

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 76/MP/2019**

**Coram:**

**Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri Pravas Kumar Singh, Member**

**Date of Order: 20<sup>th</sup> July, 2022**

**In the matter of:**

Petition under section 79 (1) (f) of the Electricity Act 2003 for the recovery of dues from the Respondent.

**And**

**In the matter of:**

Rajasthan Rajya Vidyut Prasaran Nigam Limited,  
Vidyut Bhawan, Jyoti Nagar Jaipur,  
Rajasthan-302005

.....**Petitioner**

**Vs**

Punjab State Power Corporation Limited,  
The Mall, PSEB Head Office,  
Baradari, Patiala, Punjab-147001

.....**Respondent**

**Parties Present:**

Shri Puneet Jain, Advocate, RRVPNL  
Shri Abhinav Gupta, Advocate, RRVPNL  
Shri Hari Mohan Gupta, RRVPNL  
Shri Anand K. Ganesan, Advocate, PSPCL  
Ms. Swapna Seshadri, Advocate, PSPCL  
Shri Amal Nair, Advocate, PSPCL  
Ms. Sugandh Khanna, Advocate, PSPCL

**ORDER**

The Petitioner, Rajasthan Rajya Vidyut Prasaran Nigam Ltd. has filed this  
Petition seeking the following reliefs:



(a) Direct the Respondent to make payment of Rs. 7.14 crore to the Petitioner towards the outstanding dues as mentioned earlier.

(b) Pass any other or further orders as this Hon'ble Commission may deem fit in the present facts and circumstances of the case and in the interest of justice.

### **Submissions by the Petitioner, RRVPNL**

2. In support of the above prayers, the Petitioner, in the present petition, has submitted the following:

- (a) The Petitioner and the Respondent, share three types of transactions which are sale of energy, O & M charges for 66 KV Mukatsar-Ganganagar Line and O & M charges for 132 KV Moga-Mukatsar-Ludhiana line. From these regular transactions, the Petitioner and the Respondent were having some pending payments for the period from 1967 to 1995, which was settled as per the terms agreed upon in the MOU dated 6.10.1995. The Petitioner had made the agreed payments to the respondent and were deducted under intimation to the respondent vide letter dated 23.02.1996.
- (b) In the 111<sup>th</sup> meeting of Commercial Committee held at Northern Regional Electricity Board (NREB), New Delhi on 17.3.2003, Item no. B.10 was finalized, which provided for the revised energy bookings from Salal HEP based on pooled shares circulated vide NREB letter dated 21.8.2002 would be treated as final and the bills would be raised/ revised by the concerned utilities accordingly.
- (c) The Petitioner raised the revised bill in consonance with letter dated 16.4.2003 circulated by NREB with regards to the decision taken in 111<sup>th</sup> Commercial Committee meeting of NREB. Accordingly, a bill for Rs 837.05142 lakh was raised for the energy transaction at BTPS rate for the period of October '96 to March '99, which was returned by PSEB, due to some required correction and later on, it was raised again vide letter dated 16.10.2003 after correction, and the corrected bill amount was Rs. 8,37,03,224/-
- (d) After adjustment of the amount payable to the Respondent against energy purchased and O & M charges of 66 KV Mukatsar-Ganganagar line and 132 KV Moga-Mukatsar-Ludhiana line, an amount of Rs. 7.14 crore is due on the Respondent since 2003. In one of the communication from the Respondent vide their Memo No. 2404/ISB-R-2, the Respondent had acknowledged the dues of Rs. 5.05 crore, which leaves the rest of Rs. 2.09



crores as the disputed amount.

- (e) Petitioner had requested the Respondent to release the undisputed and reconciled amount of Rs. 5.05 crore at the earliest and they can reconcile the rest of the amount. The matter was continuously followed from the Petitioner's end through various letters and telephonically. The list of follow-up letters from Petitioner is given below:

Dated	Addressing to	Letter No.
17.08.2009	Chairman, PSPCL	RVPN/CCOA/ISM/D.786
21.06.2010	Chairman, PSPCL	RVPN/CMD/CCOA/ISM/D.397
02.08.2013	Chairman, PSPCL	RVPN/CMD/CCOA/ISM/F.PSEB/2013-14/D.793
21.02.2012	Director, Finance, PSPCL	RVPN/Dir. (Fin.)/CCOA, Sec. ISM/F.PSEB/2011-12/D.2119

the repeated follow ups, the matter was also brought in the 25<sup>th</sup> Commercial Sub-Committee meeting of NRPC held on 24.12.2013, in which the representative of the Respondent intimated that the issue is under consideration and shall be resolved mutually.

- (g) The officers of the Petitioner also visited the Respondent from 3.8.2016 to 5.8.2016 and during this time, the issue was discussed with Dy. CAO, ISB, Patiala in meeting, wherein following points were expressed from the Petitioner side:

(i) The documents provided by the petitioner's officers shall be got examined from their accounts record & payment can be released as one-time settlement.

(ii) The due interest as intimated & to be claimed by the Petitioner is not accepted as non-reconciliation of outstanding amount is still pending.

(iii) One-time settlement is possible that too without interest/late payment charges if any & undisputed /non-reconciled amount/ outstanding.

(iv) After confirmation/prior appointment competent Officers of Accounts wing may visit their office for final negotiation/settlement.

- (h) After pursuing the matter continuously and requesting the due amount through various official letters dated 7.10.2016, 18.10.2016, 7.3.2017, 23.3.2017, 21.11.2017, 14.3.2018, 13.6.2018 and 6.9.2018 and getting no response from the Respondent, by the present petition, the Petitioner seeks recovery of the said amount from the Respondent as no amount in this regard has yet been released from the Respondent.

- (i) The Respondent has already been notified through letter dated 7.3.2017 that in case of non-payment we may take up the matter to the CERC as per section 79 of the Electricity Act, 2003.



- (j) The failure of the Respondent to address the issue of outstanding dues and non-payment of the same, after multiple assurances, gives rise to the cause of action. Hence, this is a dispute within the meaning of Section 79 (1) (f) of the Electricity Act, 2003 and this Commission is the appropriate forum which is vested with the power to adjudicate and arbitrate upon the dispute of the present nature, due to which the cost of generation has increased

### **Hearing dated 30.5.2019**

3. The petition was heard on 'admission' on 30.5.2019 and the Commission after hearing the parties, admitted the petition and directed the parties to complete pleadings in the matter. The Commission also directed the Petitioner to place on record, the minutes of the meeting and letters. The Commission further directed the Petitioner to conduct meeting with the Respondent, to mutually resolve the dispute involved in the present petition.

4. In compliance to the above, the Petitioner has filed additional affidavit dated 12.6.2019. The Respondent has filed its reply vide affidavit dated 3.7.2019 and the Petitioner has filed its rejoinder vide affidavit dated 19.7.2019.

### **Reply of the Respondent, PSPCL**

5. The Respondent PSPCL in its reply has submitted the following:

- (a) At the outset, it is stated that there is no merit in the present petition and the same is liable to be dismissed with costs. The contentions raised by the Petitioner in the Petition are wrong and denied. The due amount is alleged by the Petitioner to have been arisen in consonance with the letter dated 16.4.2003 as circulated by National Electricity Regulatory Board (NREB).
- (b) The claims of the Petitioner are barred by limitation, since the petition has been filed on 14.2.2019, for claims which pertain to the period commencing from October, 1996 to March, 1999 and in turn, emanating from an invoice dated 16.10.2003 raised for a sum of Rs. 8.37 crore.



- (c) Subsequently, after adjustment of amount payable by the Petitioner to the Respondent against energy purchased and O & M charges of 66 KV Mukatsar-Ludhiana line, the alleged pending amount has come down to Rs. 7.14 crore.
- (d) No claims are maintainable except, if it is, for the period of three years before filing of the present petition i.e. prior to 15.02.2016. Any claims for this period are barred by limitation in terms of the judgment of the Hon'ble Supreme Court in *AP Power Coordination Committee & Ors v M/s Lanco Kondapalli Power Ltd & Ors (2016) 3 SCC 468*. The Hon'ble Supreme Court has held that the limitation period of 3 years would apply in adjudication proceedings initiated under Section 86 (1) (f) of the Electricity Act, 2003, which is an identical provision to Section 79 (1) (f) of the Act.
- (e) The bill according to the petition has been raised on 16.10.2003, which was due to be paid within 10 days i.e. by 25.10.2003. When on the said date, the bill remained unpaid, the cause of action *qua* the present claim arose. Counting from the said date, the petition ought to have been filed by 24.10.2006, as per the Hon'ble Supreme Court's Judgment. Since the petition has been filed only on 14.2.2019, it is clearly beyond time and the Petitioner cannot follow the present course of recovery, contrary to the settled law of limitation.
- (f) The entire case of the Petitioner is based on a supposed 'acknowledgement' of liability by the Respondent vide an office memo dated 13.11.2009. This by no stretch of imagination is an acknowledgment of debt. Vide the said memo, the Respondent has questioned the calculation of the outstanding amount to be Rs. 7.14 crore. As against the said calculation, the Respondent has given its calculations. The said letter of the Respondent was in no manner, whatsoever, an acknowledgment of debt. The Petitioner is seeking to indulge in a self-serving interpretation of the aforesaid office memo, as being an acknowledgment of debts, which would extend the period of limitation to file the present proceedings. This contention is grossly misconceived.
- (g) The acknowledgment of debt is defined in Section 18 of Limitation Act, 1963. A perusal of Section 18 of the Limitation Act indicates certain conditions to be fulfilled in order to establishment '*acknowledgement of debt*', as under: –
- (i) *That the acknowledgement of liability must be in writing.*



*(ii) That the acknowledgement of liability must be made before expiry of limitation period for filing the suit. If limitation has already expired, it would not revive under section 18 of the Limitation Act.*

*(iii) That the acknowledgement of liability must be unqualified and must be in unambiguous, clear terms.*

*(iv) That the acknowledgement must be signed by the person or his authorized agent admitting liability.*

- (h) It is submitted that the acknowledgement of liability must be made before expiry of limitation period for filing the suit and if limitation has already expired, it would not revive under Section 18 of the Limitation Act. In the present case, the cause of action arose on 16.10.2003 or 25.10.2003 (considering 10 days for payment) and the alleged acknowledgement also would help the Petitioner, only if it had been made by 24.10.2006. In the above background, the office memo dated 13.11.2009 does not aid the case of the Petitioner.
- (i) A perusal of the office memo dated 13.11.2009 indicates that the Respondent had not acknowledged anything and simply projected its calculation and thus it is factually incorrect to say that the Respondent agreed to pay the amounts as claimed by the Petitioner.
- (j) On the above principles, the Respondent is placing reliance on the judgments (i) K. Krishnamoorthy vs Investment Trust Of India Limited, cited in 2012-2-L.W. 256 (ii) State Bank Of India vs Kanahiya Lal & Anr in RSA No. 248/ 2015 decided on 2nd May, 2016 and (iii) K.Jeyaraman vs M/s Sundaram Industries Ltd cited in 2008-3-L.W. 2594
- (k) Without prejudice to the above, even the date of the office memo is outside the period of limitation and therefore, the same cannot be an acknowledgement of pending dues extending the period of limitation. The claim ought to have been filed latest by October, 2006 and thus the interpretation of the office memo dated 13.11.2009, apart from being factually incorrect, is beyond the period of limitation.
- (l) Even if the office memo dated 13.11.2009 is misinterpreted to be an acknowledgment of pending dues by the Respondent even then by no stretch of imagination is the Petitioner not barred by the law of limitation. It cannot be the case of the Petitioner that it hibernates over the impugned invoice and then only seeks a claim in the year 2019 after a period of 16 years.
- (m) It is also the case of the Petitioner that it had periodically being following up with the Respondent to realize Rs. 5.05 crores. The earliest



correspondence as placed on record by the Petitioner is the letter dated 21.6.2010 i.e. after a hiatus of almost 7 years from the date of the impugned invoice. The aforesaid correspondence was followed by correspondences dated 21.2.2012 and 2.8.2013. Further, it is the case of the Petitioner that the Petitioner had raised the issue of the pending impugned invoice in 25<sup>th</sup> Commercial Sub-Committee Meeting of NRPC held on 24.12.2013. However, the above does not amount to initiating proceedings for recovery and mere writing of the letters would not extend the period of limitation.

- (n) The Respondent, on making enquiries has found that the office of the AG, Rajasthan in its report dated 11.7.2016 bearing no. CAW-F.P.6/CMD & Director (F)/RVPN/2015-16/POM-14 had given adverse findings on the pro-activeness of the Petitioner while realizing the alleged claim. The AG in its report had strongly reprimanded the Petitioner on its lack of initiative in pursuing the matter with the Respondent.
- (o) It was only following this, that the representatives of the Petitioner suddenly started visiting the office of the Petitioner between 3.8.2016 to 5.8.2016, to discuss and deliberate upon the issue of the pending impugned pending invoice. It was subsequent to the aforementioned adverse report that the Petitioner started addressing regular correspondences *qua* the impugned invoice and the alleged acknowledgment on the part of the Respondent. The Petitioner belatedly made the following correspondences namely, 7.10.2016, 18.10.2016, 7.3.2017, 23.3.2017, 21.11.2017, 14.3.2018, 13.6.2018 and 6.9.2018.
- (p) The Respondent craves leave to place the relevant dates in a tabular manner for better appreciation of the fact that the Petitioner is barred by law to bring up impugned invoice.

SI. NO.	DATE(S)	PARTICULAR
1.	October '1996 – March '1999	Period to which the claim pertains
2.	16.10.2003	Date of the impugned Invoice
3.	26.10.2003	Time period for payment of Impugned Invoice
4.	25.10.2006	Date on which the limitation qua the impugned invoice expired
5.	13.11.2009	Date of acknowledgement of the alleged pending amount to the tune of Rs. 5.05 crore. (six years post expiry of limitation)
6.	21.6.2010	Earliest correspondence (as placed on record) by the Petitioner making the claim
7.	24.12.2013.	25 <sup>th</sup> Commercial Sub-Committee Meeting of NRPC





8.	11.7.2016	Audit report of the Auditor General
9.	14.2.2019	Date of filing of the present petition

(q) The fulcrum of the contentions of the Petitioner that having meetings and correspondences extends the period of limitation has no basis whatsoever. It is a well settled principle that discussions, meetings and correspondences do not extend the period of limitation.

(r) In fact, the Appellate Tribunal (APTEL) has specifically rejected such a contention in respect of claims and counter claims under a PPA between a generating company and distribution licensee in its judgment in *GUVNL vs Essar Power Limited (judgment dated 22.20.2010 in Appeal Nos. 77 & 86 of 2009)*.

6. Accordingly, the Respondent has submitted that there is no merit in the claims made by the Petitioner and the present petition is liable to be dismissed.

### **Rejoinder of the Petitioner**

7. The Petitioner in its rejoinder (to the reply of the Respondent) has submitted the following:

a) A plea of limitation has been raised which effectively means that the amount claimed is not denied, but it is claimed that the remedy of the Petitioner is barred by limitation. The Petitioner submits that it is highly unfortunate that a public undertaking which has never denied the liability earlier is now taking a patently unjust plea of limitation against another public undertaking.

b) The entire case of the Respondent revolves around the fact that the claim of the Petitioner is barred by time. In this regards it is submitted that: (a) That the Petitioner has been constantly reminding the Respondent about the said invoice, the issue has been raised in several meetings which have been held and the Respondent every time acknowledged the said debt and assured the Petitioner qua the payment of the said amount. (b) That the said amount due on the Respondent was shown continuously in the final audited balance sheets of the Petitioner company. (c) The Petitioner has vide several communications informed the Respondent qua the said liability, which liability to pay has not been denied ever prior to the present reply, in fact the Respondent has acknowledged and admitted the said debt.

c) The Respondent has stated that the, Petitioner's claim is barred by





limitation in the absence of any communication between 26.10.2003 and 13.11.2009. In this regard, it is submitted that there were several letters which were exchanged between the parties during the said period. It is submitted that

(i) By a letter dated 23.2.2004, the Respondent acknowledged the entire liability mentioned in the invoice i.e. 8,37,03,224/-. However, the Chief Engineer, PSEB had stated that liability of Rs. 4,23,74,579/- stands adjusted against the invoices raised by the Respondent, which were pending payment from the Petitioner and it was stated that the remaining amount would be adjusted against the future bill.

(ii) Further, the invoices raised after June, 2002 are of no consequence pursuant to the letter dated 29.6.2002, wherein the Respondent were asked to stop raising O&M charges qua the said line. The amount was adjusted and thereafter the amount claimed in the present petition i.e. 7,14,38,022 remained due to be paid by the Respondent. The said adjustment can also be tallied from the ledger and balance sheets filed by the Petitioner along with the additional affidavit filed pursuant to the orders dated 30.5.2019 passed by this Commission

(iii) Several reminders were sent on behalf of the Petitioner to the Respondent following up for the payment. However only in 2009, the Respondent admitted the partial claim of the Petitioner to the tune of 5.05 crores and the remaining amount was made subject to the same tallying with the records. Copies of some of the communications sent on behalf of the Petitioner to the Respondent dated 19.10.2005, 9.3.2006 and 6.10.2007 are annexed

d) In the year 2010, the Respondent succeeded Punjab State Electricity Board. Thereafter, the Respondent's regular plea is that they do not have old documents as the same were destroyed due to fire and they have asked the Petitioner to provide them the details of the dues. As mentioned in the reply also, and on account of the aforesaid circumstance the employees of the Petitioner went to the office of the Respondent in 2016 and delivered the documents against proper receiving. After filing of the present petition, the representative-employees of the Respondent also visited the office of the Petitioner and took copies of all the documents available with the Petitioner, including the one filed with the main petition, additional affidavit and the present rejoinder affidavit.

e) The judgments relied upon by the Respondent are inapplicable, so far as the present factual scenario is concerned, in as much as in all the said cases, the claim was either denied by the Respondent therein or the claim was in nature of damages and compensation under the contract, neither is the case herein in the present situation. The Respondent has not denied their liability to pay, and in fact has admitted the debt on several occasions.



- f) It is denied that in the present case, the cause of action arose on 16.10.2003 or 25.10.2003 (considering 10 days for payment) and it is denied that the alleged acknowledgement also would help the Petitioner only if it had been made by 24.10.2006. It is denied that the above background, the office memo dated 13.11.2009 does not aid the case of the Petitioner. It is submitted that the period of limitation has therefore not begin to run since there has never been any refusal by the respondent at any point of time prior to filing of the present counter.
- g) It is denied that the Respondent, on making enquiries has found that the office of the AG, Rajasthan in its report dated 11.07.2016 had given adverse findings or strongly reprimanded the Petitioner on its lack of initiative in pursuing the matter with the Respondent.
- h) The present case is one where the legitimate dues have occurred in favour of the Petitioner and the same is admitted by the Respondent. Further, the cause of action because of the above facts, continuous correspondences and conduct of the parties is a continuing one.

#### **Hearing dated 15.4.2021**

8. During the hearing of the petition on 15.4.2021, the learned counsel for Respondent PSPCL submitted that pursuant to the direction of the Commission vide ROP of the hearing dated 30.5.2019, no meeting was convened by the Petitioner. However, the Commission again directed the parties to endeavour to mutually resolve the dispute involved in the present petition, within four weeks and to file outcome of the meeting, within one week thereafter.

#### **Additional Submissions of Respondent, PSPCL**

9. The Respondent in its additional submissions vide affidavit dated 22.11.2021, has referred to the directions of the Commission to the parties, to mutually resolve the disputes involved in the present petition and submitted that the disputes involved in the present petition, relate to the period from October, 1996 to March, 1999, much prior to the incorporation of the Respondent PSPCL. It has also submitted that the records pertaining to the disputed period, on account of being



vintage, are not available with the Respondent and in the absence of any documentary evidence, any kind of bilateral meeting will not result in a fruitful outcome. The Respondent has further submitted that the prescription of prosecuting claims of various nature by the legislature is precisely to avoid parties raising issues at belated stages by which time, appropriate records may not be available with others. In these circumstances, the Respondent has submitted that the Commission may adjudicate the matter on the basis of facts and submissions placed before the Commission.

### **Hearing dated 23.11.2021**

10. During the hearing of the matter on 23.11.2021 through video conferencing, the learned counsel for the Petitioner submitted that the efforts made by the Petitioner, to mutually resolve the issues between the parties, pursuant to the directions of the Commission vide ROP dated 15.4.2021, had failed as the Respondent rejected the same. The learned counsel, however, sought permission to file certain additional submission/ documents in the matter. The learned counsel for the Respondent also sought permission to file its response to the additional submissions of the Petitioner. The Commission accepted the request of the parties and adjourned the hearing of the matter.

### **Additional submissions of the Petitioner**

11. The Petitioner, in terms of the liberty granted vide ROP dated 23.11.2021, has, vide affidavit dated 13.12.2021, filed certain additional documents viz., the NRPC Conduct of Business Rule, 2006, the relevant extracts of the agenda of 36<sup>th</sup> Commercial Sub-committee meeting of NRPC dated 11.6.2018, the relevant extracts of the MoM of 36<sup>th</sup> Commercial Sub-committee meeting of NRPC dated



18.7.2018 and copy of communication/letters sent by Petitioner to Respondent requesting for holding meeting for mutual agreement.

**Hearing dated 22.2.2022**

12. During the hearing of the Petition on 22.2.2022, through video conferencing, the learned counsel for the Petitioner submitted that the discussions between the parties to mutually settle the matter did not materialize and hence the same may be taken up for the hearing after permitting the Petitioner to file its written submissions. The Commission directed the Petitioner to implead the Northern Regional Power Committee (NRPC) as party to the Petition and file revised memo of parties. The Commission also directed the Respondent, PSPCL to file on affidavit the Memo No. 3673 of PSEB dated 12.11.2008 and the Petitioner's letter dated 29.8.2008 as referred to in the Respondent Memo No. 2404/ISB-R-2 dated 13.11.2009. The Commission further directed the parties to file their respective written submissions.

13. In compliance to the above directions, the Petitioner has impleaded NRPC as a Respondent in the matter, and filed revised memo vide affidavit dated 28.2.2022. The Petitioner has also filed additional affidavit dated 11.3.2022, bringing on record copies of communication/letters made between the parties and the alleged acknowledgment of dues by the Respondent in respect of the claimed dues. The Respondent vide affidavit dated 14.3.2022, has submitted that the erstwhile PSEB which, after unbundling, has culminated into formation of the Respondent Company. It has also submitted that the Respondent is not in possession of the aforesaid documents (Petitioner letter dated 29.8.2008 and PSEB letter dated 12.11.2008), as the same are very old and the records are not traceable. The



Respondent, while pointing out that the files and documents pertaining to the dispute are not available with the Respondent Company, has submitted, that the law of limitation is specifically for discouragement of old demands, particularly for the reason that where raising of demand is unduly delayed, evidence tend to disappear. Accordingly, the Respondent has certified, that the documents called for are not available in office record of the Respondent, and cannot, therefore, be placed before this Commission.

**Hearing dated 26.5.2022**

14. The matter was heard through video conferencing on 26.5.2022. During the hearing, the learned counsel for the Petitioner submitted that no reply has been filed by NRPC, which has been impleaded as Respondent in the matter. He also submitted that since the matter was earlier listed before the NRPC, which is an adjudicating authority and since the Respondent PSPCL had acknowledged the claims of the Petitioner, the claim is not barred by limitation.

15. The learned counsel for the Respondent, PSPCL reiterated that the claim of the Petitioner is barred by limitation, as the same relates to the period from October, 1996 to March, 1999, and the date of invoice is 16.10.2003. The learned counsel, while pointing out that letters/ correspondences sent by the Petitioner, do not extend the period of limitation, clarified that the Respondent PSPCL had not acknowledged any of the claims of the Petitioner. Accordingly, the learned counsel submitted that the petition may be rejected, as barred by limitation. The Commission, after hearing the parties, reserved its order in the matter.

16. Based on the submissions of the parties, the issue which emerges for consideration is "*Whether the prayer of the Petitioner to direct the Respondent to*



*make payment of the outstanding dues of Rs 7.14 crore, is barred by limitation?"*

### **Analysis and Decision**

17. The Petitioner has submitted that in terms of the NREB letter dated 21.8.2002 and the decision taken in the 11<sup>th</sup> Commercial Committee meeting of NREB on 17.3.2003, a revised energy charges bill for Rs 8.37 crore was raised in respect of the energy sale by the Petitioner to PSEB (*now Respondent PSPCL*) under inter-State energy exchange from Salal I & II, at BTPS rate, for the period from October, 1996 to March, 1999. Subsequently, after adjustment of amount payable by the Petitioner to the Respondent, against the energy purchased and O&M charges of 66 kV Mukatsar-Ludhiana line, the pending amount was reduced to Rs 7.14 crore. The Petitioner has stated that the Respondent, in one of its communication dated 13.11.2009, had acknowledged the dues for Rs 5.05 crore, which leave the rest of Rs 2.09 crore, as the disputed amount. The Petitioner has further submitted that it had requested the Respondent to release payment of the undisputed and reconciled amount of Rs 5.05 crore and for reconciliation of the rest of the amount. It has pointed out that the matter was continuously followed up through various letters during the period from 2009 to 2012 and was also brought in the 25<sup>th</sup> Commercial Sub-committee meeting of NRPC on 24.12.2013, in which the representative of the Respondent intimated that the issue was under consideration and shall be resolved mutually. The Petitioner has added that after pursuing the matter continuously with the Respondent and requesting payment of the due amount through various official letters during the period from 2016 till 2018, and getting no response from the Respondent, the Petitioner has sought recovery of the said amounts from the Respondent, through this petition.



18. Per contra, the Respondent has contended that the claim of the Petitioner which pertain to the period from October, 1996 to March, 1999, emanating from an invoice dated 16.10.2003 is barred by limitation, in terms of the judgment of the Hon'ble Supreme Court in AP Power Coordination Committee & ors v M/s Lanco Kondapalli Power Ltd & ors (2016) 3 SCC 468 (*the Lanco case*). The Respondent has also submitted that the cause of action arose on 16.10.2003 or 25.10.2003 (considering 10 days for payment) and therefore, in terms of the judgment of the Hon'ble Supreme Court, the petition ought to have been filed by 24.10.2006. The Respondent has further submitted that the office memo dated 13.11.2009 is outside the period of limitation and therefore, the same cannot be an acknowledgement of pending dues extending the period of limitation. Referring to the correspondences/ letters dated 21.6.2010, 21.2.2012, 2.8.2013, 7.10.2016, 18.10.2016, 7.3.2017, 23.3.2017, 21.1.2017, 14.3.2018, 13.6.2018 and 6.9.2018, the Respondent has submitted that discussions, meetings and correspondences do not extend the period of limitation. In response, the Petitioner has contended that since there has never been a refusal of payment by the Respondent, the period of limitation has not begun to run and the cause of action, therefore, continues till the present.

19. We have considered the submissions of the parties and the documents on record. The Electricity Act, 2003 (hereinafter referred to as the Act) is a special statute, which does not provide for any period of limitation for adjudication of claims by this Commission. Though no period of limitation has been prescribed in the Act for filing of Petitions for adjudication of disputes, the Hon'ble Supreme Court in the 'Lanco case' held that the claims coming for adjudication before the Commission cannot be entertained or allowed, if otherwise, the same is not





recoverable, in a regular suit on account of law of limitation. The relevant extract of the said judgment is as under:

*“30.....In our considered view a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Sections 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power under Section 86 (1)(f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time-barred claims, there is no conflict between the provisions of the Electricity Act and the Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation, on account of the provisions in Section 175 of the Electricity Act or even otherwise, the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.”*

20. In the light of the above judgment, the limitation period prescribed for money claims under the Limitation Act, 1963 i.e. 3 years, will be applicable for filing the application before the Commission.

21. The Respondent PSPCL has submitted that the present petition ought to have been filed by the Petitioner by 24.10.2006, as the cause of action, in respect of the bill dated 16.10.2003 for payment of Rs 8.34 crore, arose, when the same remained unpaid by the Respondent till 25.10.2003. Accordingly, the Respondent has submitted that the present petition, filed by the Petitioner on 14.2.2019, seeking recovery of the said amount is barred by limitation. It has also pointed out that mere writing of letters, discussions and meetings do not extend the period of limitation. We notice that in the present case, there has not been any denial of the claim of the Petitioner by the Respondent. Contrary to this, the Respondent PSEB



and the Petitioner RVPNL, were actively involved in the reconciliation of accounts/ outstanding dues and had also exchanged various letters/communications, as tabulated below:

Sl. No.	Date	Party	Particulars
1	16.10.2003	RVPNL	Revised Energy Charges bill for Rs 8.37 crore for the month of October, 1996 to March, 1999
2.	6.4.2004	PSEB	Requested to charge the 66 kV Mukatsar-Sriganganagar line from 132 kV S/stn end for safety of the equipment/material (if required) and PSEB will not be responsible for any loss etc.
2.	19.10.2005	RVPNL	The net amount receivable from PSEB is Rs 7.25 crore, after adjustment of the un-disputed dues payable by RVPNL to PSEB
3	17.2.2006	PSEB	An amount of Rs 4.24 crore is also receivable by PSEB from RVPNL. Request to depute your officer for reconciliation of outstanding dues as on 23.2.2006.
4	9.3.2006	RVPNL	After reconciliation, an amount of Rs 7.19 crore is payable by PSEB to RVPNL. Kindly reconcile and arrange for payment
5	31.8.2006	PSEB	Requested to depute some officer to reconcile the outstanding dues, so that the matter can be decided once for all. The details of outstanding dues payable by RVPNL is 4.24 crore.
6	19.9.2006	RVPNL	Requested to reconcile the details of each claim from your accounts and intimate difference, so that the same can be sorted out at the time of reconciliation.
7	23.10.2006	PSEB	Request to reconcile the figures of our claim and intimate if there is any discrepancy, so that further action can be taken accordingly.
8	30.12.2006	RVPNL	Requested to re-verify your accounts and arrange payments of our dues of Rs 7.19 crore at the earliest.
9	6.10.2007	RVPNL	An amount of Rs 7.12 crore is receivable from PSEB as on 30.9.2007 (after taking into account the claims against overlay exchange of energy and pooled losses raised by both organizations)
10	26.10.2007 27.11.2007, 28.12.2007 & 22.1.2008	RVPNL	Request to make payment of Rs 7.12 crore by PSEB
11	29.8.2008	RVPNL	Request for release of payment of dues amounting to Rs 7.14 crore at the earliest.
12	12.11.2008	PSEB	Refer to letters dated 23.2.2004, 27.2.2006 and 23.10.2006. Copies of bills raised by PSEB for which payment is outstanding are enclosed. You are requested to send a team of concerned officials to Patiala to get details reconciled at the earliest, so



			that final position of accounts is arrived at.
13	19.1.2009	RVPNL	Request to make the payment of Rs 4.77 crore, being the undisputed and reconciled amount as per PSEB accounts confirmed vide PSEB letter dated 12.11.2008 and also depute a team for reconciliation of the details still remaining un-reconciled.
14	30.1.2009	PSEB	As per your letter dated 29.8.2008, your office has calculated the outstanding amount against PSEB to be Rs 7.14 crores, while PSEB calculates this figure to be Rs 4.77 crores. It is desirable that full reconciliation of all bills/ outstanding amounts raised by either organization is carried out before making any payments, so that no dispute arises afterwards. If you agree that the amount of Rs 4.77 crores, as arrived at by PSEB as full and final payments of your outstanding amount, PSEB will make the payments accordingly. For further reconciliation, representatives of this office are likely to visit concerned RRVPN office at Jaipur in February at the convenience of both our offices.
15	25.2.2009	PSEB	Er. Rajesh Kathpalia, Dy Director in this office will be visiting your office on 3 <sup>rd</sup> March, 2009 regarding issues of reconciliation of accounts between PSEB and RRVPN.
16	4.3.2009	RVPN	As desired by Shri R. Kathpalia, Dy. Dir, PSEB (camp Jaipur), the details of payments made to PSEB against power purchase and O&M charges during the years 1994-95 to till date are enclosed herewith for further needful.
16	6.4.2009	PSEB	As per your letter and subsequent correspondence, your office has calculated the outstanding amount against PSEB to be Rs 7.14 crore, while PSEB calculates this figure to be Rs 4.77 crore. To zero in on the difference in the amounts of pending payments, it is also necessary to tally the accounts/ pending payments bill wise and as per record available in this office, there are certain bills raised by PSEB which RRVPN seems not to have included in its accounts and there are payments pending since very long. It is requested that RRVNL may once again look at the above bills and incorporate them into their accounts so that accounts are reconciled by both sides.
17	24.4.2009	RVPN	Request to expedite our dues besides reconciling the balance dues.
18	19.5.2009	PSEB	Request that RRVPNL may once again look at the bills and incorporate them into their accounts so that accounts are reconciled by both sides
19	9.7.2009	RVPN	Kindly recast your accounts and arrange for payment of dues verified and reconciled as per PSEB account. If required a team of RVPN can be deputed to Patiala for further reconciliation and clarification of points as clarified above.



20	17.8.2009	RVPN	Kindly direct the concerned officer(s) to reconcile the remaining accounts and also arrange the payment of reconciled and undisputed amount of Rs 4.77 crore immediately.
21	13.11.2009	PSEB	As per your letter dated 29.8.2008, your office has calculated the outstanding amount against PSEB to be Rs 7.14 crore, while PSEB calculates this figure to be Rs 5.05 crore. It is reiterated once again that full reconciliation of all the bills/outstanding amounts raised by either organization is carried out so that no dispute arises in future. If any clarification is required, a meeting can be arranged of the officers of both organizations at the convenience of both offices.
22	29.12.2009	RVPN	in order to settle the accounts, we may sit together and verify the records which appears to be not completely available with PSEB. Therefore, its is requested to kindly depute your team to RVPN on the date and time convenient to PSEB. In the meantime, kindly release the payments of undisputed and reconciled dues of Rs 5.05 crore immediately.
23	10.6.2010	PSPCL	The issues of outstanding amount of RVPN and PSEB against each other, need further clarification/discussion on various counts. The issues which need further discussions are.....A meeting can be arranged between officers/officials of our respective organizations to sort out the issue of pending payments by way of verification of records/reconciliation. Your office may also depute a team of concerned officials for the work of reconciliation on a mutually convenient date.
24	21.6.2010	RVPN	As you are aware the accounts are very old and our auditors are making repeated comments on these receivables, it is requested to kindly direct the concerned officers to reconcile the remaining accounts. It is further requested to arrange payment of reconciled and undisputed /admitted dues of Rs 5.05 crore.
25	19.7.2010 10.5.2011 & 30.9.2011	RVPN	Reminder-Request for payment towards undisputed/ reconciled dues of Rs 5.05 crore and for deputing team of officials to Patiala/Jaipur for reconciliation purpose

22. It is evident from the above that, since 2005, both the parties were involved in the reconciliation process through exchange of letters, deputing officials to each other's office for clarification/discussions for an amicable settlement of the disputes. In fact, the reconciliation process undertaken by the parties, resulted in the reduction of the Petitioner's claim from Rs.8.37 crore to Rs. 7.14 crore, after



adjustment of the amounts. It is pertinent to mention that, in response to the Petitioner's letter dated 19.10.2005 seeking payment of outstanding dues, the Respondent, had, vide its letters dated 17.2.2006, 31.8.2006 and 23.10.2006 preferred a counter claim of Rs 4.24 crore, as receivable from the Petitioner, with a request to depute an officer to reconcile outstanding dues. Thereafter, on a request made by the Petitioner on 29.8.2008, to make payment of the outstanding amount of Rs 7.14 crore, the Respondent on 12.11.2008, informed the Petitioner, that only an amount of Rs 4.77 crore (as per its own calculation), was payable and requested the Petitioner to send a team of concerned officials to Patiala, to get the details reconciled to arrive at a final position. It is further noticed that on 30.1.2009, the Respondent expressed its willingness to pay the amount of Rs 4.77 crore, as full and final payment, subject to consent of the Petitioner. This amount was confirmed by the Respondent vide its letter dated 6.4.2009, with a request for further reconciliation. Though the Petitioner had sought payment of the undisputed amount of Rs 4.77 crore and for reconciliation of the remaining amount, the Petitioner vide its letter dated 13.11.2009, worked out the outstanding dues as Rs 5.05 crore, with a request for full reconciliation of bills / outstanding amounts. Even after the erstwhile PSEB was unbundled and the Respondent Company was formed in 2010, the Respondent vide letter dated 10.6.2010, pointed out that the issue of payment of outstanding amounts to the Petitioner need further clarification/ discussion, on various counts, and accordingly requested the Petitioner to depute a team of officers for the said reconciliation work. Thus, the submission of the Respondent that the claim of the Petitioner after 24.10.2006, is barred by limitation, is misconceived, as the documents placed on record, indicate that the parties had invested time in bonafide negotiations for settlement of disputes, during the period



from 2005 to 2010. According to us, this period of negotiation/ reconciliation between the parties, is to be excluded from the period of limitation.

23. Now, the question which begs for consideration in the present case, is the date from which the limitation period is set to have commenced. In order to examine this, the 'point' at which any of the parties, abandoned its efforts to negotiate/arrive a settlement is required to be determined. The Petitioner has submitted that the Respondent on 13.11.2009 had acknowledged the dues of Rs 5.05 crore and had agreed to check its accounts and books for the remaining amount of Rs 2.09 crore. It has also submitted that after requesting the Respondent to release the entire amount, including the undisputed amount of Rs 5.05 crore, the matter was followed up from the Petitioner's end, continuously through various letters and telephonic calls. The Petitioner has further submitted that since no response was received, the matter was also brought in the 25<sup>th</sup> Commercial sub-Committee meeting of NRPC held on 24.12.2013, wherein, the Respondent informed that the matter was under consideration. It has also submitted that the matter was being pursued continuously through various official letters dated 7.10.2016, 18.10.2016, 7.3.2017, 23.3.2017, 21.11.2017, 14.3.2018, 13.6.2018 and 6.9.2018 and getting no response from the Respondent, it had no option but to file the present petition for recovery of Rs 7.14 crore from the Respondent. The Petitioner has added that the judgment of the Hon'ble Supreme Court in 'Lanco case', is not applicable, as the Respondent had not denied its liability or refused to pay the amounts and therefore, the cause of action continues, every time the Petitioner sent notices/letters to the Respondent.

24. Per contra, the Respondent has submitted that by letter dated 13.11.2009



indicating the outstanding dues of Rs 5.05 crore, is in no manner, an acknowledgement of debt. The Respondent has also submitted that the records pertaining to the disputed period (October 1996 to March 1999), on account of being vintage, are not available with the Respondent and are not traceable. The Respondent, while denying that the amount of Rs 5.05 crore was undisputed, has stated that letters and meetings were effectuated well after the expiry of the limitation period and cannot therefore be considered.

25. As stated earlier, the Respondent vide its letter dated 30.1.2009 had agreed to make payment of Rs 4.77 crores as full and final settlement, but subsequently, it had, by letter dated 13.11.2009, calculated the outstanding amount as Rs 5.05 crore, with a request for further reconciliation. Even though the Petitioner has contended that the said letter dated 13.11.2009 is an 'acknowledgement' of debt, we notice that the Respondent, by its letter dated 10.6.2010, had sought further clarification/ discussion on the issue of outstanding amount, on various counts viz., (i) Sale of energy in Jan, 2002 (Rs 906252/-) (ii) Balance O&M charges for 132 kV Moga-Mukatsar line for 5/67 to 7/95 (Rs 5091288/-) (iii) Previous pending payments after incorporating adjustments (Rs 5137513/-) and (iv) Outstanding ad-hoc payments as on 31.3.90 payable by PSEB as per CAO/Settlement claims/ PSEB (5046558.17/-). By the same letter, the Respondent also requested the Petitioner to depute a team of officers/ officials for verification of records/ reconciliation work, to sort out the issue of pending payments. Pursuant to this, multiple letters (letters dated 21.6.2010, 19.7.2010, 10.5.2011 and 30.9.2011) were addressed by the Petitioner to the Respondent seeking payment and reconciliation of dues, but no reply was sent by the Respondent.





26. We find that the key word for our discussion hinges around the term “acknowledgement” within the meaning of The Limitation Act. A fresh period of limitation is to be computed from the said acknowledgement. We have considered the facts and circumstances of the case. Explanation (a) to Section 18 of the Law Limitation reads as follows: -

*“an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right”*

27. In the course of hearing of this petition, the matter was referred to the NRPC by this Commission to get the matter mutually resolved. Unfortunately, it did not work. In order to appreciate, we have perused the Northern Regional Power Committee (Conduct of Business) Rules, 2006. The NRPC has been constituted by the Government of India under the provisions of Section 2, Sub-section 55 of the Electricity Act, 2003 vide resolution F.No.23/1/2004-R&R dt. 25.5.2005 and subsequent amendment dt. 29.11.2005. It has been duly published in the Gazette. Rule 3 of the Business Rules provides functions of NRPC, Rule 3 (VIII) reads as *“to evolve consensus on all issues relating to economy and efficiency in the operation of power system in the region”*.

28. We have perused additional affidavit dt. 13.12.2021. The minutes of the meeting and the Business regulations of NRPC has been brought on the record. The following facts emerges from the additional affidavit submitted by the Petitioner: -

- a) Annexure II of the affidavit is agenda of 36<sup>th</sup> meeting of the Commission Sub Committee in which item No.10 was regarding the dispute raised in this



petition. It is subsequently stated in the agenda of the meeting that officers of the Petitioner, visited the office of the respondent with effect from 3.8.2016 to 5.8.2016 and the authorities of the respondent had assured that undisputed reconciled them of Rs.5.05 cores would be released soon and balance amount of Rs.2.09 cores would be reconciled. Further it is stated in the agenda that PSPCL should arrange reimbursement of undisputed reconciled amount of Rs 5.05 cores immediately and balance amount of Rs 2.09 cores has to be reconciled at the earliest.

29. Accordingly, it is stated as per Annexure III that the said meeting was held on 1.6.2018 and the minutes of the meeting was circulated by letter dated 18.7.2018. It is stated that the representative of the Respondent assured to take up the issue with the Finance Department and discuss mutually with the Petitioner. In the minutes of the meeting, Member Secretary, NRPC requested RVPN & PSPCL to discuss and resolve the issue by bilaterally and inform the status to NRPC Secretariat.

30. By Annexure IV, it is stated that the Petitioner again approached the Respondent to mutually settle the dispute at the direction of the Commission on 27.4.2021. Again, by letter dated 12.5.2021, similar request was made by the petitioner. It is stated in the said admitted letter *“an e-mail was received from your office on 7.5.2021 stating that the matter has been put up to higher authorities. However, due to Covid-19, the matter has been delayed and will be intimated as soon as the directions from competent authorities will be received”*. By letter dated 2.6.2021, again a reminder was sent by the Petitioner. We have to consider, as to whether the minutes of the meeting comes within the purview of the acknowledgment as stated under Section 18 explanation (a) of the Limitation Act.



31. It is apparent from the above facts that the Respondent was admitting an undisputed dues of Rs 5.05 crores and only disputing rest of Rs 2.09 crores in so many words before the NRPC, which is a person other than a person entitled to the right. It was consistently admitting the dues and the assertion of the Petitioner, finally the letter dated 12.05 2021, quoting that “an e-mail was received from your office on 7.5.2021 stating that the matter has been put up to higher authorities. However, due to Covid-19, the matter has been delayed and will be intimated as soon as the directions from competent authorities will be received”. is not denied. Thus, the Respondent was making waiver of the said limitation in the NRPC meeting-agenda, minutes of the meeting and at the request of the Commission to resolve the matter.

32. The Commission is of the view that the Respondent has been acknowledging the undisputed and unreconciled dues and amounts to acknowledgement within Explanation (a) of the Article 18 of the Limitation Act quoted above. It is to be mentioned here that both the parties of the case are Government Bodies and are expected to honour their commitments and behave in a reasonable manner. We have considered the matter alternatively as well, the Petitioner and the Respondent, share three types of transactions which are sale of energy, O & M charges for 66 KV Mukatsar-Ganganagar Line and O & M charges for 132 KV Moga-Mukatsar-Ludhiana line. They are in long relationship for the same. Their adjustment of accounts is a continuing process. Their outstanding assets and liabilities and balance-sheet is always with them. Though the balance-sheet of the Respondent has not been placed before us, but it has not been pleaded before us that the said liability is not being shown even in its balance-sheet. The burden was upon the Respondent to plead and proof the same. We are



of opinion that since the liability was admitted, the Respondent did not produce the same. It is to be mentioned that a balance-sheet is an acknowledgement of a subsisting liability, reliance placed. (1966, ALJ page 388).

33. In view of the above discussions, we find that the claim of the Petitioner is not barred by Law of Limitation as consistently being acknowledged. Accordingly, it is ordered:

**ORDER**

34. Respondent to pay undisputed amount of Rs 5.05 crore alongwith interest at the rate as per their agreement *pendent lite and future* within four weeks of this order, and further by a mutual meeting may be held to resolve the disputed amount of Rs 2.09 crore, within six weeks of this order. Respondent is further directed to pay Rs Five lakhs as cost/ compensation to the Petitioner, since unnecessary litigation has been thrust upon the Petitioner.

35. Petition No. 76/MP/2019 is disposed of in terms of the above discussions and findings.

**Sd/-**  
**(Pravas Kumar Singh)**  
**Member**

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

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

