the invoices for August 2016, November 2016, January and February 2017 consistently reveal a similar pattern. The billing and payment details of other ESCOMs (HESCO, GESCOM), as furnished by the appellants themselves, reveal a similar picture. It is wholly unnecessary to make a mention of the specific instances at length since the data furnished is replete with them to create the impression noted above. Just as a sample, reference can be made to the pattern of payments made by HESCO. It made the payment through thirty-five instalments (from 11.09.2018 to 17.12.2018) against the invoice for September 2017 issued on 03.10.2017, the payment where against was due on 06.12.2017, the procurer having admitted liability to pay substantial part of what was billed. Likewise, the same procurer made the payment through fifteen instalments (from 17.12.2018 to 13.03.2019) against the invoice for October 2017 issued on 02.11.2017, the payment where against was due on 07.01.2018, the procurer having again admitted liability to pay substantial part of what was billed.

194. The pattern shown by the above-mentioned details of billing and payments is clearly indicative of the procurers having understood the arrangement with seller to be such as obliged running accounts to be maintained. This being the sequitur, the argument of the respondent Udupi Power that it is a case of "continuing cause of action" gets validated and strengthened rendering the plea of limitation bar superfluous. But the appellants contest invocation of section 22 Limitation Act by referring to provisions of PPA.

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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.

209. We conclude that the plea of bar of limitation raised by the appellants is without substance and must be rejected."

33. In the instant case, the Petitioner had provided transmission facility to DNHED and GED by entering into Bulk Power Transmission Agreements (BPTA) with DNHED on 6.9.2011 and with GED on 21.11.2011. The transmission charges towards wheeling of power from RGPPL to DNHED and GED through the Petitioner's network were calculated by the WRPC vide letter dated 17.8.2010 and the same was continued thereafter. Since September 2013, while RGPPL has not declared any availability of power to DNHED or GED, the Petitioner has continued to raise bills upon the Respondents towards payment of wheeling charges.

34. As per the BPTA, the Petitioner has been raising monthly bills and the late payment surcharge on the outstanding monthly bills along with the outstanding arrears every month. The last payment was made by DNH was on 17.1.2014 against bill for the month of October 2013 and that by GED was on 16.9.2013 against bill for the month of August 2013. The issue of levy of charges under the BPTA as arose thereafter was also regularly taken up during the various commercial meetings of



WRPC including before the Ministry of Power in order to amicable resolution as envisaged in BPTA and the same has been admitted by GED in its submission. However, in absence of any amicable resolution between the parties, MSETCL continued to raise bills on GED and DNHED.

35. Further, the Petitioner tried to encash Letter of Credit submitted by GED. However, the Petitioner was restrained from encashing the said Letter of Credit by Court of the Principal District Judge, North Goa, Panjim in the Civil Suit No. 24 of 2014 filed by GED. Thereafter, the period of the said LC lapsed during the operation of the interim injunction order, thereby resulting in making the LC infructuous and as a result the Petitioner could not encash the same in settlement of the liabilities against GED towards charges of wheeling and suffered huge losses.

36. It is evident from the above-mentioned details of billing, payments, injunction order sought against encashment of Letter of Credit by GED leading to Letter of Credit becoming infructuous even when the matter has been under dispute before various forums in the last five years, that DNHED and GED have understood the arrangement with the Petitioner to be such as obliged running accounts to be maintained in terms of the above judgment of APTEL.

37. Further, in terms of the above judgment of the APTEL, each 'breach' by both the Respondents, namely, DNHED and GED, resultantly burdened the Petitioner with additional working capital cost. As such, the breach creates a continuing source of injury, thereby satisfying the first element of 'continuing breach'. Since DNHED and GED have consistently defaulted in paying charges and late payment surcharge, there has been a continuous and recurring contravention and non-compliance of

applicable law. The 'breach' being recurring, the second element of 'continuing breach' is satisfied. Since the breach continues on account of continued refusal to discharge liability towards charges, a fresh cause of action is constituted so long as the breach is recurrent and continues.

38. In light of the above, the present Petition is not barred by the limitation in view of provisions of Section 22 of the Limitation Act, 1963 since the Petitioner has been raising bills continuously upon DNHED and GED which remain unpaid.

**Issue No.3: Whether the Petitioner is entitled to payment of transmission charges under BPTA regardless of the fact that no power is being wheeled from RGPPL's generating station to DNHED and GED?**

39. The Petitioner has submitted that it has provided transmission facility to DNHED and GED for transmission of power from RGPPL and BPTAs have been signed to that effect. The Petitioner has been maintaining the required transmission system as provided in Clause 3.1 of the BPTAs and it has ensured availability of the system as required in Clause 6 of the BPTAs. Hence, as per Clause 7 of the BPTAs, the Respondents, DNHED and GED are liable to make payment of monthly charges including late payment charges, arrears and any other charges. The BPTA does not talk towards non-levying of charges in case of non-usage of the transmission system by the Respondents. Clause 7.2.1 of the BPTA provides for charges on a monthly basis to be recovered towards access and use of the intra-State transmission system. The charges towards wheeling in the instant case are not contingent upon the actual availability of electricity to be transmitted, which is a matter purely between the Respondents, DNHED/ GED and RGPPL.



40. The Respondents have submitted that the entire revenue requirements of the Petitioner are recovered from the four distribution licensees in the State of Maharashtra, namely, MSEDCL, Tata Power-Distribution, Reliance Infra- Distribution and BEST. The charges paid by the other customers (such as DNHED and GED) would only go on to reduce the transmission charges already recovered by the Petitioner from distribution licensees of the State of Maharashtra. The Respondents have also submitted that non-use of transmission system of MSETCL by DNHED and GED is purely on account of failure of MSEDCL to schedule power from RGPPL and the consequent inability of RGPPL to supply power to the other beneficiaries. MSEDCL holds 95% share in generating station of RGPPL while the remaining 5% is held by others such as DNHED and GED and since MSEDCL is not procuring its share, generating station of RGPPL is unable to operate.

41. The Respondents have submitted that in terms of Clause 7.2.1 of BPTA, the transmission charges are to be paid for 'access and use' of the transmission system and in absence of any actual use/ scheduling of power from RGPPL, they are not liable to pay the transmission charges. Both access and use of the transmission system are essential pre-condition for the billing and recovery of transmission charges by the Petitioner as per BPTAs. *Per contra*, the Petitioner has submitted that once the access is provided without any encumbrances, thereafter the "use" of the transmission system rests with the Respondents and it is for them to ensure valid PPA is in place and timely procurement of power from the generator to ensure that the system is being 'used' for actual transmission of power. The Petitioner being a transmission licensee cannot be held responsible for the alleged non-usage of its transmission system which is out of its purview and control.

42. The Petitioner has submitted that since the BPTA still persists and has not been terminated by the Respondents, the liability to pay the transmission charges continues. In response, DNHED has submitted that when a contract is impossible of being performed, there is no need to specifically terminate it and the impossibility of performance is a mode of discharge of contract.

43. We have considered the submissions of the parties. The relevant extracts from BPTAs are as under:

a. BPTA executed between the Petitioner and DNHED

*“b) Electricity Department, Dadra and Nagar Haveli, Government of India, having its Head Office at Amlı, Silvassa- 396 230. (hereinafter called "ED-DNH" or Transmission System User), which expression shall unless repugnant to the context or meaning thereof shall include its successors and permitted assigns as party of first part agrees to pay the transmission charge of Rs. 29.17 Lacs per month for 2% of RGPPL power as per the transmission charges calculated by WRPC vide Letter No.WRPC/(Comm1-J)/4/Corr/2010-1038 Dated 17/08/2010. **These transmission charges will be valid for the Financial Year 2011-12 and subsequently will be reviewed on year to year basis based on the calculations of WRPC.**”*

b. BPTA executed between the Petitioner and GED

*“b) EDG agrees to pay the transmission charges of Rs. 22.16 Lacs per month for 1% of RGPPL power as per the transmission charges calculated by WRPC vide Letter No.WRPC/(Comm1-I)/4/Corr/2010/1058 Dated 17/08/2010. **These transmission charges will be valid for the Financial Year 2011-12 and subsequently will be reviewed on year to year basis based on the calculations of WRPC.**”*

44. The relevant extracts of letter of WRPC dated 17.08.2010 is as under:

*“5. As a follow up action WRPC vide letter dated 21<sup>st</sup> May 2010 requested MSETCL for furnishing of all the required information viz., the details of lines in the identified contract path, cost; etc. MSETCL furnished the data vide letter dated 23<sup>rd</sup> June 2010 and 29<sup>th</sup> June 2010. As the data was incomplete, MSETCL was repeatedly pursued by WRPC to furnish the incomplete data fully. The matter was also discussed during 55<sup>th</sup> meeting of Commercial Committee held on 15<sup>th</sup> July 2010 and MSETCL was again requested to furnish in respect of date of commissioning, line length, capital cost of Parli-Solapur and Solapur-karad line and also Tax rates of MSETCL etc., which was still awaited. Finally, MSETCL furnished the above remaining information on 29<sup>th</sup> July 2010.*

6. As agreed by MSETCL and Goa, **the calculation in respect of Transmission Charges payable for wheeling of RGPPL power to Goa, DD and DNH through MSETCL intervening transmission system, has been calculated for year 2010-11 in line with the methodology given by Commission in petition No. 64/2008 and in Petition No. 67/2008** in the matter of fixation of and adjudication on the transmission charges for use of the Gujarat transmission system for conveyance of Central Sector power to Union Territory of Daman & Diu (DD) and to Union Territory of Dadra and Nagar Haveli (DNH) respectively vide CERC order dated 3rd February 2009.”

CALCULATION OF TRANSMISSION CHARGES OF MSETCL SYSTEM FOR TRANSFER OF RGPPL POWER TO DD & DNH			
YEAR 2010-11 (from 1.04.2010 to 31.03.2011)			
Anticipated Drawal by DD from RGPPL (MUs)			350.4
Anticipated Drawal by DNH from RGPPL (MUs)			350.4
Anticipated average drawal by DD from RGPPL (MW)			40
Anticipated average drawal by DNH from RGPPL (MW)			40
Line name	RGPPL-Nagothane	Nagothane-Padga	
Single/double circuit	s/c	d/c	
Circuit			
No. of bays	2	4	
Date of commissioning (1991-92 level)	2000	2001	
Years since commissioning after 1991	10	9	
years since commissioning after 2001-02 till 2008-09	8	8	
Voltage level (kV)	400 kV	400 kV	
Line length(Ckt. km)	136	117	
Total capital cost (Rs lacs)	12374.90	12178.34	
Equity (30 % of capital cost)	3712.47	3833.50	
Debt (70 % of capital cost)=Loan taken	p 8662.43	8344.83	
Cum. Depreciation upto 2000-01*	q 883.57	456.18	
Cum. Depreciation from 2001-02 to 2008-09 #	r 2544.28	2627.23	
Cum. Depreciation from 2009-10 ##	s 653.39	674.70	
Net loan at the end of last year (p-q-r)	t 4581.19	5186.73	
Calculation of Fixed charges (Lacs)			
Return on equity (@ 23.21%)	a 861.66	689.76	
Interest on loan(12.25% of Net Loan) (t x rate)	b 561.20	635.37	
Depreciation(5.28% of 90 % capital cost)	c 588.06	607.23	
O&M Expenses (as per tariff notification)	d 103.28	177.23	
Components of working capital			
O&M Expenses for one Month	e1 8.81	14.77	
Maintenance spares(15% p.a. of O&M expenses)	e2 15.49	26.58	
Receivables equivalent to two month	e3 43.81	72.90	
Interest on working capital(12.25%)	e 8.32	14.00	
Total Fixed Charges for year 2010-11 (a+b+c+d+e)	f 2122.50	2323.58	
Avg. anticipated contracted Power in MW	g 80	80	
SIL in MW	h 646	425	
Chargeable fixed charges (f x g/h)	i 262.88	437.38	
Total chargeable fixed charges (Rs. Lacs)	j 700.23		
Anticipated drawal by DD from RGPPL wheeled through MSETCL system during 2010-11 (in MUs)			350
Applicable transmission charges for DD for the year 2010-11 in Rs. Lacs			350.11
Anticipated drawal by DNH from RGPPL wheeled through MSETCL system during 2010-11 (in MUs)			350
Applicable transmission charges for DNH for the year 2010-11 in Rs. Lacs			350.11
* As per old method on full capital cost @3.57 % p.a.			
# as per Appendix-II of T&C of Tariff 2004-2009@2.57 % p.a.			
## as per Appendix-III of T&C of Tariff 2009-2014@5.28% p.a.			
Note : Full capacity of RGPPL (1980 MW) considered for calculation			

45. Perusal of letter of WRPC dated 17.8.2010 reveals that the calculation of wheeling charges for wheeling of power from RGPPL's generating station to GED and DNHD through the Petitioner's intervening transmission system has been done

in line with the Commission's order dated 3.2.2009 in Petition No. 64/2008 and Petition No. 67/2008. The tables attached along with the said WRPC letter provides that apportionment of applicable charges for year 2010-2011 has been done on the basis of anticipated drawl by DD/DNH. Similar table is attached for anticipated drawl by GED. As per the attached tables, it is clear that the apportionment of applicable charges has been done on basis of MU wheeled through the transmission system of MSETCL.

46. We note that Petition No. 64/2008 and Petition No. 67/2008 were filed by Gujarat Energy Transmission Corporation Ltd. (GETCO) for fixation of transmission charges for use of its transmission system for conveyance of Central sector power to Union Territory of Dadra and Nagar Haveli (DNH). The Commission in its order dated 3.2.2009 directed WRPC to submit detailed calculation of the transmission charges for transmission of power to DD and DNH considering the proportion in which the identified transmission assets are used for conveyance of power to DD and DNH which was to be estimated based on relevant historical data of power flows.

47. The Commission vide order dated 31.7.2009 fixed the transmission charges for use of Gujarat transmission system for conveyance of Central sector power to Union Territories of Damn & Diu and Dadra and Nagar Haveli, for the period from 1.4.2004 to 31.3.2009 based on calculations by WRPC, a sample of which is as follows:

“

<b>PERIOD 1.4.2004 TO 31.3.2005</b>		
<i>Line Type</i>		
<i>220 kV S/C lines</i>	<i>6.83</i>	<i>Lakh/k.m</i>
<i>220 kV D/C lines</i>	<i>12</i>	<i>Lakh/k.m</i>
<i>400 kV S/C lines</i>	<i>14.82</i>	<i>Lakh/k.m</i>

400 kV D/C lines	27.5	Lakh/k.m
66 kV lines as indicated by GEB		

<i>Drawal from Grid (MUs)</i>			
2004-05	<i>DD</i>	<i>DNH</i>	<i>Total</i>
	1216	2105	3321
<i>Average Load (MW)</i>			
	<i>DD</i>	<i>DNH</i>	<i>Total</i>
2004-05	139	240	379

<b>Actual drawal by DD from the Grid and wheeled through GETCO system during 2004-05 (in MUs)</b>	<b>1216</b>
<i>Applicable transmission charges for DD for the year 2004-05 (Rs. in lakh)</i>	434.01
<i>Actual drawal by DNH from the Grid and wheeled through GETCO system during 2004-05 (in MUs)</i>	2105
<i>Applicable transmission charges for DNH for the year 2004-05 (Rs. in lakh)</i>	751.31

48. It is observed that in terms of order in Petition Nos. 64/2008 and 67/2008, the applicable transmission charges for the usage of intervening transmission system of GETCO was based on the actual/ anticipated power drawn from the grid and wheeled using the transmission system of GETCO.

49. A combined reading of BPTAs read with letter of WRPC dated 17.8.2010 (wherein calculation of transmission charges was based on Order of the Commission dated 31.7.2009 in Petition No. 64/2008 and Petition No. 67/2008) leads us to the conclusion that wheeling charges to be paid by DNHED or GED was to be based on actual drawl (in MU) which was to be calculated by WRPC. WRPC had made calculations that were applicable for 2011-12 and WRPC was required to make calculation of transmission charges for subsequent years, but same was not done by WRPC.

50. The Petitioner has contended that DNHED and GED are required to make payment even if transmission system of the Petitioner is not being used by them.



However, terms of the BPTA does not support its contention. Had that been the case, there was no need to make the payment subject to review on yearly basis based on the calculations of WRPC. We have already noted that calculation of WRPC was based on MU basis that was calculated based on actual usage in terms of order of the Commission in Petition No. 64/2008 and Petition No. 67/2008.

51. Provisions of the Act related to intervening transmission facilities provides as under:

*“Section 35. (Intervening transmission facilities): The Appropriate Commission may, on an application by any licensee, by order require any other licensee owning or operating intervening transmission facilities to provide the use of such facilities to the extent of surplus capacity available with such licensee:*

*Provided that any dispute, regarding the extent of surplus capacity available with the licensee, shall be adjudicated upon by the Appropriate Commission.*

*Section 36. (Charges for intervening transmission facilities):*

*(1) Every licensee shall, on an order made under section 35, provide his intervening transmission facilities at rates, charges and terms and conditions as may be mutually agreed upon:*

*Provided that the Appropriate Commission may specify rates, charges and terms and conditions if these cannot be mutually agreed upon by the licensees.*

*(2) The rates, charges and terms and conditions referred to in sub-section (1) shall be fair and reasonable, and may be allocated in proportion to the use of such facilities.*

*Explanation. - For the purposes of section 35 and 36, the expression “intervening transmission facilities” means the electric lines owned or operated by a licensee where such electric lines can be utilised for transmitting electricity for and on behalf of another licensee at his request and on payment of a tariff or charge.*

52. The Central Electricity Regulatory Commission (Rates, Charges and Terms and Conditions for use of Intervening Transmission Facilities) Regulations, 2010 (hereinafter referred to as ‘the 2010 Intervening Facility Regulations’) was notified on 23.9.2010. Relevant extract from the 2010 Intervening Facility Regulations is as under:

*“3. Scope and Applicability:*

*(1) These regulations shall apply only where a contract path can be identified.*

*(2) These regulations shall apply where the intervening transmission facilities incidental to inter-State transmission owned or operated by a licensee, are used or proposed to be used by any trading licensee or distribution licensee for transmission of power through long-term access, medium-term open access or short-term open access, and where the contracting parties have failed to mutually agree on the rates and charges for the usage of such intervening transmission facilities as envisaged under the proviso to sub-section (1) of Section 36 of the Act.*

*(3) The terms and conditions contained in these Regulations shall be the model terms and conditions and the rates and charges specified in these regulations shall be the ceiling rates and charges and the parties may negotiate the rates and charges and the terms and conditions within the broad framework laid down under these Regulations:*

*Provided that the agreements entered into prior to the notification of these Regulations, either through mutual consent of the contracting parties or on the orders passed by the Appropriate Commission, for use of any intervening transmission facilities, shall continue to have effect notwithstanding inconsistency, if any, with these Regulations till the expiry of such agreements.”*

*4. Rates and Charges:*

*The rates and charges for usage of intervening transmission facilities shall be as specified under the Schedule-I to these Regulations. The rates and charges specified based on contract path are for a standard distance of 50 Km or a part thereof.*

*Provided that in case the annual revenue requirement of the contract path in question has already been determined by the Commission or any State Electricity Regulatory Commission then the sharing of the transmission charges so determined, by the applicant, will be in the ratio of the **average power flow in MW of the transaction** determined on post-facto basis, to the peak capacity of the power flow in MW in the line as given in Schedule-II.”*

53. In the instant matter, “BPTA for the use of transmission system of Maharashtra State Electricity transmission Company Limited” signed with the Petitioner on 6.9.2011 (DNHED) and 21.11.2011 (GED) specifies that the calculation done by WRPC in its letter dated 17.8.2010 was applicable for the year 2011-12 and thereafter the charges payable by DNHED and GED was subject to review on year to year basis based on the calculation of WRPC. As per documents available on record,



we note that the calculations have not been revised. We also note that the BPTA was signed post coming into force of the 2010 Intervening Facility Regulations, but BPTA did not refer to it and provided that charges payable by DNHED and GED would be based on the calculations of WRPC. As per Regulation 3(2) of the 2010 Intervening Facility Regulations, in case of mutual agreement between contracting parties, the provisions of the 2010 Intervening Facility Regulations are not applicable. Therefore, as long as BPTAs exist between the contracting parties, they would be guided by provisions of BPTAs.

54. The Respondents have submitted that the BPTAs have got discharged since it has become impossible to perform. In our view, the Respondents have not made out a case for impossibility of performance of contract. The Respondents' case rests upon the fact that MSEDCL which has 95% share in power from RGPPL's generating station is not scheduling power and that RGPPL's generating station cannot operate at 5% and, therefore, no power can be scheduled. We note that the same situation persisted when the BPTAs were signed and the signatories to the BPTAs were aware of share of respective distribution companies. Thus, the BPTA is still in force and is binding on the parties.

55. Having held that provisions of BPTAs entitle the Petitioner to make payment of transmission charges on basis of MU and that such charges were to be calculated by WRPC on yearly basis, any contention of the Petitioner that it is entitled to wheeling charges, even if its transmission system is not being used, is not acceptable. It was incumbent upon the Petitioner to get the transmission charges revised through approaching WRPC. However, neither the Petitioner approached WRPC for revision

of transmission charges nor the Respondents (DNHED/ GED) approached WRPC in this regard. The last bill raised by the Petitioner, available on record, is dated 2.4.2018 which in its 'Note' provides as under:

- "1. The charges forming part of Bill are in line with Calculation carried out by WRPC vide their letter No. WRPC/ (Comrnl-1)/4/Corr/2010-1052 Dated 17 AUG, 2010.*
- 2. The bill is raised as per discussed and agreed in 59<sup>th</sup> Commercial Committee Meeting of WRPC held at Mumbai on dated 18<sup>th</sup> August 2011."*

Thus, the bill was based on calculation carried out by WRPC vide letter dated 17.8.2010 and 59<sup>th</sup> Commercial Committee Meeting held on 18.8.2011.

56. The validity of calculation done by WRPC vide letter dated 17.8.2010 was till 2011-12, which is also mentioned in the BPTA and, therefore, it is not appropriate on the part of the Petitioner to raise bills for subsequent years as per charges determined for year 2011-12. We note that the matter was discussed in 59<sup>th</sup>, 64<sup>th</sup> and 65<sup>th</sup> Commercial Committee Meetings of WRPC. However, the charges were not revised based on actual drawl of power that formed basis of calculation of transmission charges for the years 2011-12 in letter of WRPC dated 17.8.2010.

57. The Petitioner /DNHED/GED are directed to approach WRPC for revision of calculation of transmission charges for years 2012-13 onwards and revise the bills accordingly. Once WRPC is approached by the Petitioner/DNHED/GED, WRPC shall revise the calculation of payable transmission charges based on methodology used for calculating charges for the year 2011-12 and that shall be done as soon as possible,. The Petitioner shall raise the revised bills based upon calculations done by WRPC.

58. Another point worth noting is that the Respondents, DNHED and GED have submitted that the Petitioner is receiving the full transmission charges from MSEDCL (and other Discoms in the State of Maharashtra) and that the charges received from DNHED and GED go towards reducing transmission charges already paid by MSEDCL. The Petitioner has not refuted the same. We note that MSEDCL, despite having been impleaded as a party to the Petition, has not made any submissions.

**Summary of the decisions:**

59. The summary of our decisions in this Order are as under:

a. The dispute raised in the Petitions falls within the jurisdiction of this Commission.

b. The Petitions are not barred by limitation.

c. Wheeling charges are to be paid by DNHED or GED on actual drawl (in MU) to be calculated by WRPC based on methodology approved by the Commission in Petition Nos. 64/2008 and Petition No. 67/2008.

d. The billings done by Petitioner for years 2012-13 onwards based on transmission charges calculated by WRPC for year 2011-12 is not correct. On being approached by the Petitioner /DNHED/GED, WRPC shall revise the transmission charges payable for period of 2012-13 onwards.

e. The Petitioner shall raise the bills based on revised calculations done by WRPC.

60. Petition No. 153/MP/2018 and Petition No. 154/MP/2018 are disposed of in terms of the above.

sd/-

**(Arun Goyal)**  
**Member**

sd/-

**(I. S. Jha)**  
**Member**

sd/-

**(P. K. Pujari)**  
**Chairperson**