

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

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

**Date of order: 31<sup>st</sup> August, 2022**

**Petition No. 32/MP/2022 along with IA Nos. 33/IA/2022 and 43/IA/2022**

**In the matter of:**

Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 for recovery of amounts payable by the Respondent to the Petitioner against the Monthly Bills and the Late Payment Surcharge thereon under the Power Purchase Agreement dated 19.8.2013 entered into between the Petitioner and the Respondent.

**And**

**In the matter of**

D.B. Power Limited  
1A, 5<sup>th</sup> Floor,  
Corporate Block, DB City Park,  
DB City, Arera Hills,  
Opposite MP Nagar, Zone-I,  
Bhopal-462 016, Madhya Pradesh

**... Petitioner**

**Versus**

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

**... Respondent**

**And**

**In the matter of**

**Petition No. 181/MP/2022**

Petition under Section 142 read with Section 149 of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against the Respondents for non-compliance of the order dated 26.5.2022 passed in Petition No. 32/MP/2022.

**And  
in the matter of**

D.B. Power Limited  
1A, 5<sup>th</sup> Floor,  
Corporate Block, DB City Park,  
DB City, Arera Hills,  
Opposite MP Nagar, Zone-I,  
Bhopal-462 016, Madhya Pradesh

**...Petitioner**

**Versus**

1. Tamil Nadu Generation and Distribution Corporation Limited,  
6<sup>th</sup> Floor, Eastern Wing,  
144, Anna Salai  
Chennai- 600 002  
Tamil Nadu

2. Chairman-cum-Managing Director  
Tamil Nadu Generation & Distribution Corporation Limited,  
Western Wing, 6<sup>th</sup> Floor, NPKRR Maaligai,  
No. 144, Anna Salai,  
Chennai- 600002, Tamil Nadu

**...Respondents**

**Parties Present**

Shri Sajjan Poovayya, Sr. Advocate, DBPL  
Shri Deepak Khurana, Advocate, DBPL  
Shri Ashwini Kumar Tak, Advocate, DBPL  
Shri Amit Anand Tiwari, Additional Advocate General, TANGEDCO  
Ms. Anusha Nagarajan, Advocate, TANGEDCO  
Ms. Aakanksha Bhola, Advocate, TANGEDCO

**ORDER**

**Petition No. 32/MP/2022**

The Petitioner, D.B. Power Limited ('DBPL'), has filed the present Petition seeking direction to the Respondent, Tamil Nadu Generation and Distribution Corporation Limited ('TANGEDCO') to pay outstanding amounts towards monthly bill for the period from March 2020 to June 2020 and July 2021 to October 2021 and Late Payment Surcharge (LPS) on monthly bills for the period from July 2020 to November

2021 for the power supplied under the Power Purchase Agreement dated 19.8.2013.

The Petitioner has made the following prayers:

*“(a) Direct the Respondent to pay an amount of Rs. 319,43,30,659.00 (Rs. Three Hundred Nineteen Crores Forty-Three Lacs Thirty Thousand Six Hundred and Fifty Nine Only) due towards the Monthly Bills for the period March, 2020 to June, 2020 and July, 2021 to October, 2021 to the Petitioner;*

*(b) Direct the Respondent to pay an amount of Rs. 130,71,66,427.00 (Rs. One Hundred Thirty Crores Seventy-One Lacs Sixty Six Thousand Four Hundred and Twenty Seven Only) due towards the Late Payment Surcharge on Monthly Bills for the period from July, 2020 to November, 2021 to the Petitioner;*

*(c) Direct the Respondent to pay an amount of Rs. 1,40,45,683.00 (Rs. One Crore Forty Lacs Forty Five Thousand Six Hundred and Eighty Three Only) due towards the Late Payment Surcharge on POC Bills for the period April, 2020 to November, 2021 to the Petitioner;*

*(d) Direct the Respondent to continue discharging its liability to the Petitioner for supply of power under the PPA;*

*(e) In the interim and pending final adjudication of the present Petition, direct the Respondents to forthwith make payment, i.e. 90% of the outstanding amount of Rs. 406,39,88,492 (Four Hundred Six Crores Thirty-Nine Lacs Eighty-Eight Thousand Four Hundred Ninety-Two Only) i.e. or any other reasonable amount as this Commission may deem fit in the facts & circumstances of the present case;*

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

2. The Petitioner is a generating company within the meaning of clause (2) of Section 28 of the Electricity Act, 2003 (hereinafter referred to as “the Act”). The Petitioner has set up a 1200 MW (2x600 MW) coal based Thermal Power plant at village Badadarha, in District Janjgir Champa in the State of Chhattisgarh. The Respondent, TANGEDCO is a Distribution Licensee in the State of Tamil Nadu within the meaning of clause (17) of Section 2 of the Act. On 19.8.2013, the Petitioner had entered into Power Purchase Agreement (‘PPA’) for supply of 208 MW electricity to the Respondent and has been supplying power with effect from 1.8.2015.

### **Submissions of the Petitioner**

3. The Petitioner has mainly submitted as under:

(a) The Petitioner has been raising provisional and monthly bills on the Respondent for capacity and energy charges (tariff) in terms of the PPA. However, the Respondent has failed to pay Rs. 319.43 crore towards monthly energy bills raised by the Petitioner during the period between March 2020 to June 2020 and July 2021 to October 2021.

(b) The Petitioner has been claiming capacity charges (apart from the energy charges) under the energy bills raised being by it on the Respondents in terms of the Commission`s order dated 22.7.2019 in Petition No. 117/MP/2017. Aggrieved by the Commission`s order dated 22.7.2019, the Respondent has filed Appeal No. 91 of 2020 before the Appellate Tribunal for Electricity (in short 'APTEL') which is pending for disposal. However, the Respondent has failed to pay the amount claimed towards capacity charges.

(c) The Petitioner has filed Petition No. 424/MP/2019 for non-compliance of the Commission`s order dated 22.7.2019 in Petition No. 117/MP/2017 which is pending before the Commission. However, the Petitioner has not claimed the capacity charges covered by the order dated 22.7.2019 and the same has been excluded from the scope of the present Petition.

(d) Out of admitted amount of Rs. 436.78 crore, the Respondent has paid Rs. 117.34 crore. Therefore, there is an unpaid/outstanding amount of Rs. 319.43 crore, which the Respondent has failed to pay and the same is being sought to be recovered by way of the present Petition. The Petitioner has been repeatedly requesting the Respondent for payment of outstanding bills under the PPA. However, the Respondent has failed to pay the same. The Respondent has admitted the above liability since it has not raised any bill dispute notice in respect of outstanding bills raised by the Petitioner.

(e) On account of delay in payment of the bills raised by the Petitioner beyond due dates, the Respondent is liable to pay Late Payment Surcharge (LPS) in terms of Article 8.8.3 of the PPA. The Commission in order dated 8.1.2020 in Petition No. 22/MP/2022 had directed the Respondent to pay LPS in terms of the PPA. Aggrieved by the aforesaid decision of the Commission, the Petitioner approached the APTEL by Appeal No. 56 of 2020 on the limited extent directing reconciliation by the parties before payment of the amount. In the said

proceedings, the APTEL vide order dated 4.2.2021 has sternly observed the conduct of the Respondent in not discharging its liability to the Petitioner towards LPS.

(f) In terms of Article 8.8 of the PPA, the Petitioner has been raising supplementary invoices claiming LPS from the Respondent to in respect of delayed payments towards the monthly bills raised by the Petitioner. However, the Respondent has failed to pay supplementary invoices towards LPS of Rs. 121.23 crore for the period from July 2020 to November 2021 in addition to the balance outstanding amount of Rs. 9.49 crore towards LPS as on June, 2020. Therefore, total amount of Rs. 130.72 crore is due and payable by the Respondent against the supplementary invoices for LPS.

(g) As per the PPA, the payment of Point of Connection ('POC') charges to CTUIL, from the injection point to delivery point is required to be paid by the Petitioner and is required to be reimbursed by the Respondent. The Petitioner raised POC charges bills upon the Respondent for supply of power. However, due to delay in payment by the Respondent of the POC charges bills beyond their due dates, the Petitioner is entitled for LPS in terms of the PPA. Accordingly, the Petitioner raised supplementary bills for LPS on POC charges bills for the period from April 2020 to April 2021 and from July 2021 to November 2021. However, the Respondent has failed to pay any amount towards the supplementary bills. For the above period, Rs. 1.40 crore is due and payable by the Respondent under the said supplementary invoices towards LPS on the POC charges bills. Since the Respondent has not raised any bill dispute notices in respect of said outstanding supplementary invoices towards LPS on monthly bills and POC charges bills, amount due is admitted amount.

(h) On account of non-payment of dues by the Respondent, the Petitioner is facing severe financial stress. The account of the Petitioner with its lenders is on the verge of becoming a non-performing asset. If the Respondent does not clear the dues in terms of PPA, the Petitioner will continue to suffer irreparable harm and injury and would default in its loan repayment to the project lenders resulting in its account being declared as a non-performing asset, which would result in shutting down the operation of the Petitioner Company leading to further cascading effect and dire consequences.

## **Interlocutory Application (IA) No. 33/IA/2022**

4. The Petitioner has filed IA No. 33/IA/2022 praying to pass an interim order directing the Respondent to forthwith and without any delay pay Rs. 417.18 crore i.e. 75% of the outstanding amount of Rs. 556.24 crore. The Petitioner has, *inter alia*, submitted that the Respondent has failed to discharge its liability to pay the aforesaid admitted amount and on account of non-payment of its dues by the Respondent, the Petitioner is facing severe financial stress. The Petitioner has further submitted that the Ministry of Power on 28.4.2022 has directed all power generation companies to import coal to the tune of 10% of its requirement and blend with domestic coal in view of the on-going power crisis. Accordingly, the Petitioner has been directed to import coal to the tune of 4,61,000 tons within next three months, which is estimated to cost about Rs. 750 crore for supply of power to the Respondent and in the event the Respondent does not clear the dues in terms of the PPA, the Petitioner will not be able to comply with the directions of the Ministry of Power w.r.t. coal import. The Petitioner has submitted that it has a good *prima facie* case and would suffer irreparable harm in case the Respondent is not directed to forthwith release the dues in favour of the Petitioner and the balance of convenience also lies in favour of the Petitioner and against the Respondent. The Petitioner has submitted that the Petitioner has given an advance notice of the IA along with copy of the IA and the main Petition to the Respondent by e-mail. The Petitioner had also informed the Respondent that the matter is listed for hearing before the Commission on 26.5.2022 and the Petitioner shall be pressing its prayer made in IA for direction to the Respondent to pay part amount pending final disposal of the main Petition.



### **Hearing dated 26.5.2022**

5. The matter was heard on 26.5.2022. During the course of hearing, the learned senior counsel for the Petitioner reiterated the submissions made in the Petition and the IA as already captured above. The learned senior counsel also pressed for the grant of the prayer made in the IA for direction to the Respondent to pay the part amount. After hearing the learned senior counsel, the matter was admitted and notice was issued. Vide Record of the Proceedings for hearing dated 26.5.2022, the Commission directed the Respondent to pay 75% of amount not under dispute before the next date hearing.

### **Petition No. 181/MP/2022**

6. Being aggrieved by the non-payment of undisputed amount by the Respondent in terms of the aforesaid order, the Petitioner has proceeded to file this Petition seeking initiation of proceedings/ appropriate action under Section 142 read with Section 149 of the Act against the Respondents for non-compliance of order dated 26.5.2022 passed in Petition No. 32/MP/2022, and to direct the Respondents to forthwith comply with the said order.

7. In the said Petition, the Petitioner has mainly submitted as under:

(a) The Petitioner had filed IA No. 33/2022 in above Petition on 21.5.2022 seeking an interim order. The Commission in its order dated 26.5.2022 directed the Respondent to pay 75% of the amount not under dispute before the next date of hearing preferably within two weeks of this order.

(b) The Respondent No. 1 was given advance notice of the listing of the Petition as well as the IA. However, it chose not to appear before the Commission in the hearing on 26.5.2022. The Petitioner, vide its letter dated 28.5.2022 requested the Respondent No. 1 to release Rs 417.19 crore i.e. 75% of the undisputed outstanding amount of Rs. 556.25 crore on or before 9.6.2022. Pertinently, Respondent No. 1 did not respond to the said communication.

(c) Subsequently, the Petitioner vide its communication dated 13.6.2022 once again urged the Respondents to comply with the aforesaid order and immediately release the payment of Rs. 417.19 crore. However, even the said communication did not evince any response from the Respondents.

(d) The Respondent No. 1 has failed to pay the 75% amount as directed vide order dated 26.05.2022 despite expiry of two weeks on 9.6.2022 and even despite expiry of the time period stipulated for filing the Reply to the Petition i.e. by 16.6.2022. the Respondent No. 1, has also failed to file the Reply within six weeks for completion of pleadings in terms of order dated 26.5.2022.

(e) The Respondents are not inclined to implement the Order dated 26.5.2022 passed by this Commission, which is clear from their conduct, by having failed to pay the amount as directed vide the said order.

(f) The Respondents are guilty of disobedience of the order dated 26.5.2022 passed by the Commission and thus are liable to be proceeded against under Section 142 and Section 149 of the Act. Accordingly, the Commission may pass appropriate directions for enforcement and implementation of the order dated 26.5.2022.

8. Against the above background the Petitioner has prayed as under:

*“(a) Direct the Respondents to comply with the Order dated 26.05.2022 passed in Petition No. 32/MP/2022, and to forthwith pay to the Petitioner, the amount of Rs 417,18,35,842.00 (INR Four Hundred Seventeen Crores Eighteen Lakhs Thirty-Five Thousand Eight Hundred and Forty-Two only) i.e. 75% of the undisputed amount of Rs. 556,24,47,789.00 (INR Five Hundred Fifty Six Crores Twenty Four Lakhs Forty Seven Thousand Seven Hundred and Eighty Nine only);*

*(b) Initiate appropriate action against the Respondents, jointly and severally, under Section 142 of the Electricity Act, 2003 and/or any other appropriate provision/s of the Electricity Act, 2003, for contravention and disobedience of the Order dated 26.05.2022 passed in Petition No.32/MP/2022;*

*(c) In the interim and pending final adjudication of the present Petition, direct the Respondents to forthwith comply with the Order dated 26.05.2022 and forthwith and without any delay make payment of Rs 417,18,35,842.00 (INR Four Hundred Seventeen Crores Eighteen Lakhs Thirty Five Thousand Eight Hundred and Forty Two only) i.e. 75% of the undisputed amount of Rs. 556,24,47,789.00 (INR Five Hundred Fifty Six Crores Twenty Four Lakhs Forty Seven Thousand Seven Hundred and Eighty Nine only).”*



**Interlocutory Application (IA) No. 43/2022 in Petition No. 32/MP/2022**

9. On the other hand, the Respondent, TANGEDCO proceeded to file the IA No. 43/IA/2022 to recall/modify the order dated 26.5.2022 directing TANGEDCO to pay 75% of the amount not under dispute. In the said IA, TANGEDCO has made the following prayers:

*“(a) Recall the order dated 26.5.2022 to the extent that the said order directs the Respondent to pay 75% of the amount not under dispute before the next date of hearing; and*

*(b) In the alternative, modify the order dated 26.5.2022, by keeping in abeyance the said direction to make payment of 75% of the amount not under dispute pending disposal of the main Petition.”*

10. In the said IA, TANGEDCO has mainly submitted as under:

(a) Since, TANGEDCO is facing sever financial hardships, it is unable to settle the monthly bills pertaining to December 2021 to April 2022 and LPS in respect thereof. Nevertheless, TANGEDCO has been clearing outstanding dues to LPS for monthly bills from October 2015 to March 2020 for Rs. 158.78 crore. Subsequently, differential capacity charges from August, 2015 to December, 2021 for Rs. 125 crore were paid on 19.8.2021 and 11.2.2022. On account of Change in Law and carrying cost, the Petitioner had claimed Rs. 375.22 crore for the period from August 2015 to September 2020 with carrying cost from October 2015 to December 2020 calculated upto March, 2021. Partial payment of Rs. 112.13 crore was paid 23.10.2019 and Rs. 172.09 crore including carrying cost was paid to the Petitioner on 11.5.2021. Outstanding dues on the monthly bills from July 2021 to November 2021 for Rs. 242.97 crore was paid on 21.1.2022, 23.2.2022, 25.3.2022, 22.4.2022 and 20.5.2022.

(b) TANGEDCO is taking all possible efforts to clear its dues. However, due to financial position of TANGEDCO, exacerbated by the severe power situation in the country, TANGEDCO is seeking rescheduling of its outstanding dues under the Electricity (Late Payment Surcharge and related matters) Rules, 2022 (hereinafter referred to as 'LPSC Rules') notified by the Ministry of Power, Government of India on 3.6.2022.

(c) In terms of LPSC Rules, on 17.6.2022, the Board of TANGEDCO resolved to submit its proposal for liquidation of total outstanding dues owing to generating companies, as on the date of notification of LPSC Rules, along with the proposed schedule of instalments as per Rule 5 (2) of LPSC Rules. Since the total outstanding dues of TANGEDCO exceed Rs. 10,000 crore, TANGEDCO proposes liquidation of total outstanding dues, subject to reconciliation, in 48 equal monthly instalments starting from 5.8.2022. On 27.6.2022, the details of the outstanding dues with respect to the Petitioner as on the date of notification of LPSC Rules i.e. 3.6.2022 has been communicated to the Petitioner in terms of Rule 5 (2) of the LPSC Rules.

(d) There are discrepancies between the claims made by the Petitioner in the Petition and dues payable as per TANGEDCO, in particular the period for which the Petitioner has claimed amounts to be payable are incorrect. Reconciled figures have been incorporated in the proposal issued to the Petitioner.

(e) LPSC Rules being squarely applicable to the outstanding dues claimed in the instant Petition, the outstanding dues would have to be dealt with in accordance with the provisions of the LPSC Rules, which are self-contained and set out the mechanism for rescheduling and payment, including consequences of defaulting in payment of instalments in accordance therewith.

(f) When the interim order dated 26.5.2022 was passed by the Commission, LPSC Rules had not come into force. Since LPSC Rules have come into force from 3.6.2022, TANGEDCO has proceeded in terms of the LPSC Rules for rescheduling of the outstanding dues and in accordance with the timeline stipulated thereunder. Amount claimed in the Petition including the amounts directed to be paid through the interim order dated 26.5.2022 squarely fall within the scope of the total outstanding dues as defined in the LPSC Rules and are liable to be dealt with in accordance with the provisions of the LPSC Rules.

(g) The interim order dated 26.5.2022 cannot be given effect to in terms of LPSC Rules. Giving effect to the directions contained in the order dated 26.5.2022 would irreparably prejudice and defeat the rights of TANGEDCO under LPSC Rules and hence ought to be kept in abeyance till pending decision in the present Petition.

(h) TANGEDCO would require reasonable time to make payment of monthly bills and LPSC and the opportunity to make such payment through instalments, without prejudice to its rights and contentions, and the interim order dated 26.5.2022 may be modified accordingly.

11. The Respondent, TANGEDCO and the Petitioner also filed the reply and rejoinder respectively in the Petition No. 32/MP/2022 as detailed below:

**Reply to the Respondent, TANGEDCO**

12. TANGEDCO in its reply dated 29.6.2022 has reiterated the submissions made in IA and has submitted that since TANGEDCO has been facing severe financial hardship, it is unable to settle the monthly bills pertaining to December, 2021 to April, 2022 and LPS thereof. It has been further submitted that TANGEDCO is taking all possible efforts to clear its outstanding dues and has rescheduled the same in 48 equal instalments in terms of Rule 5 (2) of the LPSC Rules.

**Rejoinder to the reply of TANGEDCO**

13. The Petitioner, in its rejoinder dated 3.7.2022, has submitted as under:

(a) The Hon`ble Supreme Court and APTEL in catena of judgments has held that financial hardship or financial crunch as contended by the Respondent, is not a justified or tenable reason for non-payment or for not discharging one`s liability.

(b) The Respondent had placed its reliance on the LPS Rules as well as the proposal dated 27.6.2022 made by it to liquidate the total outstanding dues in 48 equal monthly instalments starting from 5.8.2022. As far as order dated 26.5.2022 directing the Respondent to pay 75% of the amount not under dispute is concerned, it is not even the case of the Respondent that the said order need not be complied with in view of the subsequent notification of LPS Rules dated 3.6.2022. Such a submission cannot even be countenanced in as much as the LPS Rules cannot render the judicial order passed by the Commission nugatory. Therefore, irrespective of the LPS Rules, the order passed by the Commission

needs to be complied with and the Respondent is obligated to and make payment in terms thereof, in order to purge contempt.

(c) The present Petition was filed on 3.1.2022, whereas the LPS Rules have been come into force w.e.f 3.6.2022. The LPS Rules having been framed and issued under Section 176 of the Act and being delegated pence of legislation, cannot apply retrospectively. Further, LPS Rules cannot affect the proceedings for recovery having already been initiated before coming into force of the Rules, such as the present Petition.

(d) Issue regarding 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 dated 5.4.2022 in Original Petition No. 1 of 2022 and connected matters wherein APTEL has relied upon various decisions of the Hon`ble Supreme Court relating to prospective applicability of delegated legislation as well as the applicability of delegated legislation to the pending proceedings. In paragraph 61 of the said judgment, APTEL also held 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 proceedings in any manner whatsoever.

(e) APTEL, after examining in great details 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.

(f) Decision of APTEL that CIL Rules cannot affect the proceedings already pending applies with all fours to the LPS Rules as well in as much as the LPS Rules cannot be applied to divest this Commission to the jurisdiction to adjudicate upon the claim already laid before it, the cause of action for which had arisen much prior to the Rules coming into force.

(g) The Respondent vide its letter dated 27.6.2022 has proposed to pay outstanding amount in 48 instalments on the premise that the outstanding amount of TANGEDCO is more than Rs. 10, 000 crore which is not correct. Outstanding due to the Petitioner as per the letter of the Respondent dated 27.6.2022, is Rs. 580,11,36,797 (revised to Rs. 655,80,61,562 vide communication dated 1.7.2022) and therefore, as per the Rules, outstanding dues in the range of Rs.501-1000 crore are to be paid within 20 equated monthly instalments. The total outstanding dues as per Rule 5 of the LPSC Rules means the total outstanding dues of a particular generator. The absurdity of the contention of the Respondent can be gauged from the reading of Rule 5 (4) of the LPSC Rules.

(h) In the proposal dated 27.6.2022, the Respondent has not included the outstanding dues payable to the Petitioner under Change in Law dues. Therefore, the Petitioner does not admit or acknowledge the correctness of the figures mentioned in the said letter dated 27.6.2022. Subsequently, the Respondent in its letter dated 1.7.2022 included the Change in Law dues to the extent of approximately 75% of Change in Law claims submitted by the Petitioner without any reason. Admittedly, the Respondent has not included LPS on the Change in Law dues and even the total amount of Change in Law dues is also not included in the outstanding dues. In terms of Rule 5 (2), the Respondent is required to communicate the total outstanding dues within 30 days of the enactment of the Rules i.e. by 3.7.2022. LPS on Change in Law dues amounting to approximately Rs. 8 crore being not part of the outstanding dues mentioned in the letter dated 27.6.2022 or in the letter dated 1.7.2022, the said letters of the Respondent are not in compliance with Rule 5 (2) of the LPSC Rules and therefore, cannot be relied upon by the Respondent at all.

(i) The contention of the Respondent that it has made certain payment, is not correct and the certain payments towards LPS and Change in Law were not made by the Respondent voluntarily or on its own accord but was paid as per the direction of the APTEL dated 4.2.2021 in Appeal No. 56 of 2020 and dated 31.4.2021 in Appeal No. 246 of 2018. Further, differential capacity charges were also paid by the Respondent pursuant to direction of the Commission in Petition for non-compliance of the Commission's direction.

(j) Since the amount paid by the Respondent is not the subject matter of the present Petition, payment made by the Respondent against the same is of no relevance.

(k) The contention of the Respondent that it has been unable to settle the monthly bills pertaining to December 2021 to April 2022 is half-truth. The Respondent is deliberately omitting to mention the monthly bills for the period March 2020 to June 2020 which also remain unpaid as also the other dues.

#### **Hearing dated 5.7.2022 and 15.7.2022**

14. The matters were heard on 5.7.2022 and 15.7.2022. During the course of hearings, learned senior counsel and learned counsel for the Petitioner and learned counsel for the Respondent, TANGEDCO made the detailed submissions in the matter. Based on the request of the learned counsels, the parties were directed to file their respective written submission within four weeks.

#### **Written submissions of TANGEDCO**

15. The Respondent, TANGEDCO vide its written submissions dated 30.7.2022, has mainly submitted as under:

(a) The purport of the LPSC Rules is to allow liquidation of total outstanding dues of the distribution companies to enable them to make payment of total outstanding dues in equal monthly instalments. In terms of the LPSC Rules, (i) all dues owned by the distribution licensee to generating companies, transmission licensees and trading licensees including late payment surcharge thereon outstanding as on 3.6.2022 are to be rescheduled provided that the distribution licensee issues a communication to such effect within 30 days of notification of the said rules and (ii) subject to such communication being sent, the distribution licensee would not be liable to pay late payment surcharge which would have accrued after 3.6.2022.

(b) The primary objections raised by the Petitioner to the applicability of LPSC Rules to the dues claimed in the instant Petition is that (i) such application would give LPSC Rules retrospective effect; (ii) LPSC Rules cannot be applied in proceedings which are already pending before this Commission even prior to

notification thereof; and (iii) LPSC Rules cannot be applicable to the dues claimed in the present Petition given the judgment of APTEL in NRSS XXIX Transmission Ltd. v. CERC and Ors. in OP Nos. 1 & 2 of 2022 dated 5.4.2022.

(c) The contention that applying the LPSC Rules to the present Petition would give the said Rules retrospective effect is misconceived inasmuch as the said Rules do not in any manner, vary or extinguish the dues that have already accrued till the date of notification thereof. They only seek to suspend the late payment surcharge that would accrue post 3.6.2022 i.e. after notification of LPSC Rules. Insofar as the dues that have already accrued, they have merely been rescheduled, the liability to pay such dues is not reduced or extinguished. Therefore, no vested right or accrued liability is affected by operation of the LPSC Rules.

(d) In any event, considering that Rule 5 of the LPSC Rules specifically deals with liquidation of arrears that have accrued till the date of notification of LPSC Rules through rescheduling, if the LPSC Rules are held to be inapplicable to accrued dues, it would be directly contrary to and do violence to the plain language of the LPSC Rules. In this regard, reliance has been placed on the judgment of APTEL in the case of Godavari Power v. Chhattisgarh State Electricity Regulatory Commission and Ors. in Appeal No. 33 of 2012.

(e) LPSC Rules do not exclude their application to dues that are subject matter of pending recovery proceedings, on the contrary, the definition of “outstanding dues” itself provides that it consists of all dues, which have not been stayed by any court or tribunal, implying thereby that it includes within its ambit, dues that are subject matter of pending proceedings.

(f) The issue of applicability of LPSC Rules to pending petitions is no longer *res integra* as this Commission in its order dated 8.7.2022 in Petition No.199/MP/2022 in the matter of Jindal Power Ltd. v. TANGEDCO has after duly noting the observations of the judgment of APTEL in the NRSS Case expressly held that from 3.6.2022 onwards, the LPSC Rules are applicable for the Petitioner therein and it cannot circumvent the Rule 5 ‘Liquidation of arrears’ on account of pending adjudication of the Petition.



(g) The question of abdication of jurisdiction by the Commission does not arise in proceedings such as the present one, which are not primarily for adjudication of any disputes, but essentially seek recovery of dues that are not in dispute. A dispute is said to arise when there is a claim and it is repudiated by another; mere failure to pay cannot be said to be a dispute. In this regard, reliance is placed on the judgment of Hon'ble Supreme Court in the case of Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority, [(1998) 2 SCC 338] and Canara Bank v. National Thermal Power Corpn., [(2001) 1 SCC 43]. As is apparent from the circumstances, the present case also do not give rise any dispute which this Commission may adjudicate. The Petitioner has invoked the recovery proceedings before this Commission and this position has also been recognised by the Commission in Jindal Case which involved the facts identical to the present case.

(h) The observations of the APTEL in NRSS Judgment were rendered in the context and on the interpretation of CIL Rules, which were widely different in purpose, scope and effect from the LPSC Rules. In the said judgment, the APTEL also made it clear that it was not undertaking judicial scrutiny of the Change in Law Rules. The findings of APTEL were based purely on an interpretation of the CIL Rules and the said judgment cannot be interpreted to render the LPSC Rules inapplicable to the dues claimed by the Petitioner in the present Petition given the differences between the two Rules. Change in Law Rules, unlike the LPSC Rules, did not expressly refer to the past dues/arrears and failed to contemplate a scenario where the claim for Change in Law was disputed, which would have led to interference with the appropriate Commission's jurisdiction if the CIL Rules were applied retrospectively.

(i) LPSC Rules are only concerned with payment of outstanding dues which are undisputed upto the date of notification of the LPSC Rules. Further, as rightly observed by this Commission in Jindal Power case, the LPSC Rules expressly relate to past dues upto the date of notification of the Rules. Therefore, the LPSC Rules cannot be equated with CIL Rules and should be squarely applied in the present case keeping in line with the view already taken by the Commission.

(j) TANGEDCO is in no manner in non-compliance with this Commission's interim order dated 26.5.2022 wherein this Commission directed TANGEDCO to *“pay 75% of the undisputed amount before the next date of hearing preferably*



*within two weeks of this order*". Thus, as apparent from the direction, the mandate was for TANGEDCO to pay 75% of undisputed amount before the next date of hearing which was not notified at the time the order was passed and preferably within two weeks. However, even before the next date was notified, the Petitioner initiated proceedings under Section 142 of the Act by filing Petition No. 181/MP/2022 on 21.6.2022 raising baseless and unsubstantiated allegation of non-compliance against TANGEDCO.

(k) Before the next date of hearing on 5.7.2022, TANGEDCO had already filed IA No. 43/IA/2022 seeking recall of order dated 26.5.2022 in view of the fact that the LPSC Rules had been notified and TANGEDCO had already issued its communication in terms of the said Rules for rescheduling the outstanding dues. The said Rules were in fact notified even before the two weeks from the date of interim order dated 26.5.2022. If TANGEDCO is constrained to make payment notwithstanding the relief afforded to the distribution licenses under the LPSC Rules, it would completely defeat the purpose of such Rules and result in further hardship and irreparably prejudice the ability of TANGEDCO to make payment to the other generating companies and licensees.

(l) It is settled law that interim orders can be modified in view of subsequent circumstances to ensure that interim relief remains just and lawful as held by the Hon'ble Calcutta High Court in *Dover Park Builders Pvt. Ltd. v. Madhuri Jalan*, 2002 SCC On Line Cal 413 and the Hon'ble High Court of Delhi in the case of *Communication Components Antenna Inc. v. ACE Technologies Corp.*, [2019 CC On Line Del 9123].

(m) In the present case, it is apparent that with the notification of LPSC Rules, TANGEDCO is permitted to make payment to the Petitioner in 48 monthly instalments as contemplated by Rule 5(1). Thus, the premise of the interim order dated 26.5.2022 – that is, TANGEDCO being liable to pay 75% of the outstanding amount to the Petitioner at once – is no longer in existence. As the Petitioner is no longer entitled to such relief in law, considering the changed circumstances, it is exigent that the interim relief also reflect these conditions. The fact that subsequent developments can be taken into account to mould relief has been recognised by the Hon'ble Supreme Court in the case of *Gaiv Dinshaw Irani v. Tehmtan Irani*, [(2014) 8 SCC 294].

(n) The contention of the Petitioner that the order of the Commission dated 26.5.2022 is not an interim but a final order as it directed TANGEDCO to pay 75% of the undisputed amount is wholly untenable. Firstly, the said order was passed on an interim application filed by the Petitioner bearing IA No. 33/2022 specifically praying that the Commission “*pass an interim order directing TANGEDCO to forthwith and without any delay pay Rs. 417,18,35,842.00 i.e. 75% of the outstanding amount of Rs. 556,24,47,789.00...*”. The order dated 26.5.2022 was passed granting this specific prayer of the Petitioner and in such circumstances, it cannot now be said that this order is a final order. Secondly, the order dated 26.5.2022 was passed ex-parte. At the time of passing of the said order, no notice had been issued to TANGEDCO by the Commission whether on the main Petition or the IA. By merely serving a copy of IA to TANGEDCO just before the matter is listed for the first time at the stage of admission, the Petitioner cannot circumvent the procedure of issuing notice as has been established by the Commission and insist on the Petitioner’s presence before the notice stage.

(o) By relying upon the judgment of Hon’ble Supreme Court in the case of Budhia Swain v. Gopinath Deb, [(1999) 4 SCC 396], the Petitioner has submitted that an order can only be recalled in specific circumstances, namely, lack of jurisdiction, fraud, mistake and lack of notice to necessary party. However, the said contention in the present context is wholly misconceived. Hon’ble Supreme Court, while enumerating the circumstances fit for recall in Budhia Swain, was dealing with a final judgment sought to recall in review jurisdiction. Whereas in the present case, the Commission is neither exercising review jurisdiction nor dealing with a final order. TANGEDCO has merely sought a recall or modification of interim order dated 26.5.2022 in view of the subsequent notification of LPSC Rules such modification/ recall of an interim order in light of subsequent events, is completely within the scope of the Commission’s jurisdiction as contemplated by various courts in their judgments.

(p) The facts and circumstances of the case warrant recall of the order dated 26.5.2022 to the extent that the said order directs TANGEDCO to pay 75% of the amount not under dispute or alternatively, modify the order dated 26.5.2022 by keeping in abeyance the said direction pending disposal of the main petition. In the event that this Commission is of the view that the LPSC Rules apply to the

present case, then the said interim order may not be given effect to. This is especially so because an interim order can only be in aid and furtherance of the final relief prayed for as held by the APTEL in the case of Essar Power Ltd. v. UPERC and Ors. in Appeal No. 82 of 2011. Therefore, as is the present case, if the final prayer cannot be granted, the interim order also cannot be sustained.

(q) This Commission's jurisdiction under Section 142 of the Act is penal in nature. Therefore, to take recourse to such penal provision, it is imperative for the Petitioner to establish that TANGEDCO has wilfully disobeyed the order. In this regard, the reliance has been placed on the Hon'ble Supreme Court's judgment in the case of Ram Kishan v. Tarun Bajaj, [(2014) 16 SCC 204]. In the present case, even before the "preferred" period of two weeks for payment was over, the LPSC Rules were notified on 3.6.2022. TANGEDCO's Board resolved on 17.6.2022 to take benefit of the provisions of LPSC Rules which allow it liquidate outstanding dues and pay them in instalments, and consequently, filed an application for recall/modification of the interim order dated 26.5.2022. TANGEDCO acted on the reasonable belief that having taken recourse of the LPSC Rules and communicated this to the Petitioner within 30 days as per requirement of Rule 5(2), it was no longer required to pay the outstanding dues in the manner specified in the interim order as is apparent from its application seeking recall/modification of the order. Therefore, there was no intention of the part of the Respondent to disobey the said order. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in the case of State of Bihar v. Rani Sonabati Kumari, [(1961) 1 SCR 728].

(r) The contention of the Petitioner that even if LPSC Rules were to apply, TANGEDCO must make payment of the Petitioner's outstanding dues in 20 monthly instalments as the outstanding dues of the Petitioner are Rs. 580 crore as recorded in TANGEDCO's letter dated 27.6.2022 is wholly untenable. The Petitioner, while laying the emphasis on the definition of "outstanding dues" in Rule 2(1)(h) of the LPSC Rules, has contended that since reference is made to only a generating company or a transmission licensee, the dues of each generating company / transmission licensee must be treated separate for the purpose of payment under Rule 5(1). However, the Petitioner has failed to appreciate the language of Rule 5(1) which refers to the "*total outstanding*

*dues....for payment by a distribution licensee*". The expression "total outstanding dues" are used while setting out the maximum permissible instalments within which payment is to be made, which expression can only mean the total of outstanding dues defined in Rule 2(1)(h) of the LPSC Rules. This contention is further bolstered by the fact that in Rule 5(1), there is no reference to generating companies, transmission licensees or trading licensees to whom the dues are owed, the emphasis is upon the total dues payable by a distribution licensee.

(s) The expression "total outstanding dues" in Rule 5(1) is to be viewed in contradistinction from the use of just "outstanding dues" in Rule 5(2), which deals with communications to be issued to the individual generating companies, licensees, etc. In interpretation of any statute, it is necessary to have regard to the context in which a particular phrase or word is used at different places in the statute, in order to determine the intent behind the use of the said phrase or word. In this regard, reliance has been placed on the judgment of Hon'ble Supreme Court in the case of *Kolkata Metropolitan Development Authority v. Gobinda Chandra Makal*, [(2011) 9 SCC 207].

(t) If the contention of the Petitioner were to be accepted, then it would render the last proviso to Rule 5(2) completely meaningless, as the said proviso specifically required that the payment of instalments have to be "on pro-rata basis, depending upon the proportion of their individual outstanding dues". If Rule 5(1) were to be interpreted to mean that the maximum number of instalment would depend upon the extent of individual outstanding dues, then there would be no question of applying pro-rata basis while issuing individual communications. On this reasoning also, Rule 5(1) has to necessarily be interpreted to mean that the maximum number of instalments stipulated therein is based on the total outstanding dues owed by the distribution licensees to all generating companies, transmission licensees and trading licensees. It is settled law that a legislation cannot be interpreted in a manner that renders any word or any phrase redundant. This position has recently been confirmed by the Hon'ble Supreme Court in the case of *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corp.* in CA No. 3657 of 2022.

(u) The Petitioner has alleged that the amounts mentioned in communications issued by TANGEDCO on 27.6.2022 and 1.7.2022 pertaining to outstanding dues

of the Petitioner are incorrect. TANGEDCO has submitted the dues as per its computation of the amounts owed based on the bills raised by the Petitioner and the objection raised by the Petitioner are not substantiated. In any event, any discrepancy in the amounts can be reconciled and it does not in any manner affect the validity of the communications issued under LPSC Rules.

### **Written Submissions of Petitioner**

16. The Petitioner, vide its written submissions dated 13.8.2022, has mainly submitted as under:

(a) Ministry of Power vide its communication dated 4.8.2022 has issued a clarification on LPSC Rules which *inter alia* clarifies that if there is a Court order prior to the date of notification of the rule i.e. 3.6.2022, the orders of the Court of competent jurisdiction will prevail. In view of this clarification issued by the very authority which has authored and issued the LPSC Rules, all objections of TANGEDCO based on LPSC Rules in order to circumvent the order dated 26.5.2022 passed by this Commission are untenable.

(b) Contention of TANGEDCO that LPSC Rules do not in any manner, vary or extinguish the dues that have already accrued till the date of notification and the Rules only seek to suspend the LPS that would accrue post 3.6.2022 is wholly misconceived and untenable. The Petitioner has a right to receive payment for the electricity supplied within the time lines agreed to and stipulated in PPA. If such payment is being deferred or postponed by virtue of LPSC Rules by a period of 48 months or by any other period, it would indubitably affect the aforesaid vital right of the Petitioner adversely.

(c) LPSC Rules are to be read, interpreted and applied in a manner so as to conform to the extant law. It is not permissible to give an interpretation of the Rules which would render the Rules in conflict of substantive extant law. The matters where prior to notification of the Rules, the Commission has already assumed jurisdiction and is seized of the subject matter, such jurisdiction cannot be taken away by application of delegated legislation such as LPSC Rules as is clear from the law laid down by APTEL in paragraph 61 of the NRSS Judgment. Undoubtedly, the LPSC Rules create a new rights, liabilities, disabilities &

obligations and the Rules do not provide that the proceedings already initiated in accordance with law before the Commission shall abate or come to an end.

(d) The reliance placed by TANGEDCO on the judgment of Hon'ble Supreme Court in Godavari Power is patently erroneous. It appears that in the said judgment the Hon'ble Supreme Court has held that the State Commission does not have powers to relax the provisions of the Act. Since, no such issue or scenario arises in the present case, the said judgment is not germane at all to the issue at hand.

(e) The contention that there arises no dispute for the Commission to adjudicate as TANGEDCO has admitted the claim of the Petitioner not only smacks of utter malafides and dishonesty, the same is utterly absurd and if accepted would lead to disastrous & unimaginable consequences. In view of the stand taken by TANGEDCO i.e. admitting its liability, the Commission is rendered a mute spectator, with TANGEDCO openly invading the rights of the Petitioner and seeking premium for its own wrongs. Even the refusal/ inability/inaction of TANGEDCO to pay even the admitted amounts is a 'dispute' before the Commission. A party cannot simply walk away from the process of law and jurisdiction of the Commission by brazenly making a statement that it admits the liability but shall not or cannot pay.

(f) This Commission is a statutory quasi-judicial forum created for seeking redressal by the generators such as the Petitioners as well as the Discoms and other entities and protecting their rights, with the status of the Commission equated to that of a Civil Court. If TANGEDCO's contention is accepted, then it would mean that the Petitioner is not even allowed to knock the doors of the Commission while it continues to suffer at the hands of TANGEDCO. Reliance placed on the judgment of Hon'ble Supreme Court in the case of Inder Singh Rekhi v. Delhi Development Authority, [(1988) 2 SCC 338] is absolutely misplaced. The said judgment was rendered in the context of determination of period of limitation to file an application before Court for appointment of arbitrator. The said judgment has not application at all to the present case.

(g) The contention of TANGEDCO that APTEL's NRSS Judgment having been rendered in context of CIL Rules is not applicable to LPS Rules is misconceived in

law. The said judgment is on the retrospective applicability of delegated piece of legislation, namely, CIL 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 and has held that in the absence of the parent statute clothing the executive 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. This is the *ratio decidendi* of the said judgment. It is submitted that both the LPSC Rules as well as CIL 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 applicability, and therefore, there is no distinction between the two set of rules. In this regard, it is submitted that the 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 APTEL i.e. the ratio laid down in the said judgment applies squarely to the LPSC Rules, the source whereof being the same i.e. the Electricity Act, 2003.

(h) The finding of the APTEL that CIL Rules cannot affect the proceedings already pending, applies with all fours to the LPSC Rules as well inasmuch as the LPSC Rules cannot be applied to divest this Commission of jurisdiction to adjudicate upon the claim already laid before it, the cause of action for which had arisen much prior to the Rules coming into force. The contention of TANGEDCO based on language and scope of CIL Rules to draw distinction between CIL Rules and LPSC Rules is wholly absurd. TANGEDCO has failed to appreciate the ratio laid down by the APTEL and the Hon'ble Supreme Court and is pointlessly drawing distinction between the provisions of LPSC Rules and CIL Rules.

(i) In terms of the order dated 26.5.222 passed by the Commission, TANGEDCO was required to file reply to the Petition by 16.6.2022. However, it failed to file its reply to the Petition within the said time frame. Further, TANGEDCO was required to pay 75% amount, as directed, preferable within two weeks i.e. 10.6.2022 and the Petition was to be listed upon completion of pleadings. However, on account



of TANGEDCO's failure to file its reply to the Petition within the time period prescribed and consequent non-completion of pleadings, the alternate time period for compliance with order dated 26.5.2022 i.e. next date of hearing was rendered nugatory by TANGEDCO itself. It is pertinent to note that it was only once the Petitioner had filed Petition No. 181/MP/2022 invoking Section 142 read with Section 146 of the Act, TANGEDCO submitted a request dated 22.6.2022 with the Commission for extension of time to file reply upto 1.7.2022. Thus, it is apparent that TANGEDCO was in default and non-compliance.

(j) The prayer for recall of the order dated 26.5.2022 as sought by TANGEDCO is not maintainable and is an abuse of process and therefore, is liable to be dismissed. It is settled law that power to recall can be exercised only on limited grounds, reliance in this regard is placed on the judgments of Hon'ble Supreme Court in the cases of (i) Indian Bank v. Satyam Fibers (India) Pvt. Ltd. [(1996) 5 SCC 550], (ii) United India Insurance Co. Ltd. v. Rajendra Singh and Ors. [AIR 2000 SC 1165], and (iii) Budhia Swain & Ors. v. Gopnath Deb & Ors., [(1999) 4 SCC 396]. Admittedly, none of the circumstances for recall of the order dated 26.5.2022 as laid down by the Hon'ble Supreme Court in the aforesaid judgments such as (i) an order suffers from inherent lack of jurisdiction and such lack of jurisdiction is patent, (ii) there exists fraud or collusion in obtaining judgment, (iii) there has been a mistake of court prejudicing a party, and (iv) a judgment was rendered in ignorance of fact that a necessary party had not been served at all etc., exist in the present case.

(k) With regard to the effect of a subsequent legislation or delegated legislation on an order passed by the Courts, the law is well settled that a Court's order remains unaffected and prevails. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Madras Bar Association v. Union of India and Anr., [2021 SCC Online SC 463] wherein the Honb'le Supreme Court held that even a subsequent legislation enacted by the Parliament or the Legislature cannot override or wipe out the orders passed by the Hon'ble Courts including the interim orders prior to such legislation.

(l) The contention of TANGEDCO that on account of change in circumstances i.e. notification of LPSC Rules, the order dated 26.5.2022 can be recalled and reliance on the judgment of Calcutta High Court in the case of Dover Park



Builders Pvt. Ltd. v. Madhuri Jalan is misconceived. In the aforesaid matter, the Hon'ble High court was dealing with an order of injunction passed under the provisions of Order 39 Rule 1 & 2 of Code of Civil Procedure, 1908 ('CPC'). The power of Court to vary / discharge/ vacate the injunction order is provided in the CPC itself including on account of 'change in circumstances'. Such power vests in the Court under Order 39 Rule 4 of CPC. Pertinently, the order dated 26.5.2022 passed by the Commission is not an order of injection. Further, in any event, recall of an order is completely different from vacating/ modifying the order of injunction. Both the 'recall of order' and 'vacation of injunction' are two separate legal concepts. TANGEDCO's prayer is for recall of the order. Further, change in circumstances, spoke of in Rule 4, second proviso is change in factual circumstances vis-a-vis the parties, which would not justify continuation of injunction and most certainly do not cover effect of a subsequent notified Rules on the Order passed by a Court.

(m) In the judgment in Communication Components Antenna Inc. V. ACE Technologies Corps., the Hon'ble Delhi High Court held that an injunction order can be varied or set aside under Order 39 Rule 4. In none of the judgments, the Court was dealing with the powers to "recall an order" which is completely different from power to the Court to "vary or vacate an injunction" under Rule 4 of Order 39 of CPC. Clearly, TANGEDCO's application is to recall the order dated 26.5.2022 and thus, above decisions have no applicability to the same. Further, the prayer (b) of the TANGEDCO's application, seeking modification of the order dated 26.5.2022- '*pending disposal of Petition*' does not survive and is rendered infructuous as the orders have been reserved on the Petition.

(n) Similarly, the reliance placed on the judgment in Gaiv Dinshaw Irani v. Tehmtan Irani, (2014) 8 SCC 294 is also misplaced as the said judgment does not even deal with the impact of subsequent delegated legislation such as the Rules on the orders already passed. The said judgment deals with a situation where the subsequent facts had a bearing on the right to relief. Unlike the said case, there is no change in factual position between the parties.

(o) Without prejudice to the above, the Petitioner is right in contending that order dated 26.5.2022 passed by the Commission is a final order with regard to 75% of the undisputed amount due inasmuch as in the reply filed by TANGEDCO, it has

admitted its liability to pay. In view of such admission, the order with regard to 75% payment is final and binding on the parties and is therefore a final order for all purposes and nothing is left to be decided by the Commission except to ensure that TANGEDCO complies with the said order and pays the said amount. Reliance placed by TANGEDCO on the prayer made in IA No. 33/2022 to contend that the prayer made by the Petitioner was for interim order is of no relevance inasmuch as the subsequent to the said prayer having been made, TANGEDCO itself has admitted its liability in the reply filed by it.

(p) The fact that the order dated 26.5.2022 is an ex-parte order does not make iota of difference inasmuch as TANGEDCO has admitted the amount in its reply. Therefore, even if TANGEDCO was present on 26.5.2022 in the hearing it would not have changed the position a bit in view of such admission. Notably, TANGEDCO chose not to appear despite being put on advance notice, much prior to the date of hearing that the Petitioner shall be pressing for interim reliefs as prayed for in the said IA. TANGEDCO does not deny that it had notice of listing of the Petition and IA before the Commission on 26.5.2022. It is admitted position that TANGEDCO did not make any payment within two weeks, it did not make any payment before the next date of hearing (5.7.2022) and TANGEDCO has not made any payment till date and this is sufficient to establish utter disregard and non-compliance of the order. TANGEDCO cannot stand on technicalities in order to frustrate dispensation of justice.

(q) Without prejudice to the above and without admitting anything, TANGEDCO's proposal letters dated 27.6.2022 and/or dated 1.7.2022 by which it has proposed to liquidate 'total outstanding dues' of the Petitioner is not in compliance with LPSC Rules inasmuch as firstly, TANGEDCO has stated that the outstanding amount shall be paid in 48 instalments on the premise that the outstanding amount of TANGEDCO is more than Rs. 10,000 crore. This is wholly incorrect and misleading. What is relevant is the outstanding dues that TANGEDCO owes to the Petitioner. The outstanding dues to the Petitioner as per TANGEDCO, as mentioned in its own letter dated 27.6.2022 is Rs. 580.11 crore (revised to Rs. 655.80 crore vide letter dated 1.7.2022) and therefore, as per the Rules, outstanding dues in the range of Rs. 501-1000 crore are to be paid within 20 equated monthly instalments.

(r) The contention that 'total outstanding dues' referred to in Rule 5 of LPSC Rules means the total outstanding dues of the distribution company to all the generators is patently fallacious, absurd and mischievous. The total outstanding dues referred to in Rule 5 on a plain reading of Rules means the total outstanding dues of a particular generator. In this regard, reference is made to Rule 2(h) which defines "outstanding dues" to mean the "*dues of a generating company...*". Further, in terms of Rule 5(2), the distribution company is required to communicate to the generating company "the outstanding dues" and the number of instalments in which "the outstanding dues" would be paid. The generator to whom such communication is issued is not concerned with the outstanding dues that distribution company owes cumulatively to all generators and traders, etc. Therefore, Rule 5(2) clearly contemplates communication by distribution company of outstanding dues owed to a particular generator to whom such communication is issued and consequently, the number of instalments in which the outstanding dues of that particular generator would be paid.

(s) The absurdity of the contention of TANGEDCO can be gauged from a reading of Rule 5(4) which reads that "*In case of delay in payment of an instalment under sub-rule (1), Late Payment Surcharge shall be payable on entire outstanding dues as on the date of notification of these rules*". It would be an absurdity to suggest if TANGEDCO defaults in payment of an instalment to one of the generator to whom it owes money whereas it continues to pay instalments to other generators as scheduled, the Late Payment Surcharge shall be payable on the "entire outstanding dues" i.e. on the entire amount cumulatively owed by TANGEDCO to all the generators.

(t) The interpretation of the fourth proviso to Rule 5(2) as expounded by TANGEDCO is erroneous. 'Pro-rata' and 'depending upon proportion of their individual outstanding dues' as mentioned in the said proviso to Rule 5(2) only means that each generator would be paid as per individual outstanding dues. In any event, the said Rule cannot be read to mean that all generators having whatsoever amount due should be treated alike. A generator who has to recover Rs. 1 crore cannot be treated in the same manner as the generator who has to recover Rs. 1000 crore. Such an interpretation is wholly absurd and runs contrary to settled principles.

(u) Further, in the proposal dated 27.6.2022 or dated 1.7.2022, TANGEDCO had not included the outstanding dues payable to the Petitioner under Change in Law dues. Thereafter, TANGEDCO issued a letter dated 1.7.2022 whereby it has sought to include Change in Law dues to the extent of approximately 75% of Change in Law claims submitted by the Petitioner. TANGEDCO has not provided any reason whatsoever for arbitrarily reducing the said Change in Law claim by 25%. Thus, admittedly, TANGEDCO has not included Late Payment Surcharge on the Change in Law dues and even the total amount of Change in Law dues is not included in the outstanding dues. In terms of Rule 5(2) of the LPSC Rules, TANGEDCO had to communicate “total outstanding dues” within 30 days of the promulgation of Rules i.e. by 3.7.2022 and the Late Payment Surcharge on Change in Law dues amounting to approximately Rs. 8 crore being not part of the outstanding dues mentioned in the letter dated 27.6.2022 or in the letter dated 1.7.2022, the said communications of TANGEDCO are not in compliance with Rule 5(2) of the LPSC Rule and therefore, cannot be relied upon by TANGEDCO at all.

### **Analysis and Decision**

17. We have considered the submissions of the parties and perused the documents available on record. At the outset, it is pertinent to note that the aspect of the applicability of LPSC Rules on the pending petition seeking directions of this Commission upon the distribution licensee for clearance of admitted outstanding dues/arrears under the Power Purchase Agreement has already been considered by the Commission in its order dated 8.7.2022 in Petition No. 199/MP/2021 in the matter of Jindal Power Ltd. v. TANGEDCO. The relevant extract of the said order reads as under:

*“....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)
Upto 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 redetermined 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 devise innovated by the apex court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise 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."*

Thus, in the above order, the Commission, after having noted the notification of the LPSC Rules and the provisions thereof, has observed that Rule 5 of the LPSC Rules 'expressly' recognizes the arrears/ past liabilities accumulated upto the date of notification of the Rules and provides for liquidation process in equal monthly instalments. In the said order, the Commission has also dealt with the contention in regard to non-applicability of LPSC Rules on the basis of the APTEL judgment in NRSS case as also made by the Petitioner in the present case and has held that from 3.6.2022 onwards, LPSC Rules are applicable and the Petitioner therein cannot circumvent Rule 5 'Liquidation of arrears'. The aforesaid findings squarely apply to the facts of the present case. However, the only distinguishing aspect in the present case is that prior to the notification of LPSC Rules, the Commission had already passed an



interim order dated 26.5.2022 whereby TANGEDCO was directed to pay 75% of undisputed amount before the next date of hearing preferably within two weeks of the order.

18. Pursuant to issuance of LPSC Rules by Ministry of Power, Government of India, the Respondent, TANGEDCO, has filed IA No.43/IA/2022 seeking recall of the interim order dated 26.5.2022. Accordingly, the issue that arises for consideration is whether in light of notification of the LPSC Rules, the direction issued vide order dated 26.5.2022 is to be enforced or such an order deserves to be recalled/modified. While the former will require TANGEDCO to pay the outstanding dues in terms of the said order whereas in the latter case, TANGEDCO will be entitled to clear the outstanding dues in monthly instalments by exercising the option available under Rule 5(1) of the LPSC Rules.

19. The Petitioner has contended that the prayer of recall of order dated 26.5.2022 is not maintainable and is an abuse of process and therefore, deserves to be dismissed. The Petitioner has submitted that it is settled law that power to recall can be exercised only in case where the order is procured by playing fraud or by misleading the court or on account of mistake, none of which exists in the present case. In this regard, the Petitioner has placed its reliance on the judgments of Hon'ble Supreme Court in the cases of (i) Indian Bank v. Satyam Fibers (India) Pvt. Ltd. [(1996) 5 SCC 550], (ii) United India Insurance Co. Ltd. v. Rajendra Singh and Ors., [AIR 2000 SC 1165] and (iii) Budhia Swain & Ors. v. Gopnath Deb & Ors., [(1999) 4 SCC 396]. The Petitioner has submitted that with regard to the effect of a subsequent legislation or delegated legislation on an order passed by the court, the law is well settled that a court's order remain unaffected and prevails. Placing reliance on the

judgment of Hon'ble Supreme Court in the case of Madras Bar Association v. Union of India and Anr., the Petitioner has submitted that in the said decision, the Hon'ble Supreme Court has held that even a subsequent legislation enacted by the Parliament or the Legislature cannot override or wipe out the orders passed by the courts including the interim orders prior to such legislation.

20. *Per contra*, the Applicant of IA, TANGEDCO has submitted that it is settled law that interim orders can be modified in view of subsequent circumstances to ensure that the interim relief remains just and lawful and in this context, TANGEDCO has placed the reliance on the judgment of Hon'ble High Court of Calcutta in Dover Park Builders Pvt. Ltd. v. Madhuri Jalan, [2002 SCC OnLine Cal 413] and the judgment of Hon'ble Delhi High Court in Communication Components Antenna Inc. v. ACE Technologies Corps., [2019 SCC OnLine Del 9123]. TANGEDCO has submitted that with the notification of the LPSC Rules, it is permitted to make payment to the Petitioner in monthly instalments as contemplated by Rule 5(1) and thus, the premise of the interim order dated 26.5.2022 – that is – TANGEDCO being liable to pay 75% of the outstanding amount at once – is no longer in existence. It has been submitted that the Petitioner is no longer entitled to such relief in law, considering the changed circumstances, it is necessary that the interim relief also reflects these conditions. In this regard, TANGEDCO has placed reliance on the judgment of Hon'ble Supreme Court in the case of Gaiv Dinshaw Irani v. Tehmtan Irani, [(2014) 8 SCC 294]. It has been also submitted that reliance placed by the Petitioner on the judgment in the case of Budhia Swain v. Gopinath Deb, [(1999) 4 SCC 396] to contend that an order can only be recalled in specific circumstances is misconceived as the Hon'ble Supreme Court, while enumerating the circumstances fit for recall, was dealing with a final judgment sought to be recalled in review jurisdiction whereas in the present case,

TANGEDCO has merely sought a recall or modification of the interim order dated 26.5.2022 in view of the subsequent notification of LPSC Rules.

21. We have considered the submissions made by the parties. It is observed that plea of TANGEDCO for recall and/or modification of the order dated 26.5.2022 is based on the subsequent events, namely, the notification of LPSC Rules and that in terms of the said Rules, TANGEDCO is permitted to make payments to the Petitioner in 48 monthly instalments as contemplated by Rule 5(1) thereof. Insofar as TANGEDCO's prayer for recall of the order dated 26.5.2022 is concerned, it is pertinent to note that power to recall the order emanates from the inherent power of the Courts and it is a settled law that such power to recall can be exercise only on limited grounds. In this regard, we may refer the judgment of Hon'ble Supreme Court in Budhia Swain & Ors. v. Gopnath Deb & Ors. (1999) 4 SCC 396, wherein the Hon'ble Supreme Court has succinctly noted the circumstances where the court may recall its order:

*"6. What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank v. Satyam Fibres India Pvt. Ltd. AIR1996SC2592. Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order (i) obtained by fraud practised upon the Court, (ii) when the Court is misled by a party, or (iii) when the Court itself commits a mistake which prejudices a party. In A.R. Antulay v. R.S. Nayak and Anr. 1988CriLJ1661 , this Court has noticed motions to set aside judgments being permitted where (i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented, (ii) a judgment was obtained by fraud, (iii) a party has had no notice and a decree was made against him and such party approaches the Court for setting aside the decision ex debito justitiae on proof of the fact that there was no service.*

.....  
*8. In our opinion a tribunal or a court may recall an order earlier made by it if (i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent, (ii) there exists fraud or collusion in obtaining the judgment, (iii) there has been a mistake of the court prejudicing a party or (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented....."*

In the aforesaid judgment, the Hon'ble Supreme Court has held that a tribunal or court may recall an earlier order made by it in the events of (i) there is inherent lack of jurisdiction which is patent, (ii) there is fraud or collusion in obtaining the order, (iii) mistake of court prejudicing a party, and (iv) such order was rendered in ignorance of the fact that a necessary notice had not been served at all. It is observed that in the instant case it is pointed out by the learned counsel for the Petitioner that a due notice was served upon it by the Petitioner and the Respondent did not appear at its own. Noticeably, none of the aforesaid grounds / circumstances exist in the present case requiring recall of the Commission's order dated 26.5.2022.

22. TANGEDCO has, however, sought to distinguish the aforesaid judgment of the Hon'ble Supreme Court and has submitted that in the said judgment, the Hon'ble Supreme Court was dealing with a final judgment sought to be recalled in review jurisdiction whereas in the present case, the Commission is neither exercising the review jurisdiction nor dealing with final order and TANGEDCO has merely sought a recall or modification of the interim order dated 26.5.2022 in view of subsequent notification LPSC Rules. It is observed that basis for plea modification of the order dated 26.5.2022 and the judgments relied upon by TANGEDCO in support thereof refer to the power of court to discharge, vary or set-aside temporary injunction orders under Order XXXIX Rule 4 of Code of Civil Procedure, 1908 (CPC) which reads as under:

***“ORDER XXXIX – Temporary Injunctions and Interlocutory Orders***

*4. Order for injunction may be discharged, varied or set aside—Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order:*

*Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the*

*opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:*

*Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party....”*

As per the above provisions, court may discharge, vary or set aside an order for injunction in the event when a party in its application for temporary injunction has knowingly made false or misleading statement to a material particular and injunction was granted without giving notice to the other party or when such discharge, variation or setting aside has been necessitated by a change in the circumstances or the court is satisfied that the order has caused undue hardship to that party. While the order dated 26.5.2022 cannot be strictly compared with the temporary injunction orders issued by the Civil Court in strict sense, even assuming that order for temporary injunction and interim order issued by this Commission are akin in nature, the question that begs consideration is whether the notification of LPSC Rules can be termed as change circumstances requiring this Commission to vacate, vary or set aside its order dated 26.5.2022. The answer to this question, in our view, is now already available in the clarification issued by the Ministry of Power on the LPSC Rules as brought on record by the Petitioner. It is noticed that the Ministry of Power, while addressing the references received from the State Government of Madhya Pradesh and CMD of the Respondent, TANGEDCO, vide its letter dated 4.8.2022, has provided the following clarification:

*“Subject: Clarification on provisions of Electricity (Late Payment Suchrage and Related Matters) Rules, 2022-reference from State Government of Madhya Pradesh and TANGEDCO.*

*Sir, I am directed to refer to letters received from State Government of Madhya Pradesh and CMD, TANGEDCO seeking clarification on provisions of Electricity (Late Payment*

*Surcharge and Related Matters), Rules, 2022 and to state that the issues raised therein have been examined in this Ministry.*

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*(ii) applicability of rule vis-à-vis Court order*

*4. It is further clarified that if there is a Court order prior to the date of notification of this rule, i.e. 03.06.2022, the orders of the court of competent jurisdiction will prevail....”*

Thus, the Ministry of Power having categorically clarified to the Respondent, TANGEDCO that any order of court prior to the date of notification of LPSC Rules will prevail, there is no question of considering the notification of LPSC Rules as ‘change in circumstances’ necessitating the modification of the Commission’s order dated 26.5.2022. Therefore, the order of the Commission dated 26.5.2022 directing the TANGEDCO to make the payment of 75% of the undisputed amount has to prevail over the provisions of the LPSC Rules and the subsequent notification of LPSC Rules, as clarified by the Ministry, cannot be termed as change in circumstances.

23. In view of the forgoing observations and clarification dated 4.8.2022 issued by the Ministry of Power, Government of India on the provisions of the LPSC Rules, we are not inclined to recall or modify our order dated 26.5.2022 directing TANGEDCO to pay 75% of the undisputed amount. Since the timeline specified in the said order for making the payment has already expired and keeping in view that TANGEDCO has also opted for clearing its arrears/past dues with respect to other generators in terms of LPSC Rules, we consider it appropriate to revise the timeline for the compliance of our direction vide order dated 26.5.2022 and accordingly, direct the TANGEDCO to make the payment of amount covered under the said order i.e. 75% of the undisputed amount, within a month from the date of this order. However, insofar as the balance outstanding dues of the Petitioner not covered under the Commission’s order dated

26.5.2022 are concerned, TANGEDCO will be entitled to clear such dues in terms of the provisions of the LPSC Rules as already held by the Commission in order dated 8.7.2022 in Petition No. 199/MP/2021 in the matter of Jindal Power Ltd. v. TANGEDCO.

**Petition No. 181/MP/2022**

24. Being aggrieved by the non-compliance of the Commission's order dated 26.5.2022 by TANGEDCO, the Petitioner has filed Petition No. 181/MP/2022 invoking the provisions of Section 142 read with Section 149 of the Act against the TANGEDCO. In this regard, TANGEDCO has submitted that even before the "preferred" period of two weeks for payment was over, LPSC Rules were notified and its Board having resolved to take benefit of the provisions of LPSC Rules which allow the liquidation of outstanding dues and pay them in instalments, TANGEDCO filed the application for recall / modification of the order dated 26.5.2022. Thus, TANGEDCO acted on the reasonable belief that having taken recourse to the LPSC Rules and communicated this to the Petitioner within 30 days as per the requirement of said Rules, it was no longer required to pay the outstanding dues in the manner specified in the interim order as is apparent from its IA seeking recall/modification of the order and thus, there was no intention on part of TANGEDCO to disobey the said order.

25. We have considered the submissions made by the parties. In the fact and circumstances of the present case as already narrated above, we do not find any wilful default on the part of TANGEDCO in non-compliance of the Commission's order dated 26.5.2022. As pointed out, LPSC Rules were notified even before the timeline prescribed for making the payment by TANGEDCO was over and TANGEDCO might

have in a bonafide manner believed and proceeded to clear the outstanding dues in terms of the provisions thereof and at the same time, moved the IA No. 43/IA/2022 seeking recall/ modification of the order dated 26.5.2022 in order to enable it clear the outstanding dues in terms of the LPSC Rules. Such conduct of TANGEDCO does not reek of wilful contravention/ disobedience of the Commission's direction dated 26.5.2022. It is also pertinent to note that the necessary clarification by the Ministry of Power, Government of India on the LPSC Rules which aided this Commission in determining the question as to whether, in view of the notification of LPSC Rules, its order dated 26.5.2022 is required to be recalled/modified, has also been issued only on 4.8.2022. We conclude by observing that after compliance of our order dated 26.5.2022, the outstanding dues are to be calculated as per the notified LPSC Rules. Hence, in view of the above circumstances, at present, we do not find the present case to be the fit case for invocation of the provisions of the Section 142 read with Section 149 of the Act against TANGEDCO.

26. In view of the foregoing observations and findings, the Petition No. 32/MP/2022 & allied IAs and Petition No. 181/MP/2022 are disposed of.

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

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

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

