

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No. 277/MP/2022
Petition No. 278/MP/2022
and
Petition No. 282/MP/2022**

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

Date of Order: 30 January, 2023

Petition No. 277/MP/2022

In the matter of

Petition under Section 79 (1)(f) read with section 19 of the Electricity Act, 2003 read with Regulation 9, 19 and 20 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading License and other related matters) regulations, 2020 seeking recovery of penalty for less return of power by the respondent as per banking agreement dated 29.03.2022 and seeking revocation of the inter-state trading license granted to M/s Svaryu Energy Limited (formerly Refex Energy Limited).

And in the matter of

Haryana Power Purchase Centre (HPPC),
Shakti Bhawan, Sector -6, Panchkula (Haryana)

.....Petitioner

Vs

M/s Svaryu Energy Limited
(Formerly Refex Energy Limited)
202, 2nd Floor., Center Point, Opp. Parel Post Office,
Jijibhoy Lane, Lalbaug, Mumbai - 400012

....Respondent

Petition No. 278/MP/2022

In the matter of

Petition under Section 79 (1)(f) read with section 19 of the Electricity Act, 2003 read with Regulation 9, 19 and 20 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading License and other related matters) regulations, 2020 seeking recovery of penalty for less return of power by the respondent as per banking agreement dated



17.03.2022 and seeking revocation of the inter-state trading license granted to M/s Arunachal Pradesh Power Corp. Pvt. Ltd.

And in the matter of

Haryana Power Purchase Centre (HPPC),
Shakti Bhawan, Sector -6, Panchkula (Haryana)Petitioner

Vs

M/s Arunachal Pradesh Power Corp. Pvt. Ltd.
A-Sector, Legi Complex,
Naharlagun, Arunachal Pradesh - 791110Respondent

Petition No. 282/MP/2022

In the matter of

Petition under Section 79 (1)(f) read with section 19 of the Electricity Act, 2003 read with Regulation 9, 19 and 20 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading License and other related matters) regulations, 2020 seeking recovery of penalty for less return of power by the respondent as per banking agreement dated 05.04.2022 and seeking revocation of the inter-state trading license granted to M/s Kreate Energy (I) Pvt. Ltd. (Formerly Mittal Processors Pvt. Ltd.).

And in the matter of

Haryana Power Purchase Centre (HPPC),
Shakti Bhawan, Sector -6, Panchkula (Haryana)Petitioner

Vs

M/s Kreate Energy (I) Pvt. Ltd.
(Formerly Mittal Processors Pvt. Ltd.).
1002, 10th Floor, Antriksh Bhawan,
22 KG Marg, Connaught Place, New Delhi - 110001Respondent

Parties Present

Ms. Soniya Madan, Advocate, HPPC
Ms. Swapna Seshadri, Advocate, APPCPL
Ms. Ritu Apurva, Advocate, APPCPL
Ms. Surbhi Gupta, Advocate, APPCPL

ORDER

The Petitioner, Haryana Power Purchase Centre, has filed all the three present petitions under Section 79(1)(f) read with Section 19 of the Electricity Act, 2003 read with Regulation 9, 19 and 20 of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading license and other related matters) Regulations, 2020 (hereinafter “CERC Trading Regulations 2020”) against the respective Respondent for breach of the Banking Agreement signed between the Petitioner and the respective Respondent, and for revocation of inter-state trading license granted to the Respondents.

2. The Petitioner has made the following prayers:
 - a) Direct the Respondent to pay penalty as per the bills raised by the Petitioner under Clause 7 of the Banking Agreement for no return of power by the Respondent
 - b) Initiate appropriate proceedings under Section 19 of the Electricity Act, 2003 read with Regulation 20 of the Trading License Regulations for revocation of the inter-State trading license granted to the Respondent
 - c) Revoke the inter-State trading license of the Respondent
 - d) Pass any other or further order(s) as this Commission may deem fit and proper in facts and circumstances of the present case

Background

3. The Petitioner, Haryana Power Purchase Centre (HPPC), is a Body Corporate constituted under orders of the Government of Haryana vide notification dated 11.04.2008, which performs the function of arranging power on behalf of distribution licensees of Haryana, i.e. Dakshin Haryana Bijli Vitran Nigam Limited (for brevity ‘DHBVNL’) and Uttar Haryana Bijli Vitran Nigam Limited (for brevity ‘UHBVNL’).
4. The Petitioner invited bids from eligible bidders vide Tender No. 91/HPPC for banking of power with HPPC. The three petitions pertain to the same Tender in which each of the three Respondents participated and appeared as successful bidders.

Petition No. 277/MP/2022



5. The Respondent, M/s Svaryu Energy Limited (formerly Refex Energy Limited), is an interstate trading licensee, bearing license no. 82/Trading License/2012/CERC dated 30.08.2018. The Respondent (then named Refex Energy Limited) participated in the said Tender and appeared as a successful bidder for banking of power from November 2021 to September 2022. The Letter of Intent No. Ch-21/HPPC/STP/21-04 dated 29.10.2021 was issued to the Respondent, confirming the acceptance of their offer.
6. Accordingly, Banking Agreement dated 29.03.2022 was executed between the Petitioner and the Respondent for banking of power as per following agreed Arrangement: -

a. Arrangement-I.

Supply of power by HPPC to Refex/ Amba Shakti Industries

Period	Quantum (MW)	Duration	Deliver Point
01.11.2021 to 31.03.2022	30	0000-2400 Hrs	Regional Periphery of Exporting Utility

Return of power by Refex to HPPC

Period	Quantum (MW)	Duration	Deliver Point
16.06.2022 to 30.09.2022	105.11% of banked power	0000-2400 Hrs	Regional Periphery of Exporting Utility

b. Arrangement-II.

Supply of power by HPPC to Refex/ Gujarat Fluoro Chemicals

Period	Quantum (MW)	Duration	Deliver Point
01.11.2021 to 31.03.2022	30	0000-2400 Hrs	Regional Periphery of Exporting Utility

Return of power by Refex to HPPC

Period	Quantum (MW)	Duration	Deliver Point
16.06.2022 to 30.09.2022	105.11% of banked power	0000-2400 Hrs	Regional Periphery of Exporting Utility

Submission by Petitioner

7. The Petitioner has submitted that it exported a total of 981.12 LUs (Lakh Units), in full compliance of the Banking Agreement. In accordance with the arrangement stipulated in

the Banking Agreement, the Respondent was required to supply 1031.26 LUs to the Petitioner from 16.06.2022 till 30.09.2022. However, the Respondent committed a breach of Banking Agreement by not supplying even a single unit to Petitioner.

8. As per the Banking Agreement, the Respondent was required to submit an advance application or day ahead application to the Petitioner for the supply of power to Petitioner from 16.06.2022 to 30.06.2022. The Petitioner vide email dated 29.05.2022 asked the Respondent to submit an application for return of power during June 2022 as per the terms of the Banking Agreement. In response thereto, the Respondent vide email dated 29.05.2022 confirmed to return the power in terms of the Banking agreement as per return period, i.e. w.e.f. 16.06.2022.
9. Despite numerous requests, an advance application or day ahead application in terms of the Banking Agreement was not submitted by the Respondent to the Petitioner. The Petitioner vide email dated 07.06.2022 intimated the Respondent that despite reminders, the application formats I & II for return of power during 16.06.2022 to 30.09.2022 have still not been received. It was categorically mentioned that the state of Haryana is facing power scarcity and is in need of the power.
10. Subsequently, a letter dated 15.06,2022 was also sent to the Respondent wherein Petitioner pointed out that despite various requests and emails, the Respondent has not responded regarding supply of power in accordance with the Banking Agreement. Furthermore, it was specifically mentioned in the said letter that if Respondent fails to respond, the Petitioner will be constrained to impose the penalty in terms of Clause 7 of the Banking Agreement. Clause 7 of the Banking Agreement stipulates imposition of penalty for such defaults of Respondent:

“7. Penalty for less return of power:

While returning the power, if Refex fails to submit the advance application or day ahead application in case of corridor constraints, then it will be treated as denial to return the power and the compensation shall be paid for such quantum of that day(s) by the trader/utility @ average IEX rate/kWh of N-1 region for that particular time slots + Rs 2/kWh. Quantum of this energy for which penalty under this clause is paid will be considered as delivered under settlement clause.”

11. In response to the above-mentioned letter of Petitioner, the Respondent vide letter dated 16.06.2022 acknowledged that they were obligated to return the banked power to Petitioner w.e.f. 16.06.2022; however, they cited an unexplained alleged 'difficulty' as ground for delay in supply of the power and sought additional time to arrange the power from another utility. The Petitioner has submitted that the Respondent in the said letter neither explained nor established with any document the alleged 'difficulty'.
12. The Respondent vide letter dated 30.06.2022 sought additional time to return power in terms of the Banking Agreement while alleging non-supply on account of alleged unforeseen circumstances i.e. Coal Crisis, delayed monsoon and exorbitant increase in demand post Covid. The Petitioner has submitted that the alleged unforeseen circumstances referred by the Respondent in the said letter existed even on 29.05.2022 when the Respondent had categorically confirmed to return power. Even thereafter, assurances were given by the Respondent to return power and no such unforeseen reasons were made as grounds for excuse from performance of their obligations under the Banking Agreement
13. Subsequently, an email dated 01.07.2022 was received from the representative of the Respondent wherein it was requested to allow them to supply the power through banking transaction from M.P. Power Management Company Limited (hereinafter referred to as 'MPPMCL') as per the following arrangement: -

Supply of Power from MPPMCL to HPPC/Other Utility		
Supply Period	Supply Duration	Quantum
04.07.2022 to 30.09.2022	RTC	100 MW

Return of Power from HPPC/Other Utility to MPPMCL		
Return Period	Return Duration	Return Percentage
16.11.2022 to 28.02.2023	50% of returnable energy shall be returned on RTC basis and the remaining 50% of returnable energy shall be returned during the period from 05:00 Hrs to 20:00 Hrs	105%

14. The Petitioner, being severely affected due to non-supply of power under the Banking Agreement, agreed on the very same day to receive 50 MW RTC power from MPPMCL w.e.f. 04.07.2022 to 30.09.2022. The consent of the Petitioner was acknowledged by the Respondent vide their email dated 04.07.2022 however, the power was not supplied through MPPMCL as well.
15. In view of the continuous default of the Respondent, the Petitioner on 18.07.2022 raised the Bill amounting to Rs. 10,95,35,188/- for the period of 16.06.2022 to 30.06.2022 as per Clause 7 of the Banking Agreement. The Petitioner has submitted that Clause 7 of the Banking Agreement is in consonance with the provisions of the Indian Contract Act, 1872.
16. In response to the Bill raised by the Petitioner, the Respondent vide letter dated 19.07.2022 without any basis and illegally refuted their liability to pay the penalty and made offer to supply power w.e.f. January 2023. The Petitioner submitted that such requests of the Respondent defeats the objective of the Banking Arrangement executed between the parties as the Petitioner was in dire need of power during the months of June to September, 2022 and has banked power considering their peak demand months.
17. The Respondent vide letter dated 03.08.2022 requested for withdrawal of Bills raised by the Petitioner and requested extension of return period thereby making an offer to supply power in the year 2023. It was further wrongly contended that no reply or confirmation was given by the Petitioner to the offer of the Respondent for supply of power through MPPMCL on RTC basis.
18. The Respondent for the very first time on 17.08.2022 cited 'Force Majeure' as the reason for non-supply of power under Banking Agreement. The Force majeure condition, if any, has to be invoked strictly in terms of Clause 14 of the Banking Agreement, which reads as under –

“14. Force Majeure

The parties shall ensure due compliance with terms of LOI. However, no party shall be liable for any claims for any loss or damage whatsoever arising out of failure to carry out the terms of the LOI to the extent that such a failure is due to the reasons governed by Force Majeure like rebellion, mutiny, civil, commotion, riot, strike, lock out, natural calamity, Act of God and technical constraints /

transmission constraints imposed by RLDC/RPC beyond the control of the parties. But any party claiming the benefit of this clause shall fully satisfy the other party within 24 hrs. of such Force Majeure. Supply/drawl of power shall be resumed immediately by the parties concerned after such eventuality has come to an end or ceased to exist.

Please note that Non concurrence of SLDC shall not be reason of Force Majeure. Also load crash/increase in demand of buyer/seller shall not be considered as a reason of Force Majeure.”

19. In view of the foregoing, a Bill dated 26.08.2022 was raised by the Petitioner on the Respondent for failing to provide the banking power for the period of 01.07.2022 to 31.07.2022 amounting to Rs. 22,13,59,4651/-.

Petition No. 278/MP/2022

20. The Respondent, M/s Arunachal Pradesh Power Corporation Private Limited is an inter-state trading licensee, bearing license no. 61/Trading License/2012/CERC dated 11.09.2012. The Respondent participated in the said Tender and appeared as a successful bidder for banking of power. The Letter of Intent No. Ch-20/HPPC/STP/21-04 dated 29.10.2021 was issued to the Respondent, confirming the acceptance of their offer.
21. Accordingly, Banking Agreement dated 17.03.2022 was executed between the Petitioner and the Respondent for banking of power as per following agreed Arrangement: -

- a. Arrangement-I.

Supply of power by HPPC to APPCPL/IPCL and its Obligated Entities:

Period	Duration (Hrs)	Quantum (MW)	Deliver Point
01.11.2021 to 15.11.2021	00:00 to 24:00 Hrs.	56 MW	Regional Periphery of Exporting Utility
16.11.2021 to 31.12.2021		91 MW	
01.01.2022 to 31.01.2022		109 MW	
01.02.2022 to 28.02.2022		91 MW	
01.03.2022 to 31.03.2022		56 MW	

Return of power by APPCPL/IPCL and its obligated Entities to HPPC

Period	Duration (Hrs)	Quantum (MW)	Deliver Point
16.06.2022 to 30.09.2022	00:00 to 24:00 Hrs.	106% of banked power	Regional Periphery of Exporting Utility

- b. Arrangement-II.

Supply of power by HPPC to Nagaland

Period	Duration	Quantum (MW)	Deliver Point
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01.11.2021 to 31.12.2021	00:00 to 24:00 Hrs.	15 MW	Regional Periphery of Exporting Utility
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Return of power by Nagaland to HPPC

Period	Duration	Quantum (MW)	Deliver Point
01.07.2022 to 31.08.2022	00:00 to 24:00 Hrs.	105% of banked power	Regional Periphery of Exporting Utility

c. Arrangement-III.

Supply of power by HPPC to Arunachal Pradesh and its Obligated Entities:

Period	Duration	Quantum (MW)	Deliver Point
01.01.2022 to 28.02.2022	00:00 to 24:00 Hrs.	45 MW	Regional Periphery of Exporting Utility

Return of power by Arunachal Pradesh and its Obligated Entities to HPPC:

Period	Duration	Quantum (MW)	Deliver Point
01.07.2022 to 30.09.2022	00:00 to 24:00 Hrs.	106.8% of banked power	Regional Periphery of Exporting Utility

Submission by Petitioner

22. The Petitioner has submitted that it exported a total of 2889.08 LUs against Arrangement-I from November 2021 to March 2022, in full compliance of the Banking Agreement. In accordance with the arrangement stipulated in the Banking Agreement, the Respondent was required to supply 3062.43 LUs to Petitioner from 16.06.2022 to 30.09.2022. However, the Respondent committed a breach of Banking Agreement by supplying only around 212.31 LUs of power against 2203.77 LUs as on 31.08.2022 to the Petitioner.
23. The Petitioner submitted that the Respondent was obligated to return the power supply w.e.f. 16.06.2022; however, the Respondent for the first time only on 08.07.2022 wrote to the Petitioner citing the alleged delays in supplying the power. The Respondent vide letter dated 08.07.2022 forwarded the letter dated 08.07.2022 of Saranyu Power Trading Private Limited (SPTPL/IPCL) wherein it was requested to extend the time period for 12 months with increase in some premium percentage for the return of banked supply of power. Such requests of the Respondent defeat the objective of the Banking Arrangement executed between the parties as the Petitioner was in dire need of power during the months of June to September, 2022 and has banked power considering their peak demand months.

24. In view of the default of the Respondent, the Petitioner on 18.07.2022, raised the Bill amounting to Rs. 32,52,75,392/- for the period of 16.06.2022 to 30.06.2022 as per Clause 6 of the Banking Agreement. Petitioner has submitted that the Clause 6 of the Banking Agreement is in consonance with the provisions of the Indian Contract Act, 1872. The Clause stipulates a specified amount named in the Contract as the amount to be paid in case of breach of Respondent for less return of power:

“6. Penalty for less return of power:

While returning the power, if APPCPL fails to submit the advance application or day ahead application in case of corridor constraints, then it will be treated as denial to return the power and the compensation shall be paid for such quantum of that day(s) by APPCPL @ average IEX rate/kWh of N-1 region for that particular time slots + Rs 2/kWh. Quantum of this energy for which penalty under this clause is paid will be considered as delivered under settlement clause.”

25. The Respondent vide letter dated 18.08.2022 informed the Petitioner that the SPTPL had started returning the power on daily basis to the tune of 50 MW RTC. The Petitioner submits that the Respondent after the delay of almost two months started returning the power to the Petitioner that too only to the extent of 1 MU per day. The return of power by the Respondent was not enough to fulfil their obligation under the Banking Agreement. This fact was also acknowledged by the Respondent in their letter dated 18.08.2022 addressed to the SPTPL and Respondent also acknowledged that the penalty invoice for the month of June, 2022 was raised by the Petitioner due to their default in non-returning of the power supply.

26. In view of the default of the Respondent in providing the supply of power during the month of July 2022, the Petitioner vide invoice dated 26.08.2022 raised the bill for the period of 01.07.2022 to 31.07.2022 amounting to Rs. 64,80,89,101/-.

27. The Respondent vide letter dated 26.08.2022 reiterated the contents of the letter dated 18.08.2022. The Respondent further stated that they had raised the invoices for penalty with the SPTPL. However, it is submitted that the Respondent supplied very less quantity of the power during the month of August, 2022 and also did not pay any penalty for their admitted defaults.

28. The Respondent vide letter dated 07.09.2022 acknowledged that SPTPL has supplied very less quantum of power during the month of August, 2022. It was also acknowledged by them that they were currently not supplying any power to the Respondent. The Petitioner submitted that it has suffered huge losses due to the clear breach of Banking Agreement on the part of the Respondent.

Petition No. 282/MP/2022

29. The Respondent, M/s Kreate Energy (I) Pvt. Ltd. is an inter-state trading licensee, bearing license no. 43/Trading License/2009/CERC. The Respondent participated in the said Tender and appeared as a successful bidder for banking of power. The Letter of Intent No. Ch-98/CE/HPPC/STP/21-04 dated 25.01.2022 was issued to the Respondent, confirming the acceptance of their offer.

30. Accordingly, Banking Agreement dated 04.04.2022 and 05.04.2022 was executed between the Petitioner and the Respondent for banking of power as per following agreed Arrangement: -

Banking agreement dated 04.04.2022 arrangements

a. Arrangement-I

Supply of power by HPPC to IPCL through KEIPL

Period	Quantum (MW)	Duration	Deliver Point
26.01.2022 to 31.03.2022	50	00.00 to 24:00	Regional Periphery of Exporting Utility

Return of power by Utility/Generator to HPPC through KEIPL

Period	Return Percentage	Duration	Deliver Point
16.06.2022 to 31.08.2022	105% of banked power	00:00-24:00 (RTC)	Regional Periphery of Exporting Utility

b. Arrangement-II.

Supply of power by HPPC to Energy & Power Department, Sikkim through KEIPL

Period	Quantum (MW)	Duration Hrs	Deliver Point
26.01.2022 to 31.01.2022	10	00:00-08:00	Regional Periphery of Exporting Utility
	40	08:00 -16:00	
	75	16:00-19:00	
	45	19:00-24:00	
01.02.2022 to 31.03.2022	45	00:00-08:00	



	75	08:00-19:00	
	45	19:00-24:00	

Return of power by Other Utility/Generator to HPPC through KEIPL

Period	Return Percentage	Duration	Deliver Point
01.08.2022 to 30.09.2022	105% of banked power	00:00-24:00 (RTC)	Regional Periphery of Exporting Utility

c. Arrangement-III.

Supply of power by HPPC to MePDCL through KEIPL on Day Head Basis:

Period	Quantum (MW)	Duration	Deliver Point
26.01.2022 to 30.04.2022	Upto 100	Any time slot between 00:00 to 24:00	Regional Periphery of Exporting Utility

Return of power by MePDCL to HPPC through KEIPL

Period	Return Percentage	Duration Hrs	Deliver Point
01.08.2022 to 30.09.2022	105% of banked power	00:00-24:00 (RTC)	Regional Periphery of Exporting Utility

d. Arrangement-IV.

Supply of power by HPPC to Other Utilities through KEIPL on Day Head Basis:

Period	Quantum (MW)	Duration	Deliver Point
26.01.2022 to 30.04.2022 (On Day Head Basis)	Upto 50	Any time slot between 00:00 to 24:00	Regional Periphery of Exporting Utility

Return of power by MePDCL to HPPC through KEIPL

Period	Return Percentage	Duration Hrs	Deliver Point
01.06.2022 to 30.09.2022	105% of banked power	00:00-05:00 & 20:00-24:00	Regional Periphery of Exporting Utility

Banking agreement dated 05.04.2022 arrangements

a. Table-A

Supply of power by HPPC to SPTPL/IPCL through KEIPL

Period	Quantum (MW)	Duration	Deliver Point
01.11.2021 to 31.12.2021	40	00.00 to 24:00	Regional Periphery of Exporting Utility

b. Table-B

Return of power by SPTPL/IPCL/Generator to HPPC through KEIPL

Period	Return Percentage	Duration	Deliver Point
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01.07.2022 to 31.08.2022	106% of banked power	00:00-24:00 (RTC)	Regional Periphery of Exporting Utility
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Submission by Petitioner

31. The Petitioner has submitted that it exported the power in full compliance of the Banking Agreement and exported a total of 1723 LU's against Arrangement-I & Arrangement-II of agreement dated 04.04.2022 and Arrangement of agreement dated 05.04.2022 from 16.06.2022 to 31.08.2022. In accordance with the arrangement stipulated in the Banking Agreement, the Respondent was required to supply 1814.33 LUs in return to Petitioner. However, the Respondent committed a breach of Banking Agreement by supplying only 606.025 LUs energy as against 1358.40 LUs energy as on 31.08.2022 against both agreements to the Petitioner.
32. As per the Banking Agreement, the Respondent was required to submit an advance application or day ahead application to the Petitioner for the supply of power to Petitioner from 16.06.2022 to 30.09.2022. The Petitioner vide email dated 20.05.2022 asked the Respondent to submit an application in requisite format for return of power as per the terms of the Banking Agreement.
33. Despite numerous requests, an advance application or day ahead application in terms of the Banking Agreement was not submitted by the Respondent to the Petitioner. The Petitioner vide email dated 15.06.2022 intimated Respondent that despite various requests and emails, they have not responded regarding supply of power in accordance with the Banking Agreement. Furthermore, it was specifically mentioned in the said letter that if Respondent fails to respond, then the Petitioner will be constrained to impose the penalty in terms of Clause 3.9 of the Banking Agreement.
34. In response, the Respondent vide letter dated 23.06.2022 acknowledged that there was delay in returning the banked power to Petitioner. The Petitioner submits that the Respondent however cited an unexplained alleged 'unforeseen reasons' as ground for delay in supply of the power. It was however, assured that they will supply 6.70 MU from 25.06.2022 to 30.06.2022.

35. The Respondent vide another letter dated 29.06.2022 stated that due to unexplained alleged 'unforeseen reasons', only 1.44 MUs were supplied during June, 2022. It was further assured that remaining will be supplied during the month of July, 2022.

36. In view of the continuous default of the Respondent, the Petitioner on 18.07.2022, raised the Bill amounting to Rs. 3,81,08,744/- for the period of 16.06.2022 to 30.06.2022 as per Clause 3.9 of the Banking Agreement. The Petitioner has submitted that Clause 3.9 of the Banking Agreement is in consonance with the provisions of the Indian Contract Act, 1872. The Clause stipulates a specified amount named in the Contract as the amount to be paid in case of breach of Respondent for less return of power:

“3.9. Penalty for less return of power:

While returning the power, if KEIPL fails to submit the advance application or day ahead application in case of corridor constraints, then it will be treated as denial to return the power and the compensation shall be paid for such quantum of that day(s) by KEIPL @ average IEX rate/kWh of N-1 region for that particular time slots + Rs 2/kWh. Quantum of this energy for which penalty under this clause is paid will be considered as delivered under settlement clause.”

37. Thereafter, the Respondent vide letter dated 20.07.2022 sought additional time to return power in terms of the Banking Agreement while alleging non-supply on account of alleged unforeseen circumstances i.e. Coal Crisis and delayed monsoon. Further, offers were made by the Respondent to return the power on Non RTC basis till 30.09.2022 and to return the balance power in the year 2023. The Petitioner submitted that such offers were of no avail as the whole objective of executing Banking agreement was to receive supply of power in the return period of June-September, 2022. Further, the alleged unforeseen circumstances referred by the Respondent in the said letter existed even on May, 2022 when the Petitioner made repeated requests for return of power as per return period of the Banking Agreement. However, no such contentions were raised by the Respondent at the appropriate time.

38. Subsequently, letters dated 25.07.2022, 02.08.2022 and 22.08.2022 were received from the Respondent wherein they reiterated the offer made by them in earlier letter dated 20.07.2022 and requested for schedule of energy on Non-RTC basis upto maximum possible quantum on day ahead basis and return of balance energy in the year 2023. The

Petitioner however, repeatedly expressed their grievance in respect to the Respondent's default in supplying power under Banking Agreement.

39. In view of the foregoing, a Bill dated 26.08.2022 was raised by the Petitioner on the Respondent for failing to provide the banking power for the period of 01.07.2022 to 31.07.2022 amounting to Rs. 20,60,22,073/-. The Respondent vide letter dated 08.09.2022 without any basis and illegally refuted their liability to pay the penalty and made alternate offer to re-schedule the balance power for next year during same season at enhanced premium.
40. In view of the continuous defaults on the part of these Respondents, which caused huge losses to the Petitioner, the Petitioner has filed the present three petitions. The Petitioner has laid reliance on Section 52 (2) of the Electricity Act, 2003 read with Regulation 9 of the Trading License Regulations 2020 which specifies the obligations to be discharged by a trading licensee. The Petitioner further submitted that if a trading licensee fails to discharge trading activity in compliance with such obligations, they are liable for action under Section 19(1) (a) of the Act, which is also incorporated in Regulation 20 of the Trading License Regulations 2020.

Hearing Dated 10.11.2022

41. The three matters were heard on 10.11.2021. During the hearing, the Commission queried regarding jurisdiction of the Commission to adjudicate the matter. After hearing the learned counsels, the Commission directed the Respondents to file their replies on admissibility and the Petitioner to file rejoinder thereof.

Reply by the Respondent

Petition No. 277/MP/2022

42. The Respondent has submitted that the present dispute fails to satisfy the criteria required for the Commission to adjudicate the matter. Under Section 79(1)(f), the Commission can only adjudicate disputes involving generating companies or transmission licensees and with matters connected to clause (a) to (d) of Section 79. In the present matter:

- a) the Petitioner, being a nodal agency/ single buyer procuring power for the distribution companies in the state of Haryana, is neither a generating company nor a transmission licensee;
- b) similarly, the answering Respondent being an inter-state trading licensee is also not covered under Section 79(1)(f) of the Act
- c) the alleged dispute in the instant case arises out of a banking agreement between the Petitioner and the answering Respondent, which does not fall under any of the subject matters specified under clauses (a) to (d) of Section 79(1).

43. The Respondent has placed reliance on *M/s Pune Power Development Private Ltd. v Karnataka Electricity Regulatory Commission & Ors*; (Appeal No.200 of 2009) wherein the Hon'ble APTEL had held as under:

“22. This aspect is further clear from the relevant provisions of the Electricity Act, 2003. As held by the Constitution Bench of Hon'ble Supreme Court, the Act is conceived to be a complete code in itself and the Act overrides even an arbitration provision contained in the contracts. Therefore, all disputes which arose in relation to the transaction between the licensees are to be made subject to the jurisdiction of the State Commission or the Central Commission as contained in Sections 86 and 79 of the Act respectively. In this context, it would be relevant to refer to Section 79(1)(f) of the Act which confers the jurisdiction on the Central Commission with regard to the specific dispute. Section 79(1)(f) of the Act reads as under: “Section 79(1)(f): to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration.”

23. The clauses (a) to (d) refer to the tariff of Central generating Companies and Tariff relating to composite scheme and inter-state transmission. A reading of this Section would make it clear that the jurisdiction conferred on the Central Commission is restricted to the aspects which are specified under clauses (a) to (d) aforesaid. However, if the jurisdiction of the State Commission which conferred under Section 86(1)(f) of the Act is looked into, it would be clear that no such restrictions are placed on its jurisdiction. In other words, all disputes between the licensees which do not fall under Section 79(1)(a) to (d) are within the jurisdiction of the State Commission.

24. A comparison of Section 79 and Section 86 of the Act would make it evident that the jurisdiction of the Central Commission is not only restricted to clauses (a) to (d) of Section 79(1) concerning generation tariff or transmission of inter-State electricity but also with regard to the disputes involving Generating Companies or transmission licensees. This means that any dispute between the Distribution Licensee and inter-State trading licensee is excluded from Section 79(1)(f). Thus, it is clear that only adjudicatory power of the Appropriate Commission for adjudication of disputes

between Distribution Licensee and Trading Licensee has been vested with the State Commission under Section 86(1)(f) of the Act.”

44. The above judgment has been relied upon and the principles enunciated therein, approved by the Hon’ble APTEL in its subsequent decisions. Pertinently, the Hon’ble APTEL in its judgment in *Lanco Power Limited v Haryana Electricity Regulatory Commission*, following the judgment of *Pune Power*, had come to a finding that a dispute between trading licensee and distribution licensee would be subject to the regulatory jurisdiction of the concerned State Commission under Section 86(1)(f). Thus, the present Petition ought to be dismissed as the same is not admissible due to lack of jurisdiction of this Commission under Section 79 of the Electricity Act, 2003.
45. Without prejudice to the above submissions, in the event that this Commission is of the opinion that it has the jurisdiction under Section 79 (1)(f) to adjudicate the present dispute, the Respondent has submitted that the Commission ought to exercise its discretion and refer the present matter to arbitration, in as much as the instant Petition involves a purely commercial dispute between a distribution licensee and a trading licensee. The dispute, arises of an alleged breach of a purely commercial contract between the parties and cannot be given the color of a violation of statutory/ regulatory obligations, as has been sought to be done by the Petitioner.
46. The Respondent submitted that the Petitioner has sought to allege violation of the Trading Licensees Regulations so as to widen the scope of the dispute and claim an additional relief of cancellation of the respondent’s trading license only for the purpose of invoking this Commission’s jurisdiction and to obviate the arbitration clause in the Banking Agreement between the parties. The Banking Agreement contains the following provision:
- “15. ARBITRATION
Subject to the statutory provisions for arbitration under the Electricity Act, 2003, all other differences or disputes between the parties arising out of or in connection with the banking arrangement shall be settled through arbitration subject to the provision of the Arbitration and Conciliation Act, 1996. The venue for arbitration shall be at Panchkula and the Arbitrator shall be M.D/ UHBVN or his nominee.”*
47. The Respondent is also filing an Application for reference of the present dispute to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 read with Section

79(1)(f) of the Electricity Act, and the same may be considered by this Commission at an appropriate stage.

Petition No. 278/MP/2022

48. The Respondent did not submit any reply.

Petition No. 282/MP/2022

49. The Respondent did not submit any reply.

Rejoinder by the Petitioner

Petition No. 277/MP/2022

50. Responding to the objections raised by the Respondent, the Petitioner has submitted that this Commission is the appropriate authority to deal with matters concerning the revocation of the inter-state trading license. The Respondent is an inter-state trading licensee granted license by this Commission. Further, considering the transactions involved in the entire banking cycle, the Commission considered it appropriate to include banking transactions within the purview of trading activities undertaken by Trading Licensees. Hence, the definition of 'Banking of electricity' was incorporated in the Regulations as under:

“Banking of electricity shall mean and include transactions for inter-State exchange of electricity between two grid connected entities either directly or through a Trading Licensee.”

51. Further, Clause (24) of Regulation 9 was revised as below in order to ensure that the trader completes the banking cycle for every contract:

“(24) Trading Licensee undertaking banking of electricity shall simultaneously enter into contract for supply of power and contract for return of power, with each of the utilities participating in the banking arrangement, as applicable.”

52. Regulation 9 of the CERC Trading Regulations 2020 stipulate the obligations of the Trading Licensee. It is incumbent upon the Trading Licensee to comply with laws in force, Acts, Rules, Regulations, Grid Code, Orders, and directions issued by the Commission from time to time and to ensure that there is no omission or negligence in the performance of the trading activity. Further, Section 52 (2) of the Electricity Act 2003 casts a statutory obligation on the person issued with a trading license by this Commission to discharge

such duties in relation to supply and trading of electricity as may be specified by this Commission. Section 52 (2) of the Electricity Act, 2003 is extracted as under:

"52. (1) Without prejudice to the provisions contained in clause (c) of section 12, the Appropriate Commission may specify the technical requirement, capital adequacy requirement and credit worthiness for being an electricity trader.

(2) Every electricity trader shall discharge such duties, in relation to supply and trading in electricity, as may be specified by the Appropriate Commission."

53. As per Regulation 13 of the CERC Trading Regulations 2020, Trading Licensee is obligated to report to the Commission any significant change in the circumstances affecting his ability to meet obligations under the agreement or any material breach of the provisions of the agreement.

54. Regulation 20 of the CERC Trading Regulations, 2020 has been validly incorporated to carry out the purposes of the Act including those provided under Section 19 of the Electricity Act, 2003. By virtue of the said regulations, wide powers of revocation are vested in the Commission. Where the Hon'ble Commission is satisfied with the apparent contraventions/ defaults of the licensee, the action to revoke the license shall be initiated to further the objectives of the Electricity Act, 2003.

55. The Petitioner has submitted that the Commission in many cases has observed trading in electricity is a regulated activity. Reliance is placed upon the Commission's Order dated 27.02.2018 in Petition no. 211/MP/2016 in matter of default by trading licensee Global Energy Private Limited with regard to payment for supply of power by Jindal Power Limited. The relevant excerpt is as under:

"We have noticed that the Respondent has not paid the outstanding dues of the Petitioner for the supply of power under LoIs dated 17.4.2014 and 30.5.2015. The Respondent had given post-dated cheques for payment of the outstanding dues which could not be encashed by the Petitioner on account of the instructions of GEPL for stopping payments against these cheques. Without prejudice to the actions pending before the Metropolitan Magistrate and High Court of Delhi for dishonor of cheques, we are of the view that failure to release payments against the post-dated cheques for outstanding dues amounts to prolonged and willful defaults on the part of GEPL to ensure timely payment to the Petitioner for supply of power which GEPL as a trading licensee is required to comply with in terms of Regulation 7(h) of the Trading Licence Regulations. Therefore, it satisfies the conditions of Section 19 (1) (a) of the Act. Further, the trading in electricity is a regulated activity under the Act as trading is

envisaged to promote competition and thereby serve public interest. If the trading licensees are allowed to flout the terms and conditions of the agreements for purchase and sale of electricity in the course of trading, there will be chaos in the market, shake the confidence of the generating companies and distribution licensees/consumers and thereby will affect competition which is against public interest. Therefore, public interest demands that such practices are strongly discouraged and the licensees indulging in such practices are dealt with strictly in accordance with law. We are of the view that a case against GEPL under Section 19 (1) (a) of the Act for revocation of license has been made out.”

56. The Petitioner submits that the Respondent has nowhere denied that this Commission has the appropriate jurisdiction to decide the petition seeking revocation of the trading license granted by this Commission. It has instead contended that the Petitioner has wrongly or deliberately sought revocation of the trading license of the Respondent. At this stage only the jurisdiction of the Hon’ble Commission is relevant which is not disputed insofar as the claim for revocation of the trading licensee is concerned. Therefore, the present Petition has to be admitted for adjudication on merits.

57. The Petitioner mentions the observations of the Hon’ble Supreme Court in *Energy Watchdog vs CERC 2017 (14) SCC 80*, wherein the Apex Court upheld the jurisdiction of this Hon’ble Commission involving inter-state generation or supply of electricity. The supply and return of power are at the regional periphery of the exporting utility. Thus, the arrangement under the present banking agreement is an inter-state transaction.

58. The Petitioner refers to Order of the Commission dated 01.03.2018 in Petition No. 10/MP/2016 in matter of *Jaiprakash Power Ventures Limited v Global Energy Private Limited*. In the said Order, the Commission has held the below view on various issues:

a. On the issue of whether the transaction in question is an intra-State transaction or inter-State transaction –

“Since the supply of power by JPVL from its generating station in Himachal Pradesh at the inter-connection point of UP Transmission Periphery passes through more than one State, it becomes the inter-State supply of power. After taking delivery of the said power, GEPL supplies the power to UPPCL which is intra-State in nature. Both the transactions taken together leave no manner of doubt that the supply of power from the generating station of JPVL to UPPCL with the intermediary of GEPL is inter-State in nature.”

b. On the issue of adjudication under Section 79(1)(f) of the Act –

“... In fact, all aspects with regard to the trading and transmission licensees for inter-State operation are dealt with under Sections 12 to 23 of the Act which includes the provisions for revocation of license. Further, the Commission has the power under Section 129 of the Act to issue necessary directions to the licensees covered under its jurisdiction to ensure compliance with the provisions of the Act or conditions of licence. Therefore, Section 79(1)(e) has been kept out of purview of Section 79(1)(f) of the Act. However, whenever a dispute involves a generating company making inter-State supply of power to a trading licensee and such dispute relates to tariff or tariff related matters, this Commission will have the jurisdiction to adjudicate the dispute under Section 79(1)(f) of the Act...”

c. On the issue of maintainability under Section 19 of the Act –

“.. Based on the materials on record, we are of the view that since GEPL has retained the late payment surcharge of Rs.25,34,79,302 and not paid the same to JPVL, despite having received the said amount from UPPCL on 9.10.2013 and 10.10.2013, it amounts to willful and prolonged default in making timely payment of dues of the seller of electricity, i.e. JPVL in this case in contravention of Regulation 7(h) of the Trading Licence Regulations. Therefore, a case against GEPL under Section 19 (1)(a) of the Electricity Act, 2003 (the Act) for revocation of licence has been made out.”

59. On the applicability of the Judgement of M/s Pune Power Development Private Ltd. v Karnataka Electricity Regulatory Commission referred by the Respondent, the Petitioner has submitted that the case can be clearly distinguished on the basis that a component of the transaction in dispute involved intra-state power supply. The said observation was based on the fact that the transaction had taken place within the jurisdiction of the Karnataka State Commission. More so, the negotiations were held in Karnataka and the Letter of Intent was also issued from Mangalore. The supply of electricity and return of the same was also to happen at the Karnataka periphery. In these circumstances, the Hon'ble Tribunal took a view that the jurisdiction of the Karnataka Commission could not be ousted.
60. However, in the present case, the banking arrangement of the Petitioner is with the trading licensee, who has a trading license granted by this Commission, and their activities including the banking of electricity are regulated under CERC Trading Regulations. The supply and return of power are at the regional periphery of the exporting utility. Such transactions simpliciter fall under the ambit of 'Inter-State-Transaction'. Thus, the principles laid down by the Hon'ble Apex Court in Energy Watchdog Case (Supra) are

attracted and squarely apply to the present inter-state transaction, meaning thereby this Commission alone has the jurisdiction.

61. The Petitioner submitted that the arbitration clause in Energy Banking Agreement dated 29.03.2022 is subjected to the statutory provisions for arbitrations under the Act. Therefore, an issue on which this Commission exercised jurisdiction under the Act, cannot be given a go-by. If there are other disputes apart from those under the Act, arbitration may be possible. Reliance is laid on the judgment of the Hon'ble Supreme Court in *Gujarat Urja vs Essar Power 2008 (4) SCC 755* where the Hon'ble Supreme Court, while interpreting Section 86 (1)(f) of the Act, held as under –

“58. In the present case we have already noted that there is an implied conflict between Section 86(1)(f) of the Electricity Act, 2003 and Section 11 of the Arbitration and Conciliation Act, 1996 since under Section 86(1)(f) the dispute between licensees and generating companies is to be decided by the State Commission or the arbitrator nominated by it, whereas under Section 11 of the Arbitration and Conciliation Act, 1996, the court can refer such disputes to an arbitrator appointed by it. Hence on harmonious construction of the provisions of the Electricity Act, 2003 and the Arbitration and Conciliation Act, 1996 we are of the opinion that whenever there is a dispute between a licensee and the generating companies only the State Commission or the Central Commission (as the case may be) or arbitrator (or arbitrators) nominated by it can resolve such a dispute, whereas all other disputes (unless there is some other provision in the Electricity Act, 2003) would be decided in accordance with Section 11 of the Arbitration and Conciliation Act, 1996. This is also evident from Section 158 of the Electricity Act, 2003. However, except for Section 11 all other provisions of the Arbitration and Conciliation Act, 1996 will apply to arbitrations under Section 86(1)(f) of the Electricity Act, 2003 (unless there is a conflicting provision in the Electricity Act, 2003, in which case such provision will prevail).

59. In the present case, it is true that there is a provision for arbitration in the agreement between the parties dated 30-5-1996. Had the Electricity Act, 2003 not been enacted, there could be no doubt that the arbitration would have to be done in accordance with the Arbitration and Conciliation Act, 1996. However, since the Electricity Act, 2003 has come into force w.e.f. 10- 6-2003, after this date all adjudication of disputes between licensees and generating companies can only be done by the State Commission or the arbitrator (or arbitrators) appointed by it. After 10-6-2003 there can be no adjudication of dispute between licensees and generating companies by anyone other than the State Commission or the arbitrator (or arbitrators) nominated by it. We further clarify that all disputes, and not merely those pertaining to matters referred to in Clauses (a) to (e) and (g) to (k) in Section 86(1), between the licensee and generating companies can only be resolved by the Commission or an arbitrator appointed by it. This is because there is no restriction in Section 86(1)(f) about the nature of the dispute.

60. We make it clear that it is only with regard to the authority which can adjudicate or arbitrate disputes that the Electricity Act, 2003 will prevail over Section 11 of the Arbitration and Conciliation Act, 1996. However, as regards the procedure to be followed by the State Commission (or the arbitrator nominated by it) and other matters related to arbitration (other than appointment of the arbitrator) the Arbitration and Conciliation Act, 1996 will apply (except if there is a conflicting provision in the Act of 2003). In other words, Section 86(1)(f) is only restricted to the authority which is to adjudicate or arbitrate between licensees and generating companies. Procedural and other matters relating to such proceedings will of course be governed by the Arbitration and Conciliation Act, 1996, unless there is a conflicting provision in the Act of 2003.”

62. The Respondent had sought liberty to file an application to refer the matter to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. No such liberty is required if the Respondent otherwise has a right to file such an application. Further, the dispute has been simmering since June 2022 when the Respondent failed to return the banked electricity to the Petitioner. If the Respondent indeed wished to resolve the dispute through arbitration, nothing prevented it from invoking the same for all these months instead of raising the incorrect plea of lack of jurisdiction.

Analysis and Decision

63. We have carefully considered the submission of all the parties. As of now, the question that needs to be decided is whether the Commission is vested with the jurisdiction to deal with the present petitions and the petitions are admissible. The Petitioner has invoked Section 79(1)(f) of the Act for adjudication of the dispute between the Petitioner and the Respondents in the three matters and Section 19 of the Act for revocation of inter-State trading licence of each of the Respondents. The Petitioner has maintained that the dispute is under jurisdiction of the Commission as the banking arrangement of the Petitioner is with the trading licensee which has been granted licence by this Commission, and it falls under the ambit of 'Inter-State Transaction', whereas the Respondent (Sarvyu) has pleaded absence of jurisdiction on the grounds that the dispute involving an electricity trader cannot be agitated before the Commission under Section 79(1)(f) of the Act.
64. The Respondent (Sarvyu) in its rejoinder, has laid reliance on the judgment in case of *M/s Pune Power Development Private Ltd. v Karnataka Electricity Regulatory Commission* wherein the Tribunal has held that a dispute between trading licensee and distribution

licensee would be subject to the regulatory jurisdiction of the concerned State Commission under Section 86(1)(f). The Petitioner has however pointed out that the concerned case involved intra-state power supply. The banking arrangement of the Petitioner is with the trading licensee, who has a trading license granted by this Commission, and their activities including the banking of electricity are regulated under CERC Trading Regulations. The supply and return of power are at the regional periphery of the exporting utility. Such transactions simpliciter fall under the ambit of 'Inter-State-Transaction'. Thus, the principles laid down by the Hon'ble Apex Court in Energy Watchdog Case (Supra) are attracted and squarely apply to the present inter-state transaction, meaning thereby this Commission alone has the jurisdiction.

65. We note that as per Clause 1 and the mutual Arrangements elaborated in recital C of the Banking agreement dated 29.03.2022 between the Petitioner & Svaryu Energy; Recital 'v' of the Banking agreement dated 17.03.2022 between the Petitioner & APPCPL; and Annexure I of the Banking agreements dated 04.04.2022 and 05.04.2022 between the Petitioner & KEIPL, the delivery point has been defined as the Regional periphery of the exporting utility in either leg of the banking transaction. Perusal of the banking agreements leaves no doubt that the exchange of electricity in the arrangement is inter-state in nature. However, given the facts and circumstances of the present petitions, we would like to examine and decide whether this Commission shall have the jurisdiction to deal with the issues raised in these cases in the course of inter-State nature of the 'banking' arrangement. The Petitioner has invoked Section 79(1)(f) and Section 19 of the Act in the current petitions. We examine the jurisdiction of the Commission under each of these provisions of the Act in the following paragraphs.

66. Section 79 of the Act provides for the following functions of the Commission:

"Section 79. Functions of Central Commission:

(1) The Central Commission shall discharge the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central

Government;

(b) to regulate the tariff of generating companies other than those owned or controlled

by the Central Government specified in clause (a), if such generating companies

enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;
(c) to regulate the inter-State transmission of electricity ;
(d) to determine tariff for inter-State transmission of electricity;
(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;
(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;
(g) to levy fees for the purposes of this Act;
(h) to specify Grid Code having regard to Grid Standards;
(i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;
(j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;
(k) to discharge such other functions as may be assigned under this Act, ”

67. In our view, the jurisdiction of the Commission for adjudication of the dispute involving a trading licensee under Section 79(1)(f) gets activated if the dispute involves a generating company, including inter-alia a generating company making inter-State supply of power to a trading licensee, and the dispute pertains to tariff or tariff related matters. In the present cases, though the matter pertains to trading licensees, it does not involve a generating company. Further, since it is a banking arrangement and involves a case of alleged default in supply, it also does not constitute as a tariff matter. Therefore, the Commission is of the view that its jurisdiction to adjudicate the instant cases does not get activated under Section 79(1)(f) of the Act.

68. However, the Commission also notes that the Petitioner has also invoked Section 19 of the Act and prayed for revocation of licence of the respondent traders. As such, it is imperative to examine the admissibility of the present Petitions in the light this provision of the Act. Section 19 of the Act reads as under:

“19. (1) If the Appropriate Commission, after making an enquiry, is satisfied that public interest so requires, it may revoke a licence in any of the following cases, namely: -
(a) where the licensee, in the opinion of the Appropriate Commission, makes willful and prolonged default in doing anything required of him by or under this Act or the rules or regulations made thereunder;
(b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation;

(c) where the licensee fails, within the period fixed in this behalf by his licence, or any longer period which the Appropriate Commission may have granted therefor –
(i) to show, to the satisfaction of the Appropriate Commission, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his licence; or
(ii) to make the deposit or furnish the security, or pay the fees or other charges required by his licence;
(d) where in the opinion of the Appropriate Commission the financial position of the licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence.

(2) Where in its opinion the public interest so requires, the Appropriate Commission may, on application, or with the consent of the licensee, revoke his licence as to the whole or any part of his area of distribution or transmission or trading upon such terms and conditions as it thinks fit.

(3) No licence shall be revoked under sub-Section (1) unless the Appropriate Commission has given to the licensee not less than three months' notice, in writing, stating the grounds on which it is proposed to revoke the licence, and has considered any cause shown by the licensee within the period of that notice, against the proposed revocation.

(4) The Appropriate Commission may, instead of revoking a licence under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon and be observed by the licensee and shall be of like force and effect as if they were contained in the licence.

(5) Where the Commission revokes a licence under this Section, it shall serve a notice of revocation upon the licensee and fix a date on which the revocation shall take effect.

(6) Where an Appropriate Commission has given notice for revocation of licence under sub-section (5), without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under this Act, the licensee may, after prior approval of that Commission, sell his utility to any person who is found eligible by that Commission for grant of licence.”

69. Section 19 of the Act deals with revocation of licence and also the circumstances and procedure for revocation of licence. One of the conditions under which the licence can be revoked is the “wilful and prolonged default on the part of licensee in doing anything required of him or under this Act or the rules or regulations made thereunder”. The Trading Licence Regulations 2020 provides the terms and conditions for grant of inter-State trading licence, networth requirement and credit worthiness for grant of trading licence, the obligations of licensee, revocation of licence, offences and punishment to the licensee, etc. Regulation 9 of the Trading Licence Regulations 2020, specifies the

obligation of the trading licensees and Regulations 17, 18, 19 & 20 cover the contraventions and suitable penalties, including revocation of licence, for such contraventions.

70. Regulation 9(1) of the CERC Trading Licence Regulations 2020 stipulates that *The Trading Licensee shall comply with the requirements of laws in force and, in particular, the Act, the Rules and the Regulations, Grid Code, orders and directions issued by the Commission from time to time and any of the State Electricity Regulatory Commissions in accordance with law.* Further, Regulation 9(24) obligates that *Trading Licensee undertaking banking of electricity shall simultaneously enter into contract for supply of power and contract for return of power, with each of the utilities participating in the banking arrangement, as applicable.*
71. In the instant petitions the Petitioner has raised the question of violation of the terms of license and provisions of the Act by the respondent trading licensees. At this stage, we have not examined the merits of the contention made by the Petitioner. We have considered that the respondent trading licensees have been granted trading licences by this Commission and violations of the Trading Licence Regulations and terms and conditions of the licence have been alleged in the petition, the Commission in exercise of its jurisdiction under Section 19 of the Act is required to examine the veracity of the allegations. Accordingly, the Commission finds that the petitions are required to be heard on merit as well and further holds that the present petitions are maintainable for a hearing under section 19 of the Act.
72. In terms of the above, the Petitions 277/MP/2022, 278/MP/2022 and 282/MP/2022 are admitted and shall be listed for further hearing.

Sd/-
(P.K. Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

