

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 298/MP/2018**

**Coram:**

**Shri P.K. Pujari, Chairperson**

**Shri I.S. Jha, Member**

**Shri Arun Goyal, Member**

**Shri Pravas Kumar Singh, Member**

**Date of order: 27<sup>th</sup> January, 2022**

**In matter of:**

Judgment dated 13.3.2020 of the Appellate Tribunal for Electricity in Appeal No.20/2019 (WBSEDCL v DVC).

**And**

**In the matter of:**

Petition seeking adjudication of disputes between the Petitioner and the Respondent for claim of fixed charges due to unilateral termination of PPA by WBSEDCL in regard to supply of power from Koderma TPS of DVC

**And**

**In the matter of:**

Damodar Valley Corporation,  
DVC Towers, VIP Road,  
Kolkata- 700054

**....Petitioner**

**Vs**

West Bengal State Electricity Distribution Company Limited,  
Block 'DJ', Sector-11, Salt Lake City,  
Kolkata-700091

**....Respondent**

**Parties present:**

Shri M.G. Ramachandran, Senior Advocate, DVC

Ms. Anushree Bardhan, Advocate, DVC

Shri Manik Rakshi, DVC

Shri Debasish Dey, DVC

Shri Debi Prasad Paitundi, DVC

Shri Debasish Mondal, DVC

Shri Samit Mandal, DVC

Shri Srikanta Pandit, DVC

Shri Vishrov Mukerjee, Advocate, WBSEDCL



## ORDER

Petition No. 298/MP/2018 was filed by the Petitioner, Damodar Valley Corporation ('DVC') seeking declaration that the Respondent, West Bengal State Electricity Distribution Company Limited ('WBSEDCL') was liable to pay Rs.111,74,47,434 crores towards principal and delayed payment surcharge at the rate of 1.5% per month, as on 31.8.2019, and for further interest at the said rate, effective from 1.9.2018, till full payment and discharge of all outstanding dues. The Commission, after holding that the claim of the Petitioner was not barred by limitation, allowed the prayers of the Petitioner, vide order dated 1.11.2019.

2. Aggrieved by order dated 1.11.2019 in Petition No.298/MP/2018, the Respondent WBSEDCL filed Appeal No. 20 of 2020, before the Appellate Tribunal for Electricity (in short 'APTEL') mainly on issue of 'limitation' not being addressed in the said order. Accordingly, APTEL, based on consent of the parties, by order dated 13.3.2020, remanded the matter to the Commission, for a fresh consideration of the issue of 'limitation', after hearing the parties. The relevant portion of the order dated 13.3.2020 is extracted hereunder:

*"5. On the foregoing facts, and in the circumstances, and with the consent of both sides, the issue of limitation raised by the Appellant vis-à-vis the claim of DVC in Petition No. 298/MP/2018 brought before the Central Commission is remitted for fresh consideration and decision by the said forum, to be rendered after hearing both parties. Needless to add that the contentions of both sides in such regard are kept open and shall be considered and adjudicated upon comprehensively by the Central Commission in the fresh order that is expected to be passed. It is desirable that the said issue is adjudicated upon, in terms of this remit, at the earliest in as much as the decision on merits of the claim, as rendered by the order dated 01.11.2019, would be open for fresh challenge by appeal, if the Appellant so desires, after decision in the event of adverse decision being rendered on its objection of limitation, such fresh challenge, of course, to be brought within the period of limitation calculated from the date of fresh decision by the Commission. The Respondents assure that the bills which have been presented to the Appellant in the wake of the impugned decision will not be pressed for payment, or recovery, till the issue of limitation is decided upon by the Central Commission in terms of the remit order, this being without prejudice to its rights and contentions."*



### **Hearing dated 23.6.2020**

3. The matter was heard on 23.6.2020 through video conferencing. The Commission, at the request of the learned counsel for the Respondent WBSEDCL, permitted the Respondent, to file its written submissions on 'admissibility' of the petition on the ground of 'limitation'. In compliance, the Respondent, WBSEDCL has filed its additional submissions on 7.7.2020.

### **Submissions of the Respondent, WBSEDCL**

The Respondent, WBSEDCL vide its additional submissions dated 7.7.2020 has mainly submitted as under:

(a) Petitioner DVC, in the main petition, has sought limited relief for payment of fixed charges for Rs 111.74 crore for the period from June 2014 to September 2015. No other declaratory relief for damages or wrongful termination of PPA has been sought by DVC. Hence, the scope of the present petition was restricted to determining whether the claim of DVC is due or not. This Commission, while deciding the present petition, ought to have considered the issue of limitation raised by WBSEDCL, with effect from the date of claim and the subsequent rejection of claim by WBSEDCL.

(b) WBSEDCL refuted DVC's claim for fixed charges as early as on 22.7.2014 and, therefore, the limitation period commenced from that date. The present petition which was filed after expiry of more than 3 years is, therefore, barred by limitation, as the first invoice claiming fixed charges, by DVC was raised on 8.7.2014 for the month of June 2014 and WBSEDCL, vide its letter dated 22.7.2014, had disputed the liability whatsoever, to pay fixed charges under the PPA dated 24.10.2013.

(c) WBSEDCL had denied DVC's claim on the first instance and had consistently maintained the same stand. WBSEDCL on 18.7.2014 had issued 'preliminary default' notice, followed by letters dated 21.7.2014 and 22.7.2014. Admittedly, the present petition was filed in September 2018, i.e. more than four years after the cause of action arose. DVC's claim for fixed charges for 2014 and 2015 are, therefore, barred by limitation since the claims ought to have been filed within a period of three years from 22.7.2014 (when WBSEDCL refused to pay the invoice dated 8.7.2014) and thereafter on 1.9.2014 (when WBSECL denied liability to pay fixed charges).



(d) The issue of applicability of the principles of limitation *vis a vis* the Electricity Act, 2003 is no longer *res integra*. The Hon'ble Supreme Court in *A.P. Power Coordination Committee v Lanco Kondappalli Power Limited & ors* (2016) 3 SCC 468 has held that a claim cannot be allowed before a State Electricity Regulatory Commission if it would be otherwise barred by limitation for filing an ordinary suit before the civil court. This essentially means that the principles of Limitation Act apply to claims brought before this Commission.

(e) DVC has contended that the period of limitation will start running from 13.5.2015, which is the date of notice of termination of the PPA. It is DVC's case that in terms of Article 7.1 of the PPA, parties were required to amicably settle the disputes. The period of consultation for amicable resolution as per Article 7.1 is 90 days and, therefore, it is DVC's understanding that it was required to defer any legal action that could be taken on the dispute during the consultation period. Hence, on receipt of letter dated 13.5.2015, it proposed mutual discussion and settlement vide communication dated 28.5.2015 and 7.7.2015.

(f) Section 18 of the Limitation Act, 1963 pertains to the effect of acknowledgement in writing for extension of limitation period and provides that the limitation period is extended only in situations where an acknowledgement of liability has been made. In the present case, WBSEDCL has clearly refuted the liability towards payment of fixed charges as early as on 22.7.2014 and any subsequent communication towards settlement is immaterial since its stand has remained the same regarding payment of fixed charges.

(g) In an analogous factual matrix, the Hon'ble Supreme Court of India in *CLP India Pvt Ltd v GUVNL & ors.* (2020) 5 SCC 585 ('the CLP case') has clarified that repeated letters, or exchange of communications, do not extend the period of limitation provided by law. It has been concluded by the Hon'ble Court that the moment a claim has been denied by a party, the limitation for such claim starts running and any suit for recovery is to be instituted within 3 years of raising such claim. It is only an acknowledgement of liability in terms of Section 18 of the Limitation Act which extends limitation. In the CLP case decided by APTEL and upheld by the Hon'ble Supreme Court, the case laws relied upon by the Petitioner (*viz.*, *Shree RAM Mills Ltd v Utility Premises (P) Ltd* (2007) 4 SCC 599 and *Hari Shankar Singhania v Gaur Hari Singhania* (2006) 4 SCC 658 have been considered and distinguished from the factual matrix.

(h) There were no negotiations or settlement talks taking place between WBSEDCL and DVC with respect to DVC's claim. WBSEDCL had always maintained that it was not liable to pay the fixed charges and had subsequently



intended to terminate the PPA with DVC. Thus, there was no 'live issue' between the parties. The cause of action arose on 22.7.2014 when WBSEDCL refused to pay to DVC and, thus, the limitation period ought to be calculated from that date onwards. Once limitation starts, only an acknowledgement of liability can stop or reset the clock in terms of Section 18 of the Limitation Act. In view of the above, the Petition is barred by limitation and ought not to be permitted by the Commission.

### **Hearing dated 25.8.2020**

5. During the hearing of the petition through video conferencing on 25.8.2020, the Commission, at the request of the learned Senior counsel for the Petitioner DVC, permitted the Petitioner to file its written submissions on the issue of 'limitation'. In compliance to the directions, the Petitioner DVC, on 27.8.2020, has filed its note of arguments on the aspect of limitation along with the compilation of the judgments relied upon by it in the matter.

### **Submissions of the Petitioner, DVC**

6. The Petitioner, DVC in its note of arguments/ additional submissions dated 27.8.2020 has mainly submitted the following:

a) On 24.10.2013, DVC and WBSEDCL entered into a PPA whereunder, DVC agreed to generate and supply and WBSEDCL agreed to purchase electricity of the contracted capacity of 200 MW from Koderma Thermal Power station (in short 'the generating station') on the terms and conditions contained therein. The commencement of supply of electricity from the generating station to WBSEDCL was from 1.4.2014 and WBSEDCL was required to pay tariff for the quantum of power declared available from the generating station namely fixed charges and energy charges for the quantum scheduled for taking delivery and in case the power is not scheduled, the fixed charges.

b) It is incorrect for WBSEDCL to proceed on the basis that it is a case of simpliciter claim for money. If the termination was unilateral and wrong, the consequential relief is the payment of capacity charges to DVC. Admittedly, there was no other reason for WBSEDCL to deny the payment of capacity charges. The limitation is therefore with reference to the basic issue of



termination and its validity and capacity charges liability is consequential to the same.

c) As regards the plea of limitation, the Commission has rightly rejected the issue raised by WBSEDCL. In terms of Article 7.1 of the PPA dated 24.10.2013, the parties were required to undertake mutual discussions for amicable resolution of disputes in the first instance, before taking any action for adjudication of disputes. The contention of WBSEDCL that the period of limitation will start running from 22.7.2014 i.e. when WBSEDCL disputed the fixed charges bill dated 8.7.2014 raised by DVC is incorrect. The termination notice was issued by WBSEDCL only on 13.5.2015 and till then, as evident from the correspondence exchanged between the parties, the parties were presenting their stand to the other side. Thus, even though the preliminary default notice was issued by WBSEDCL on 18.7.2014, the final termination notice was issued by WBSEDCL only on 13.5.2015 (i.e. after 10 months).

d) On receipt of letter dated 13.5.2015, DVC proposed mutual discussion and settlement by communication dated 28.5.2015 and 7.7.2015. In response to the proposal from DVC for amicable settlement, as provided under Article 7.1 of the PPA, the parties were required to attempt to resolve the disputes and the period of consultation for such amicable resolution was 90 days. In terms of this, DVC was required to defer any legal action that could be taken on the dispute during the period of consultation.

e) The amicable settlement provided under Article 7.1 of the PPA is after the termination of the PPA and not before the termination. Therefore, the meeting could only be after 13.5.2015, when the final termination was issued by WBSEDCL and not before. The stand was finally taken by WBSEDCL against the process of amicable resolution on 17.9.2015. The petition was filed by DVC within three years on 7.9.2018. The contention of WBSEDCL that there was no 'live' issue between the parties, starting from 22.7.2014 is patently erroneous and baseless.

f) The settled position of law is that the limitation period commences when the dispute between the parties arise and they can no longer settle the matter amicably. The present petition filed by DVC on 7.9.2018 is within time and the claims of DVC are not barred by limitation. (Judgments of the Hon'ble Supreme Court in Shree` Ram Mills Ltd v Utility Premises (P) Ltd (2007) 4 SCC 599, Judgments of the Hon'ble High Court of Delhi in Oriental Building & Furnishing co Ltd v Union of India (1981) SCC Online Del 140 and Yogesh Kumar Gupta v Miss Anuradha Rangarajan (2007) SCC Online Del 287) and



the Judgment of the Hon'ble High Court of Madras in TNEB v Kirloskar Constructions & Engineers Ltd (2008 SCC Online Mad 352) were relied upon.

g) The present petition filed by DVC is, therefore, within the limitation period, in terms of the decision of the Hon'ble Supreme Court in A.P. Power Coordination Committee and ors v Lanco Kondapalli Power Limited & ors (2016) 3 SCC 468.

### **Hearing dated 23.7.2021**

7. During the hearing of the petition through video conferencing on 23.7.2021, the Commission after hearing at length the learned Senior counsel for the Petitioner DVC and the learned counsel for the Respondent WBSEDCL on the issue of limitation, reserved its order in the matter. However, at the request of the parties, the Respondent WBSEDCL was permitted to file its written submissions and the Petitioner DVC to file its response to the same. In compliance to this, the Respondent WBSEDCL on 27.8.2021 has filed written submissions along with copy of the judgments relied upon in the matter and the Petitioner DVC has filed its additional submissions on 6.9.2021.

### **Written Submissions of Respondent WBSEDCL**

8. The Respondent WBSEDCL in its written submissions dated 27.8.2021 has mainly reiterated the submissions made in its additional submissions dated 7.7.2020 (as stated in paragraph 4 above) and the same are not repeated herein for sake of brevity.

### **Additional Submissions of Petitioner, DVC**

9. In response to the written submissions of the Respondent WBSEDCL, the Petitioner DVC, vide additional submission dated 6.9.2021, has clarified the factual and legal position as under:



(a) The dispute between the parties was with regard to the unilateral termination of the PPA by WBSEDCL and this was considered by the Commission in order dated 1.11.2019 and held in favour of the Petitioner. It is, therefore, incorrect for WBSEDCL to allege that Petition No.298/MP/2018 did not involve the issue of relief for damages for wrongful action on the part of WBSEDCL of claiming termination of the PPA and consequently not taking electricity and not paying the fixed charges.

(b) The issue of validity of the action of WBSEDCL on termination of PPA was subject matter of discussions between the parties, after WBSEDCL issued preliminary default notice on 18.7.2014. However, WBSEDCL did not proceed with final termination notice till 13.5.2015 i.e. more than 10 months. Article 13.3 of the PPA envisaged the preliminary default notice to be followed with final termination notice after 21 days. No action was taken by WBSEDCL in the month of August 2014 or soon thereafter, for issue of any further notice in terms of Article 13.3 of the PPA. Accordingly, the dispute has arisen between the parties only when the termination notice dated 13.5.2015 was issued and even then, the same is subject to resolution through amicable methods as mandated under Article 7.1 of the PPA.

(c) It is wrong on the part of WBSEDCL to state that DVC has construed the period of limitation will start from 13.5.2015. DVC has claimed the principles on which limitation is to be counted from 17.9.2015. For the purpose of limitation, the cause of action for adjudicatory or arbitral dispute arose only when WBSEDCL finally rejected any settlement on 17.9.2015. DVC is not claiming any extension of limitation period under Section 18 of the Limitation Act, on grounds of acknowledgement by writing, as alleged by WBSEDCL.

(d) The decision of APTEL and the Hon'ble Supreme Court in CLP case relied upon by WBSEDCL is distinguishable in the facts and circumstances is not relevant as in the cited case there was no consideration for implication of provision such as Article 7.1 of the PPA as in the present case.

### **Analysis and Decision**

10. Based on the submissions of the parties and the documents available on record, we proceed to examine if the liability of the Respondent, WBSEDCL to pay capacity/ fixed charges to Petitioner is barred by 'limitation'.

11. Some of the clauses in the PPA dated 24.10.2013 between WBSEDCL and DVC are extracted hereunder for reference:





## **“7. SETTLEMENT OF DISPUTES**

*7.1 All differences or disputes between the parties arising out of or in connection with this agreement shall be mutually discussed and amicably resolved within 90 days.*

## **13. EVENTS OF DEFAULT AND TERMINATION**

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### **13.3 Procedure and Termination for cases of DVC's Event of Default**

*13.3.1 Upon the occurrence and continuation of any DVC Event of Default under Article 13.1 WBSEDCL shall have the right to deliver to DVC a WBSEDCL preliminary default notice ("WBSEDCL Preliminary Default Notice"), which shall specify in reasonable detail the circumstances giving rise to the issuance or such notice.*

*13.3.2 Following the issuance of WBSEDCL Preliminary Default Notice, a consultation period of fifteen (15) days or such longer period as the parties may agree, shall apply.*

*13.3.3 During the consultation period, the Parties shall, save as otherwise provided in this Agreement, continue to perform their respective obligations under this Agreement.*

*13.3.4 After the period of seven (7) days following the expiry or the consultation period, unless the parties not having otherwise agreed to the contrary or DVC Event of Default giving rise to the said consultation period has not been remedied, WBSEDCL shall be simultaneously entitled to issue thirty (30) days' notice for termination of this Agreement.*

*13.3.5 If DVC fail to cure the event of default in the manner provided in this Agreement, WBSEDCL in addition to its right to specifically enforce this agreement shall also have the right to terminate this Agreement for such event of default even before the expiry of the Term of this Agreement, provided on such termination, the liability of DVC to supply such power shall cease immediately.*

### **13.5 Consequences of Termination**

*Upon the default or breach by either Party thereto of any covenant hereunder, the Party affected by any such default or breach may, at its option, in addition to exercising any other remedies provided under this Agreement, approach the Appropriate Commission to specifically enforce its rights under this Agreement.*

12. The Respondent WBSEDCL has submitted that it had outrightly refuted the Petitioner's claim and entitlement to fixed charges as early as on 22.7.2014, which was an absolute and complete rejection of DVC's claim for fixed charges. It has also submitted that the first invoice by the Petitioner DVC claiming fixed charges was raised on 8.7.2014 for the month of June 2014 and the Respondent vide its letter dated 22.7.2014 disputed any liability whatsoever to pay fixed charges under the PPA dated 24.10.2013. The Respondent, while pointing out that it had issued 'Preliminary



Default Notice' on 18.7.2014, has submitted that on 1.9.2014, it wrote to the Petitioner stating that the failure to supply power from Unit-I of the generating station for a continuous period of three months (1.4.2014 to 1.7.2014) constituted an 'event of default' as per Article 13.1 of the PPA and that WBSEDCL is not liable to pay any fixed charges for non-scheduling of power. The Respondent has further submitted that there were no negotiations or settlement talks taking place between the parties with respect to the Petitioner's claim and, thus, there was no 'live issue' between the parties. It has contended that since the present petition has been filed (in September 2018) i.e. more than four years after the cause of action arose, the claim of the Petitioner for fixed charges for the years 2014 and 2015 is barred by limitation. The Respondent has referred to the judgment of the Hon'ble Supreme Court in A.P. Power Coordination Committee & ors v Lanco Kondapalli Power Limited & ors (2016) 3 SCC 468 (in short 'the Lanco case') and submitted that the claims ought to have been filed by the Petitioner DVC within three years from 22.7.2014 (when WBSEDCL refused to pay the invoice of DVC dated 8.7.2014) and thereafter on 1.9.2014 (when WBSEDCL denied liability to pay the fixed charges). Relying upon the judgment of the Hon'ble Supreme Court in the CLP case (affirming the judgment of APTEL), the Respondent has argued that the moment a claim has been denied by a party, the limitation for such claim starts running and any suit for recovery is to be instituted within three years of raising such claim. It is only an acknowledgement of liability in terms of Section 18 of the Limitation Act, 1963 which extends limitation. Accordingly, the Respondent has submitted that the prayers ought not to be permitted by the Commission, as the present petition is barred by limitation.



13. Per contra, the Petitioner DVC has submitted that the validity of the conduct of the Respondent WBSEDCL on the subject matter of termination was subject matter of the discussions between the parties after WBSEDCL issued preliminary notice on 18.7.2014. However, WBSEDCL did not proceed to issue final termination notice till 13.5.2015 (more than about 10 months), though Article 13.3 of the PPA envisaged preliminary default notice to be followed by final termination notice after 21 days. The Petitioner has contended that the dispute has arisen between the parties only when the termination notice dated 13.5.2015 was issued and even then, the same was subject to resolution through amicable methods as envisaged under Article 7.12 of the PPA. The Petitioner has accordingly submitted that for the purpose of limitation, the cause of action for adjudicatory or arbitral dispute arose only when WBSEDCL finally rejected any settlement on 17.9.2015 and the petition was filed within a period of three years from the said date.

14. We have examined the matter and the documents on record. DVC has entered into a PPA with WBSEDCL on 24.10.2013 for generation and sale of 200 MW power from Unit-I & Unit-II of the generating station for a period of 25 years from 1.4.2014. Failure by DVC to supply power for a continuous period of three months from 1.4.2014 to 1.7.2014 would constitute an event of default, in terms of Article 13.1 of the PPA. It is noticed that DVC on 8.7.2014 raised invoice on WBSEDCL claiming capacity charges for the month of June 2014. DVC had by letter dated 13.7.2014 informed WBSEDCL that Unit-II of the generating station had achieved COD and that WBSEDCL was liable to pay fixed charges in terms of Article 6.1.11 of the PPA, as it failed to schedule power. In response, WBSEDCL by letter dated 18.7.2014 issued 'Preliminary Default Notice' on account of failure of DVC to supply power and also by



letter dated 22.7.2014 denied its liability to pay fixed charges for invoice dated 8.7.2014, as COD was not achieved in accordance with the 2014 Tariff Regulations.

15. According to WBSEDCL, since DVC's claim for fixed charges (as per invoice dated 8.7.2014) was outright refuted and denied by WBSEDCL at the first instance on 22.7.2014, the limitation period commenced from such date. It has contended that the present petition filed by DVC in September 2018, is barred by limitation, as the claims ought to have been filed within three years from 22.7.2014.

16. We observe that though DVC by letter dated 13.6.2014 informed WBSEDCL that Unit-II of the generating station achieved COD on 14.6.2014, WBSEDCL by its letter dated 22.7.2014 had denied its liability to pay fixed charges to DVC, on the ground that COD of Unit-II was not declared in accordance with the 2014 Tariff Regulations. We have noted that no provision of the 2014 Tariff Regulations permits a distribution company to decide whether declaration of COD by a generating station has been done correctly or not. In our view any such objection is not legally tenable and *non-est*. In case WBSEDCL felt that the declaration of COD of Unit-II by DVC was not in accordance with the 2014 Tariff Regulations, it should have, in all fairness, approached this Commission, challenging the same. It is pertinent to mention that in a similar case involving the declaration of COD of Unit-IV of NTPC's Barh Super Thermal Power Station, Stage-II, one of the beneficiaries, namely, GRIDCO, had filed Petition No.130/MP/2015 before this Commission, challenging the declaration of COD as 8.3.2016 (instead of 15.11.2014), which was affirmed by our order dated 20.9.2017. This decision was later upheld by APTEL vide its judgement dated 25.1.2019 in Appeal No. 330 of 2017 and thereafter confirmed by the Hon'ble Supreme Court vide its order dated 5.4.2019. In our view, WBSEDCL, without



seeking any adjudication on this issue, cannot, unilaterally conclude that COD of Unit-II was not declared by DVC in accordance with the 2014 Tariff Regulations and contend that the limitation period shall be counted from that date. In this background, contention of the Respondent WBSEDCL that the limitation period of three years commenced from 22.7.2014, since it raised objection regarding the declaration of COD of Unit-II by DVC, is fit to be rejected.

17. WBSEDCL, in terms of Article 13.3 of the PPA (supra) had issued 'Preliminary Default Notice' on 18.7.2014, for the failure of DVC to supply power in terms of the PPA, which was responded to by DVC vide its letter dated 31.7.2014. WBSEDCL has submitted that it followed its letter of 18.7.2014 with letters dated 21.7.2014 and 22.7.2014. We note that Article 13.3.2 of the PPA provides for a consultation period of 15 days or such longer periods as the parties may agree, after issuance of 'Preliminary Default Notice' by WBSEDCL. Also, Article 13.3.4 of the PPA envisages that after seven days of expiry of the consultation period, WBSEDCL is entitled to simultaneously issue 30 days' notice for termination of the PPA. In other words, Article 13.3.4 of the PPA envisaged the 'preliminary default notice' be followed by a final termination notice after 21 days. In the present case, WBSEDCL, after issuance of 'preliminary default notice' on 18.7.2014, had issued the final termination notice only on 13.5.2015 i.e. after 10 months. WBSEDCL has also not clarified as to why it issued final termination notice after 10 month (instead of 15+7 days as envisaged in Article 13.3.4 of the PPA) of issuing 'preliminary default notice' if there was no 'live issue'. In our view, issuance of final termination notice after nearly 10 months of issuing the 'preliminary default notice' tantamount to an agreed longer period of consultation as envisaged in Article 13.3.2 of the PPA that provides for "a



*consultation period of fifteen (15) days or such longer period as the parties may agree,”.* When PPA specifically provides for issuance of final termination notice to terminate the PPA, it is not sufficient for the Respondent to issue only the ‘preliminary default notice’ and claim that limitation would begin from the date when it issued the reminder of the ‘preliminary default notice’ i.e. on 22.7.2014. According to us, the dispute between the parties had commenced only from 13.5.2015, on issuance of the final termination notice by WBSEDCL and not from 22.7.2014.

18. Further, DVC has submitted that in terms of the provisions of the PPA dated 24.10.2013, the parties were required to undertake mutual discussions for amicable settlement of disputes, before taking any action for adjudication. Accordingly, DVC has submitted that after receipt of the final termination notice dated 13.5.2015 from WBSEDCL, it had proposed for mutual discussion and settlement of the disputes by letters dated 28.5.2015 and 7.7.2015, as provided under Article 7.1 of the PPA. DVC has also stated that after rejection of the proposal of DVC for amicable settlement of disputes, by WBSEDCL vide its letter dated 17.9.2015, the present petition has been filed on 7.9.2018 and, therefore, it has submitted that the same is within the limitation period and its claims are not barred by limitation.

19. *Per contra*, WBSEDCL has submitted that there was no extension of limitation period under Section 18 of the Limitation Act, 1963 and that there was no ‘live issue’ between the parties since there were no negotiations or settlement talks taking place between WBSEDCL and DVC with respect to DVC’s claim. Placing reliance on the judgment of the Hon’ble Supreme Court in the CLP case, WBSEDCL has submitted that the cause of action arose on 22.7.2014 when WBSEDCL refused to pay to DVC and, thus, the limitation period ought to be calculated from that date onwards.



20. Article 13.5 of the PPA, dealing with the consequences of termination, provide as under:

*“13.5 Consequences of Termination*

*Upon the default or breach by either Party thereto of any covenant hereunder, the party affected by any such default or breach may, at its option, in addition to exercising any other remedies provided under this Agreement, approach the Appropriate Commission to specifically enforce its right under this Agreement.”*

21. In terms of the above provision, the parties have the option to exercise any other remedies under the agreement in addition to approaching the Commission seeking enforcement of its rights. Further, Article 7.1 of the PPA provides as under:

*“7.1. All differences and disputes between the parties arising out of or in connection with the Agreement shall be mutually discussed and amicably resolved in 90 days.”*

22. Thus, DVC, seeking resolution of the disputes (pursuant to the final termination notice dated 13.5.2015 issued by WBSEDCL), by letters dated 28.7.2015 and 7.7.2015 in terms of Article 7.1, cannot be faulted. It is noticed that pursuant to the rejection of the aforesaid proposals of DVC (for an amicable settlement) by WBSEDCL on 17.9.2015, the present petition has been filed by DVC on 7.9.2018, i.e. within the period of limitation of three years, in terms of the judgment of the Hon'ble Supreme Court in Lanco case. The reliance placed by WBSEDCL on the judgment in the CLP case is not applicable in the present matter, as in the CLP case, there was no decision/ consideration by the Hon'ble Supreme Court of any provision similar to Article 7.1 of the PPA, as in the present case. We, therefore, reject the submissions of WBSEDCL and hold that the petition filed by DVC, in terms of the prayers therein, is within the period of limitation and the claims of DVC are not barred by limitation. We find and hold that the cause of action and the Petitioner's right to sue has arisen when the respondent finally refused to make an amicable settlement



as per the terms of the PPA and the petition has been brought within the limitation period of three years.

23. The issue of 'limitation' in Petition No.298/MP/2020 is, accordingly, disposed of in terms of the directions of APTEL in order dated 13.3.2020 in Appeal No. 20/2020.

**Sd/-**  
**(P. K. Singh)**  
**Member**

**Sd/-**  
**(Arun Goyal)**  
**Member**

**Sd/-**  
**(I.S. Jha)**  
**Member**

**Sd/-**  
**(P.K. Pujari)**  
**Chairperson**

