

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 199/MP/2021

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of order: 8th July, 2022

In the matter of:

Petition under Section 79(1)(f) of the Electricity Act, 2003 and Article 8 of the Power Purchase Agreements dated 29.6.2012 and 23.8.2013 entered into between the Petitioner and the Respondent, for recovery of Late Payment Surcharge on the monthly bills of the Petitioner.

And

In the matter of

Jindal Power Limited
Plot No. 2, Sector-32
Gurgaon- 122001, Haryana

...Petitioner

Versus

Tamil Nadu Generation and Distribution Corporation Limited,
6th Floor, Eastern Wing
144, Anna Salai
Chennai- 600 002
Tamil Nadu

...Respondent

Parties Present

Shri Deepak Khurana, Advocate, JPL
Shri Ashwini Kumar Tak, Advocate, JPL
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Shri Rahul Ranjan, Advocate, TANGEDCO

ORDER

The Petitioner, Jindal India Limited '(JPL)', has filed the present Petition seeking direction to the Respondent to pay the amounts due and payable to the Petitioner towards Late Payment Surcharge (hereinafter referred to as 'LPS') on account of delay

in payment of the Petitioner's monthly bills for the power supplied under the Power Purchase Agreements dated 29.6.2012 and 23.8.2013. The Petitioner has made the following prayers:

“(a) Direct the Respondent to pay the amount of Rs. 429,14,33,287 - (Rupees Four Hundred Twenty-Nine Crore Fourteen Lacs Thirty-Three Thousand Two Hundred and Eighty-Seven Only) to the Petitioner towards Late Payment Surcharge (Rs. 101,31,13,293 - under PPA-I and Rs. 327,83,19,994- under PPA-II);

(b) Pending final adjudication of the present Petition, pass an ex-parte ad interim order, directing the Respondent to forthwith make payment of at least 75% of the above amount to the Petitioner; and

(c) Pass any such other Order(s) as this Commission may deem fit in the facts and circumstances of the present case.”

2. The Petitioner has set up a coal based Thermal Power Station at Tamnar, Raigarh district in the State of Chhattisgarh with an installed capacity of 1000 MW (4 X 250 MW) in Phase-I and 2400 MW (4 X 600 MW) in Phase-II totalling 3400 MW. Tamil Nadu Generation and Distribution Corporation Limited ('TANGEDCO') issued a Request for Proposal (in short 'the RfP') on 5.12.2011 for procurement of power for 'Medium Term' under Case I bidding process for meeting its base load power requirements in the State of Tamil Nadu. The Petitioner participated in the bidding process and submitted bid on 18.2.2012. Pursuant to the submission of bid, the Petitioner was declared as the successful bidder at a levelised tariff of Rs. 4.9165/kWh for supply of 200 MW RTC (round the clock) power. Thereafter, a Power Purchase Agreement (hereinafter referred to as 'MT-PPA') was executed between the Petitioner and TANGEDCO on 29.6.2012 for the period from 1.9.2012 to 31.8.2017. The MT-PPA postulated usage of domestic coal from captive mines as the primary fuel to be used for generating electricity. The MT-PPA signed between the Petitioner and the Respondent and levelized tariff of Rs. 4.9165/kWh quoted by the Petitioner was approved and

adopted by Tamil Nadu Electricity Regulatory Commission ('TNERC') under Section 63 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') vide order dated 17.4.2013 in P.P.A.P No. 7 of 2012.

3. Subsequently, TANGEDCO issued another RfP on 21.12.2012 for procurement of 1000 MW \pm 20% RTC Power for 'Long Term' under Case-I bidding process for meeting its base load power requirements in the State of Tamil Nadu. Pursuant to the submission of bid, the Petitioner was declared as the successful bidder at a levelized tariff of Rs 4.91/kWh for supply of 400 MW RTC power and another PPA (hereinafter referred to as "LT-PPA") was executed between the Petitioner and TANGEDCO on 23.8.2013 for the period from 1.2.2014 to 30.9.2028 in this regard. This PPA postulated usage of domestic coal from linkage as the primary fuel to be used for generating electricity. The LT-PPA signed between the Petitioner and the Respondent at the levelized tariff of Rs. 4.91/kWh was approved and adopted by TNERC under Section 63 of the Act vide order dated 29.7.2016 in P.P.A.P No. 3 of 2014.

Submissions of the Petitioner

4. The Petitioner has mainly submitted as under:
- (a) PPA dated 29.6.2012 and PPA dated 23.8.2013 provide for payment of monthly bills to the Petitioner for the power supplied to the Respondent, by due date which is 30th day after a monthly bill or a supplementary bill is received and duly acknowledged by the Procurer (Respondent).
 - (b) PPAs further provide remedy on failure to make monthly payment by due date that LPS shall be payable by the Respondent to the Petitioner at the rate equal to SBI-PLR per annum, on the amount of outstanding payment, calculated on day to day basis (and computed with monthly rest) for each day of delay.

(c) From November 2016 against PPA dated 29.6.2012 and from December 2016 against PPA dated 23.8.2013, the Respondent has delayed payment of the monthly bills of the Petitioner beyond their respective due dates for which it is liable to pay LPS in terms of Article 8.3 of the PPAs. The following amount of LPS is payable by the Respondent to the Petitioner from the financial year 2016-17 to financial year 2021-22:

Late Payment Surcharge				
S. No.	Financial Year	400MW PPA-dated 23.8.2013 (Rs)	200MW PPA dated 29.6.2012 (Rs)	Total (Rs)
1	FY 2016-17	3,15,16,090	10,82,694	3,25,98,784
2	FY 2017-18	39,62,64,647	13,83,53,059	53,46,177,06
3	FY 2018-19	40,16,00,413	13,80,38,751	53,96,39,164
4	FY 2019-20	91,48,50,722	34,21,28,369	125,69,79,091
5	FY 2020-21	114,44,05,717	31,05,43,482	145,49,49,199
6	FY 2021-22 (Up to 31.08.2021)	50,89,54,940	10,46,48,749	61,36,03,689
7	Total LPS upto on 31.08.2021	339,75,92,529	103,47,95,104	443,23,87,633

(d) The Respondent delayed payment of the monthly bills of the Petitioner for supply of power under the PPA. As on 30.4.2021, Rs 174,83,37,670/- was outstanding against the Respondent which comprised monthly energy bills of Rs. 79,80,70,124/- for the months of April 2019 to July 2019 and LPS of Rs 95,02,67,546/- accrued as on 30.4.2021, on monthly energy bills from the month of November 2016 to August 2019 under PPA dated 29.6.2012. As on 30.4.2021, Rs 889,43,92,890/- was outstanding against the Respondent under PPA dated 23.8.2013 which comprised monthly energy bills of Rs. 592,15,01,159/- for the months of April 2019 to March 2021 and LPS of Rs. 297,28,91,731 accrued as on 30.04.2021 on monthly energy bills from the month of December 2016 to February 2021.

(e) On 2.8.2021 and 1.9.2021, the Petitioner issued invoices towards LPS on the Respondent. However, the Respondent has failed to pay the same.

(f) Apart from payments due towards LPS, the Respondent has also defaulted in payment of monthly energy bills for the period of April, 2019 to July, 2019 under PPA. The Respondent has defaulted in payment of change in law compensation pertaining to PPA dated 23.8.2013 for the months of September, 2020 to June 2021.

(g) The Petitioner is in a financially precarious condition owing to non-payment of bills by the Respondent. The claim of the Petitioner raised in the present Petition had never disputed by the Respondent.

(h) The Respondent has failed to discharge its liability and has not paid any amount towards LPS despite repeated requests and follow ups by the Petitioner.

Hearing dated 22.3.2022

5. The matter was admitted on 22.3.2022 and parties were directed to complete the pleadings on merits.

Hearing dated 7.6.2022

6. During the course of hearing, learned counsel submitted that as on the date of filing of the Petition, total outstanding LPS was Rs. 429.14 crore which has now accumulated to approximately Rs. 549 crore. Learned counsel further submitted that despite clear direction of the Commission vide Record of Proceedings for the hearing dated 22.3.2022, the Respondent has not filed reply in the matter by 11.4.2022 and has now belatedly sought extension of time vide its letter 3.6.2022. Learned counsel submitted that neither the liability of payment of LPS nor its quantification is disputed by the Respondent and therefore, the Respondent may be directed to make payment of LPS, in line with the Commission's earlier order dated 8.1.2020 in Petition No. 22/MP/2019 which has also been upheld by the Appellate Tribunal for Electricity ('APTEL') vide its order dated 4.2.2021 in Appeal No. 56 of 2020. Learned counsel

further submitted that the Petitioner is also praying for an interim direction to the Respondent to make payment of 75% of the total dues forthwith.

7. In response to the specific query of the Commission regarding the Petitioner having taken any remedial actions as per the provisions of the PPAs, Rules notified by the Ministry of Power in this regard, etc., learned counsel submitted that the Letter of Credits ('LCs') furnished under the PPAs are not sufficient to meet the outstanding amount of LPS. Also, the LCs initially furnished by the Respondent were conditional and the corrective steps were taken by the Respondent only recently. As regard to the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 ('LPS Rules') notified by the Ministry of Power on 3.6.2022, learned counsel submitted that the LPS Rules would not impact the adjudicatory process initiated by the Petitioner upon filing of present Petition back in September, 2021 as the cause of action for the Petition had accrued much earlier to the date of notification of the LPS Rules. In support, learned counsel placed the reliance on the paragraphs 61, 62 and 64 of the judgment of APTEL dated 5.4.2022 in OP No. 1 of 2022 and Ors. Learned counsel added that in any case as per Rule 5 of the LPS Rules, it is the Respondent who has to take the necessary steps and communicate, in writing, the outstanding dues and number of installments in which the outstanding dues would be paid within the time specified therein.

8. Learned counsel for the Respondent, TANGEDCO submitted that the Petitioner's submission that the LPS Rules would not apply in the present case may not be correct as the LPS Rules specifically provide for liquidation of arrears. Learned counsel added that as such the Respondent's reply does not take into account the LPS Rules as they have been notified recently and that she may be permitted to seek necessary instruction in this regard.

9. After hearing the learned counsel for the parties, the Commission permitted the parties to complete the pleadings.

10. The Respondent vide its affidavit dated 9.6.2022 has filed its reply. The Petitioner has also filed rejoinder thereof.

Reply of the Respondent, TANGEDCO

11. The Respondent, vide its affidavit dated 9.6.2022 has mainly submitted as under:

(a) Since, the Respondent is facing severe financial hardship, it has been unable to settle the LPS.

(b) Ministry of Power, Government of India has notified the Electricity (Late Payment Surcharge and related matters) Rules, 2022 (hereinafter referred to as "LPS Rules"), which provides for rescheduling of outstanding dues owed to generating companies, transmission licensees and electricity trading licensees. Rule 5 of the LPS Rules provides for rescheduling of the total outstanding dues including LPS up to the date of notification of the rules in accordance with the stipulation contained therein. The said Rules therefore squarely apply to the present case. In terms of the LPS Rules, TANGEDCO has a window of 30 days from the date of the said Rules to propose the schedule of instalments for liquidation of such arrears.

(c) LPS Rules expressly provide for rescheduling arrears that have accrued prior to the date of notification of the said Rules (unlike in the case of the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 (in short 'Change in Law Rules'), thus leaving no room for doubt that the provisions relating to liquidation of arrears would apply in all cases. The mere fact that the present petition was filed before notification of the said Rules does not dilute the applicability of the Rules in any manner.

(d) The judgment of APTEL in OP No. 1 of 2022 and batch dated 5.4.2022 is inapplicable in the context of LPS Rules given the express provisions thereof. In the said judgment, the APTEL held that the Change in Law Rules cannot be construed to have retrospective application because as held there in any law

which creates new rights, liabilities, disabilities, obligations shall be prospective in operation, unless otherwise provided, either expressly or by necessary implication. Further, the observations in the said judgment with respect to the mandatory power of the Commission to adjudicate upon disputes were rendered in light of the fact that disputes with respect to the Change in Law, for which jurisdiction of the Commission already stands invoked cannot be scuttled by Rules framed by the Government. On the other hand, LPS Rules does not take away any power to adjudicate upon disputes, it only provides for rescheduling the arrears in terms thereof and hence is not covered by the ratio of the judgment of the APTEL.

(e) If the LPS Rules were held to be inapplicable in respect of outstanding dues accrued up to the date of its notification, it would extend beyond mere interpretation of the said Rules and would tantamount to striking down the validity of delegated legislation, which is impermissible in view of the judgment of the Hon'ble Supreme Court in PTC India Limited v. CERC and Ors. [(2010) 4 SCC 603].

(f) Considering the severe financial crisis, which is exacerbated by the prevailing shortage of power and high prices at which TANGEDCO is constrained to procure power from the exchanges, TANGEDCO would require reasonable time to make payment of LPS and the opportunity to make such payment through instalments.

Petitioner's rejoinder to the reply of Respondent, TANGEDCO

12. The Petitioner, in its rejoinder dated 17.6.2022, has mainly submitted as under:

(a) The Respondent has admitted its liability to pay LPS amount claimed in the Petition. Neither the liability to pay nor the amount of LPS claimed in the Petition is in dispute. The Petitioner has placed on record the updated invoices dated 1.6.2022 which include LPS amount for the month of May, 2022 which shall become due on 1.7.2022. For MT-PPA, the outstanding LPS amount is Rs.118,01,74,222/- and for LT-PPA, the outstanding LPS amount is Rs.443,15,73,919, thus totalling to Rs.561,17,48,341/-. Thus, the Respondent is

liable to be directed to forthwith pay the aforesaid outstanding amount to the Petitioner.

(b) With regard to averment of the Respondent that the Respondent is facing severe financial hardship and has not been able to settle the LPS, Hon'ble Supreme Court and APTEL has held in a catena of decisions that financial hardship or financial crunch is not a justified or tenable reason for non-payment or not discharging one's liability. In any event of the matter, the assertion of the respondent with regard to financial hardship is totally vague and unsubstantiated. The Respondent has not placed on record any material to establish the financial hardship claimed by it.

(c) Reliance placed by the Respondent on the LPS Rules notified by the Ministry of Power on 3.6.2022 is wholly misconceived and erroneous. The present Petition was filed on 7.9.2021, whereas the LPS Rules have been brought into force w.e.f 3.6.2022. Firstly, the LPS Rules having been framed and issued under the provisions of the Electricity Act, 2003 ('the Act') (Section 176 and Section 179) and being delegated piece of legislation, cannot and do not apply retrospectively. Separately and in any event of the matter, the said Rules cannot affect the proceedings for recovery having already been initiated before the coming into force of the Rules, such as the present Petition.

(d) The issue with regard to the prospective applicability of the Rules as well as the applicability of the Rules to the pending proceedings is no longer *res integra* and is squarely covered by the recent judgment of the APTEL in Original Petition No. 1 of 2022 and connected matters (*NRSS-XXIX Transmission Limited v. Central Electricity Regulatory Commission and Ors.*) rendered on 5.4.2022 in respect of Change in Law Rules. In the said judgment, the APTEL, has referred to and relied upon various decisions of the Hon'ble Supreme Court wherein the Court laid down the law relating to prospective applicability of delegated legislation as well as the applicability of delegated legislation to the pending proceedings. Reliance has been placed on paragraphs 52, 53, 54, 56, 57, 59 and 60 of the said judgment dated 5.4.2022

(e) Separately, in the same judgment, the APTEL has held in paragraph 61 that the Rules cannot stop the pending adjudicatory process where the cause of

action and claims pre-date the Rules. Therefore, on this count alone, the LPS Rules cannot affect the present proceeding in any manner whatsoever.

(f) The judgment of APTEL does not rest on the said clarification issued by the Ministry of Power vis-à-vis the date of applicability of the Change in Law Rules. APTEL, after examining in great detail the legal position with regard to delegated legislation such as the Rules, and while referring to and applying the law laid down in the numerous judgments of the Hon'ble Supreme Court, has held that in the absence of the parent statute clothing the executive (MoP) with the power to frame Rules retrospectively, the Rules cannot apply retrospectively and secondly, the Rules cannot affect the proceedings which are already pending on the date of notification of the Rules. Both the LPS Rules as well as Change in Law Rules are delegated pieces of legislation having been framed under Section 176 read with Section 179 of the Act. Therefore, both set of Rules stand on the same footing, having their origin in the aforesaid provisions of the Act, when it comes to their prospective applicability, and therefore cannot be any distinction between the two set of Rules. In this regard, APTEL, in Paragraph 57 of the aforesaid judgment has categorically held that there is no power under Section 179 of the Act to frame Rules with retrospective effect. The said pronouncement of the APTEL applies squarely to the LPS Rules, the source whereof being the same i.e. the Act.

(g) Secondly, the decision of APTEL that the Change in Law Rules cannot affect the proceedings already pending applies with all fours to the LPS Rules as well, inasmuch as the LPS Rules cannot be applied to divest this Commission of the jurisdiction to adjudicate upon the claim already laid before it in the present Petition, the cause of action for which had arisen much prior to the Rules coming into force. It is extremely relevant to submit that APTEL has applied and followed the general proposition of law laid down by the Hon'ble Supreme Court vis-à-vis retrospective applicability of delegated legislation and delegated legislation's impact on the pending proceedings in a catena of judgments (the same having been referred to by APTEL copiously). On this count as well, there is no distinction between the Change in Law Rules and the LPS Rules when it comes to the applicability of the said Rules to the pending proceedings. The Respondent's argument that if the LPS Rules are not applied to the present

proceeding, it would amount to striking down the validity of the delegated legislation (Rules) is utterly misconceived, preposterous and patently fallacious. If the Rules are held not to be applicable for the reason that they apply prospectively or for the reason that the Rules cannot affect the pending proceeding (being the settled position of law), it does not amount to striking down the validity of the Rules. Even the APTEL in its judgment dated 5.4.2022 has not struck down the Rules as invalid. The APTEL has only held that Rules are not applicable to the pending proceedings.

(h) The Respondent has sought reasonable time to make payment of the outstanding amount to the Petitioner. Under the regulatory framework, the stipulation is for payment of invoices for the power supplied by the due date (which is 30 days). This is the benchmark for reasonable time, which has already expired long time ago. It is the solemn obligation of the Respondent to discharge its liability in respect of the power purchase by it from the Petitioner.

Analysis and Decision

13. We have considered the submissions of the parties and perused the documents available on record.

14. The present Petition has been filed seeking direction to the Respondent to pay the amounts due and payable to the Petitioner towards LPS on account of delay in payment of Petitioner's monthly bills for the power supplied under the Power Purchase Agreements dated 29.6.2012 and 23.8.2013. The Petitioner has submitted that as on date of filing of the present Petition total outstanding LPS was Rs. 429.14 crore which, as indicated in its rejoinder, has now accumulated to Rs. 561.17 crore.

15. The relevant provisions in the PPAs between the parties in regard to Late Payment Surcharge are as under:

MT-PPA dated 29.6.2012

Article 8 – Billing and Payment

....

8.3.5 In the event of delay in payment of a Monthly Bill by the Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate of two percent (2%) in excess of the applicable SBAR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly interest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.

LT-PPA dated 23.8.2013

“Article 8 – Billing and Payment

8.3.5 In the event of delay in payment of a Monthly Bill by the Procurer beyond its Due Date, a Late Payment Surcharge shall be payable by such Procurer to the Seller at the rate equal to SBI-PLR per annum, on the amount of outstanding payment, calculated on a day to day basis (and compounded with monthly interest), for each day of the delay. The Late Payment Surcharge shall be claimed by the Seller through the Supplementary Bill.”

16. It is noted that the Respondent has neither denied the liability to pay the LPS under the aforementioned provisions of the PPAs, nor disputed the amount due and payable to the Petitioner towards LPS. It is thus clear that the Respondent is, admittedly, in default of discharging its liability towards LPS in terms of the PPAs. Therefore, there is no dispute which is required to be adjudicated under Section 79(1)(f) of the Act in the present Petition.

17. While admitting the payment due on account of claim of LPS by the Petitioner, the Respondent has expressed difficulties being faced in payment due to the Petitioner due to severe financial hardship being faced by the Discom. We are of the view that this ground is untenable inasmuch it is settled law that financial hardship is not a ground much less a justifiable ground to not discharge its liability in terms of the contract/PPA.

18. The Respondent has submitted that Ministry of Power, Government of India has notified the LPS Rules and in terms of LPS Rules, TANGEDCO has a window of 30

days from the date of the said Rules to propose the schedule of instalments for liquidation of such arrears. Rule, 3, Rule, 4 and Rule 5 of LPS Rules provides as under:

“3. Late Payment Surcharge.- (1) *Late Payment Surcharge shall be payable on the payment outstanding after the due date at the base rate of Late Payment Surcharge applicable for the period for the first month of default.*

(2) *The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent for every month of delay provided that the Late Payment Surcharge shall not be more than three per cent higher than the base rate at anytime:*

Provided that the rate, at which Late Payment Surcharge shall be payable, shall not be higher than the rate of Late Payment Surcharge specified in the agreement, if any.

4. Adjustment towards Late Payment Surcharge: *All payments by a distribution licensee to a generating company or a trading licensee for power procured from it or by a user of a transmission system to a transmission licensee shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.*

5. Liquidation of arrears: (1) *The total outstanding dues including Late Payment Surcharge upto the date of the notification of these rules shall be rescheduled and the due dates re-determined for payment by a distribution licensee in the following maximum number of equated monthly installments:-*

Outstanding dues amount (in Rs. Crore)	Maximum no. of equated monthly installments (months)
Up to 500	12
501-1,000	20
1,001-2,000	28
2,001-4,000	34
4,001-10,000	40
>10,000	48

(2) *The distribution licensee shall communicate, in writing, to the generating company, transmission licensee, electricity trading licensee, as the case may be, the outstanding dues and number of installments in which, the outstanding dues would be paid and this communication shall be sent within thirty days of the promulgation of these rules:*

Provided that if distribution licensees fails to communicate to generating company, transmission licensee, electricity trading licensee, as the case may be, the rescheduling of dues in accordance with sub-rule (1) of rule 5 within thirty days, these provisions shall not be applicable to it:

Provided further that the distribution licensee may make payment in a month more than the equated monthly installment for the month:

Provided also that the first due date for payment of the equated monthly installment shall be the fifth day of the immediate month that comes after forty five days from notification of these rules and due date for all subsequent equated monthly installments shall be due on fifth day of date the subsequent months.

Illustration: If these rules come into effect on 10th March, 2022 then the due date of the equated monthly installment shall start from 5th May, 2022 and subsequent equated monthly installment shall be due on 5th of subsequent months i.e. 5th June, 2022 and so on:

Provided also that the payment of installment shall be done to all the concerned generating companies, transmission licensees, electricity trading licensees, as the case may be, on pro-rata basis, depending upon the proportion of their individual outstanding dues.

(3) Notwithstanding anything contained in rule 3, if the distribution licensee agrees to payment of the arrears dues as per the installment fixed under the rule, and makes timely payment of these installment then Late Payment Surcharge shall not be payable on the outstanding dues from the day of the notification of these rules.

(4) In case of delay in payment of an installment under sub-rule (1), Late Payment Surcharge shall be payable on the entire outstanding dues as on the date of notification of these rules.

(5) In case of non-rescheduling of the arrears in accordance with this rule, all payments made by the Distribution Company shall first be adjusted against the arrears.”

19. As per Rule 3 (1), LPS is payable on the payment of outstanding after due date at the base rate of LPS applicable for the period for the first month of default. As per Rule 4, all payments are required to be first adjusted towards LPS and thereafter, towards monthly charges starting from the longest overdue bill. As per Rule 5 (1) dealing with liquidation of arrears, total outstanding dues including LPS upto the date of the notification of these rules are required to be rescheduled and the due dates re-determined for payment by a distribution licensee in the equated monthly instalments. As per Rule 5 (2) of the LPS Rules, the distributions licensee is required to communicate within 30 days of promulgation of LPS Rules, in writing, to the generating company, transmission licensee, electricity trading licensee, the outstanding dues and number of

instalment in which the outstanding dues would be paid in terms of Rule 5 (1), failing which the provisions of rescheduling of dues shall not be applicable to the distribution company.

20. The Respondent has submitted that LPS Rules expressly provide for rescheduling arrears that have accrued prior to the date of notification of the said Rules. The mere fact that the present petition was filed before notification of the said Rules does not dilute the applicability of the Rules in any manner. *Per Contra*, the Petitioner has submitted that LPS Rules would not impact the adjudicatory process initiated by the Petitioner upon filing of present Petition back in September, 2021 as the cause of action for the Petition had accrued much earlier to the date of notification of the LPS Rules. In this regard, the Petitioner has relied on the judgment of APTEL dated 5.4.2022 in OP No. 1 of 2022 and Ors. to contend that the Rules cannot stop the pending adjudicatory process where the cause of action and claims pre-date the Rules. Therefore, on this count alone, the LPS Rules cannot affect the present proceeding in any manner whatsoever.

21. We have considered the submissions of the parties. The Petitioner has submitted that APTEL in its judgment dated 5.4.2022 in the case of *NRSS-XXIX Transmission Limited v. Central Electricity Regulatory Commission and Ors.* has held that even procedural law does not always have retrospective effect particularly where cause of action and claims proceedings pre-date the new law. Relevant portion of above judgment is extracted as under:

61. We may add here that even if we were to adopt the view of CERC that the CIL Rules represent procedural law, we are not persuaded to accept that these Rules can stop the pending adjudicatory process in its tracks divesting the statutory authority of its jurisdiction to adjudicate in matters awaiting its decision. In Ramesh Kumar Soni v. State of MadhyaPradesh, (2013) 14 SCC 696, it was held that even procedural law does not always have retrospective effect particularly where cause of action and claims proceedings pre-date the new law. We may quote the following passage from the said decision:

“19. Even otherwise the Full Bench failed to notice the law declared by this Court in a series of pronouncements on the subject to which we may briefly refer at this stage. In Nani Gopal Mitra v. State of Bihar, AIR 1970 SC 1636, this Court declared that amendments relating to procedure operated retrospectively subject to the exception that whatever be the procedure which was correctly adopted and proceedings concluded under the old law the same cannot be reopened for the purpose of applying the new procedure.....”

“5.It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle, viz. that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force--(See In re a Debtor, and In re Vernazza. The same principle is embodied in Section 6 of the General Clauses Act which is to the following effect:

...
23. *In Baburam v. C.C. Jacob and Ors., (1999) 3 SCC 362, this Court invoked and adopted a device for avoiding reopening of settled issues, multiplicity of proceedings and avoidable litigation. The Court said:*

“5. The prospective declaration of law is a device innovated by the apex court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty-bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law...”

62. *The principles which emerge from the settled law governing the subject thus guide us to the effect that a statute which creates new rights, liabilities, disabilities, obligations shall be prospective in operation, unless otherwise provided, either expressly or by necessary implication. Amendments relating to procedure operate retrospectively exception being that whenever the proper procedure was adopted and proceedings concluded under the old law, the same cannot be reopened. A new law or an amendment bringing about a change in forum shall not affect cases which are concluded or are at an advanced stage since such change would cause avoidable hardship to the parties in those cases. In cases where the consequential hardship is too great retrospective operation is withheld.”*

22. APTEL in paragraph 62 of the aforesaid judgment has held that *‘a statute which creates new rights, liabilities, disabilities, obligations shall be prospective in operation, unless otherwise provided, either expressly or by necessary implication’*. It is observed that Rule 5 of the LPS Rules ‘expressly’ recognizes the arrears/past liabilities accumulated upto the date of notification of Rules and provides for liquidation process

in equal monthly instalments. From 3.6.2022 onwards, the LPS Rules are applicable for the Petitioner and the Petitioner cannot circumvent Rule 5 'Liquidation of arrears' on account of pending adjudication of the Petition. Thus, the contention of the Petitioner that the LPS Rules are not applicable to the present case is not sustainable.

23. In view of the above, the Commission is of the view that the Respondent and the Petitioner are required to take further action in accordance with the LPS Rules,

24. In terms of the above discussion and findings, the Petition No. 199/MP/2021 is disposed of.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member