

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 276/MP/2024

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu, Member
Shri Harish Dudani, Member**

Date of Order: 12th June, 2025

In the matter of:

Petition under section 79(1)(f) of the Electricity Act, 2003 seeking quashing of invoices raised by the Respondent No. 1 on the Petitioner for being void, illegal and *non-est*, and seeking appropriate directions against the Respondent No. 1 to withdraw the invoices uploaded on the PRAAPTI portal and restraining it from issuing or uploading any further invoices on the said portal and from taking any coercive actions in furtherance of such invoices, including by way of seeking regulation of open access under the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022.

And

In the matter of:

Maharashtra State Electricity Distribution Company Limited,
Prakashgad, Plot No. G-9, Anant Kanekar Marg,
Bandra (E), Mumbai – 400015

...Petitioner

Vs

1. Ratnagiri Gas and Power Private Limited,
RGPPL Anjanwel, Taluka: Guhagar
District: Ratnagiri, Maharashtra-415 634

2. Grid Controller of India Limited
B-9, First Floor, Qutab Institutional Area
Katwaria Sarai, New Delhi – 110 016

3. PFC Limited,
First floor, Urja Nidhi
1, Barakhamba Lane, Connaught Place
New Delhi - 110 001

...Respondents

Parties Present:

Shri C. S. Vaidyanathan, Senior Advocate, MSEDCL
Shri Sanjay Sen, Senior Advocate, MSEDCL
Ms. Mandakini Ghosh, Advocate, MSEDCL
Ms. Neha M. Dabral, Advocate, MSEDCL
Shri Vishal Binod, Advocate, MSEDCL
Shri Sagnik Maitra, Advocate, MSEDCL



Ms. Rimali Batra, Advocate, MSEDCL
Ms. Sanika Dalvi, Advocate, MSEDCL
Shri Abhishek Lalwani, Advocate, MSEDCL
Shri Ramji Srinivasan, Senior Advocate, RGPPL
Ms. Swapna Seshadri, Advocate, RGPPL
Shri Anand K. Ganesan, Advocate, RGPPL
Ms. Ritu Apurva, Advocate, RGPPL

ORDER

The Petitioner, Maharashtra State Electricity Distribution Company Limited (in short 'MSEDCL') has filed this Petition under Section 79(1)(f) of the Electricity Act, 2003 (the Act) seeking the following relief(s):

- (a) Declare that the invoices raised by the Respondent No. 1 against the Petitioner, as more specifically set out in ANNEXURE P – 28 to this Petition, as void, non-est and illegal;*
- (b) Restrain the Respondent No.1 from issuing any further invoices under the terminated PPA dated 10.04.2007 and from uploading any further invoices on the PRAAPTI portal, seeking payment thereof;*
- (c) Direct Respondents No. 2 and 3 to restore Petitioner's short-term access and full GNA;*
- (d) Restrain the Respondents from taking any coercive steps against the Petitioner in furtherance of such impermissible, inapplicable, void, non-est and arbitrary invoices, including by way of regulation of GNA and open access under the framework of the LPS Rules;*
- (e) Pass ad-interim / interim / ex-parte order(s) in respect of the prayer (b), (c) and (d) hereinabove; and*
- (f) Pass any other further order as this Hon'ble Commission may deem fit and proper in the fact and circumstances of the case.*

Background facts

2. Ratnagiri Gas and Power Private Limited (Respondent No.1 herein) is a joint venture of NTPC Ltd, GAIL, MSEB Holding Company, ICICI, IDBI, SBI, and Canara Bank. was established as a Special Purpose Vehicle (SPV) to take over the assets of Dabhol Power Project, which were owned by Dabhol Power Company Limited (in short 'DPC'), a private company promoted and established by the erstwhile Enron Group. The assets of DPC included a gas-based combined cycle power project with an



estimated net capacity of 2150 MW (as per the restructuring plan), along with an integrated LNG Terminal of estimated capacity of 5 MMTPA and associated infrastructure facilities at District Ratnagiri in the State of Maharashtra. The Dabhol Power Project consisted of three Blocks, namely, Block I, Block II, and Block III, with each of them having two Gas turbines and one Steam Turbine and a common LNG Terminal. The Block-I of the Dabhol Power Project was established by the year 1999, and work on Blocks-II and III and the LNG terminal was in progress in May 2001, when its operation was closed down. Maharashtra State Electricity Board (in short 'MSEB') a board constituted in the State of Maharashtra under Section 5 of the Electricity (Supply) Act, 1948 was the beneficiary of the entire power generated from the above project as per the Power Purchase Agreement (PPA) and related agreements entered into between DPC and MSEB. DPC and its promoter, Enron Group, ran into serious financial and other difficulties and could not continue to operate the Dabhol Power Project. Consequently, DPC and MSEB also went into litigation. These litigations involved the invocation of guarantees and counter-guarantees given by the Government of Maharashtra and the Government of India for the project. The operation in the Dabhol Power Project was eventually closed down in May 2001. Upon its closure, the said Project and all its assets were placed under the control of a Receiver appointed by the Hon'ble High Court of Bombay in Suit No. 875/2002.

3. The Government of India and the Government of Maharashtra were desirous of reviving the Dabhol Power Project, considering the huge investments made in the project, the possibility of generating 2150 MW power from the project to meet the shortage of electricity in the country, particularly in the State of Maharashtra and in the larger public interest. After exploring several possibilities, it was finally decided that an SPV would be formed with shareholdings by NTPC Limited, GAIL (India) Ltd.,



Financial Institutions such as IDBI Limited, ICICI Bank Limited, State Bank of India, Canara Bank and the State Electricity Utility in the State of Maharashtra (MSEB Holding Company Ltd) and vested with the task of revival of the project. The Government of India finalized a comprehensive scheme with regard to the capital investments, project cost, transfer value, funding requirements, repayment to the banks and financial institutions, equity investment, etc., of the project after its takeover by the SPV. In pursuance of the above-said decision, RGPPL was formed as an SPV to take over the assets of Dabhol Power Project along with the generating units, integrated LNG Terminal, and associated infrastructure facilities for revival. On 22.9.2005, the Hon'ble High Court of Bombay recorded the consent terms for the above takeover, at a lump sum consideration of Rs 8485.45 crore, as envisaged in the scheme worked out and approved by the Government of India. In terms of the order of the Hon'ble High Court and the approved financial scheme, the assets of Dabhol Power Project, including the integrated LNG Terminal and associated infrastructure facilities, were taken over by RGPPL from the Court Receiver on 6.10.2005, on an "as is where is" basis.

4. The power project of RGPPL is an inter-state generating station having arrangements for the sale of electricity in more than one State, with 95% of its capacity allocated to the Petitioner, MSEDCL (the successor of MSEB), and the balance 5% as unallocated power at the disposal of the Government of India. Presently, the Government of India has allocated the unallocated share of power for 3 months each to Goa, Daman, Dadra & Nagar Haveli, and Madhya Pradesh. The generating station has been granted Mega Power Project status by the Ministry of Power, Government of India, on March 14, 2006. RGPPL executed a Power Purchase Agreement (PPA) with the Petitioner on 10.4.2007, containing the terms and conditions for the supply of



95% of power generated from the Project, with the remainder 5% capacity to be sold to the Procurers located outside the State of Maharashtra, namely, Goa, Dadra & Nagar Haveli and Daman and Diu. The actual dates of commercial operation of the different blocks of the generating station are as under:

Blocks (Units)	Capacity (MW)	COD
Block – II	663.54	1.9.2007
Block – III	663.54	21.11.2007
Block – I	640.00	19.5.2009

5. In Petition No. 96/2007 filed by RGPPL, the tariff of Blocks-II and III of the generating station was determined for the period from 1.9.2007 to 31.3.2009, vide Commission's order dated 4.6.2009, considering the capital cost of Rs. 351832 lakhs, as on 1.9.2007. Thereafter, in Petition No.283/2009 filed by RGPPL, the tariff of the generating station for the period 2009-14 was determined by the Commission vide order dated 18.8.2010. In the said order, the installed capacities of Blocks I to III of the generating station was approved as under:

Blocks (Units)	As per restructuring plan	(MW)	
		Capacity from 1.4.2009 to 18.5.2009	Capacity with effect from 19.5.2009
Block – I	670		640.00
Block – II	740	663.54	663.54
Block – III	740	663.54	663.54
Total	2150	1327.08	1967.08

6. Subsequently, RGPPL filed Petition No. 166/MP/2012, seeking prayers, amongst others, to resolve the issues arising out of the non-availability of domestic gas of the required quantum and the reservations of the beneficiaries to allow to enter into contracts for available alternate fuel i.e RLNG and consequences thereof and the Commission vide order dated 30.7.2013 disposed of the said petition, holding that any declaration of capacity by RGPPL based on RLNG as the primary fuel qualifies for the computation of availability of the generating station for recovery of the fixed charges



and accordingly the fixed charge recovery be made by RGPPL based on availability after accounting for declaration of capacity on RLNG. The Commission did not consider it necessary to examine the issues of relaxation of NAPAF already approved by the Commission or the admissibility of invoking the Force Majeure clause by RGPPL.

7. Against this order, MSEDCL filed an appeal (Appeal No.261/2013) before the Appellate Tribunal for Electricity (in short 'APTEL') on various counts. During the pendency of this appeal, RGPPL filed Petition No.183/MP/2013 before this Commission, seeking adjudication of the disputes raised by MSEDCL in regard to the liability to pay capacity charges, energy charges, and other charges under the PPA dated 10.4.2007. During the pendency of this petition, MSEDCL vide letter dated 8.5.2014 terminated the PPA with effect from 1.4.2014, and the same was repudiated by RGPPL vide letter dated 22.4.2014, followed by letter dated 3.6.2014. Thereafter, by order dated 3.7.2014, the said petition (Petition No.183/MP/2013) was rejected as not maintainable, on the ground that APTEL was seized of the issues in the appeal filed by MSEDCL. The relevant portion of the order is extracted below:

"7.....It is also pertinent to mention that the respondent has challenged the Commission's order dated 30.7.2013 before the Tribunal in which the petitioner has been impleaded as the respondent. The Tribunal while disposing of the I.A No.348/2013 (in Appeal No. 261/2013) filed by the respondent MSEDCL for stay of operation of the order dated 30.7.2013 has observed that the question as to whether the Commission has correctly interpreted the provisions of the PPA or not could be decided only after hearing the parties. Thus, the Tribunal having been seized of the issue in the said appeal, there is no reason for the petitioner to seek the intervention of the Commission for a declaration that the respondent is liable for payment of capacity charges based on declaration of availability as per terms of the PPA. The prayer of the petitioner is not maintainable"

8. APTEL vide its judgment dated 22.4.2015, dismissed the Appeal No.261/2013 filed by MSEDCL, affirming the order of the Commission dated 30.7.2013, and holding



that MSEDCL is required to pay capacity charges to RGPPL even if MSEDCL does not give consent to the GSA/GTA. The relevant portion of the order is extracted below:

ORDER

“This instant appeal i.e. Appeal No. 261 of 2013 is hereby dismissed and the impugned order dated 30th July, 2013 passed in Petition No.166/MP/2012 is hereby upheld. Further, the appellant is under obligation to pay capacity charges to respondent No.2, power generating company, even if the appellant does not give consent to GSA/GTA because the appellant in place of natural gas or fuel is using R-LNG (primary fuel)”

9. The APTEL judgment dated 22.4.2015 was challenged by MSEDCL before the Hon'ble Supreme Court in Civil Appeal No.4228/2015, and the Hon'ble Court disposed of the said appeal vide order dated 13.5.2015, as under:

“The question raised in the present appeal before this Court at this stage appears to be academic in the absence of any coercive steps against the appellant for recovery. We, therefore, decline to entertain this appeal at this stage. However, we give liberty to the appellant to move this Court once again in the event it becomes so necessary. The appeal is disposed of.”

10. Thereafter, RGPPL filed Execution Petition (E.P. No.18/2022) before the APTEL, seeking execution of its judgment dated 22.4.2015 in Appeal No. 261/2013 (para 6 above). MSEDCL, however, filed Civil Appeal (C.A. No.1922/2023) before the Hon'ble Supreme Court to set aside the APTEL judgment dated 22.4.2015. In this appeal, MSEDCL raised the issue of termination of the PPA dated 10.4.2007. The Hon'ble Supreme Court vide order dated 6.2.2023, stayed the execution proceedings (EP No. 18/2022), stating that no coercive steps shall be taken against MSEDCL in the said petition. Consequent upon the proceedings being stayed as above, RGPPL withdrew the execution petition, with liberty to approach later, if need be, and accordingly, APTEL, vide its order dated 20.4.2023, dismissed the same as withdrawn. Thereafter, the Hon'ble Supreme Court vide its judgment dated 9.11.2023, dismissed the Civil Appeal (1922/2023) filed by MSEDCL and directed that the execution proceedings filed by RGPPL before the APTEL, to be continued. The relevant portion of the order dated 9.11.2023 is extracted below:



“36. In the present context, bearing in mind the background of the establishment of the first respondent, and the shortfall of domestic gas for reasons beyond the control of the first respondent, such a deviation from the plain terms is not merited and militates against business efficacy as it has a detrimental impact on the viability of the first respondent.

37. The execution proceedings pursuant to the above-mentioned execution petition before the APTEL be continued.

38. The appeal is dismissed. There shall be no order as to costs”

11. Against the judgment dated 9.11.2023, MSEDCL filed Review Petition [(R.P.(c) No. 1997/2023] before the Hon'ble Supreme Court, also claiming that the termination of the PPA was not considered by the Hon'ble Supreme Court, despite attaining finality. During the pendency of this review petition, RGPPL, in terms of the liberty granted by APTEL and in terms of the Hon'ble Supreme Court's direction, filed an Execution Petition (E.P. No. 12/2023) before APTEL, seeking the execution of its judgment dated 22.4.2015 (in Appeal No. 261/2013). However, MSEDCL filed IA No.230/2024 before APTEL seeking stay of the execution proceedings, but, later withdrew the same, vide order dated 11.3.2024. Thereafter, on 19.3.2024, the Hon'ble Supreme Court dismissed the Review Petition (1997/2023) filed by MSEDCL, as under:

“2. Having perused the review petition, there is no error apparent on the face of the record. No case for review under Order XLVII Rule 1 of the Supreme Court Rules 2013 has been established. The review petition is, therefore, dismissed.”

12. Further, MSEDCL filed IA No.1068/2024 in the Execution Proceedings (E.P. No.12/2023) seeking the intervention of APTEL, in respect of the PRAAPTI proceedings in the light of the approaching trigger date for the curtailment of open access of MSEDCL, due to non-payment of dues against the outstanding invoices raised by RGPPL. MSEDCL also filed a Writ Petition (W.P. No. 24685/2024) before the Hon'ble High Court of Bombay, seeking directions to set aside the invoices raised by RGPPL and also to restrain RGPPL, from issuing fresh invoices under the allegedly terminated PPA, and from uploading any invoices in the PRAAPTI portal. The Hon'ble



High Court vide its order dated 8.8.2024, disposed of the said writ petition, directing as under:

“(a) The Petitioner herein shall file their Petition before the CERC by 14th August 2024 along with an application for stay. These papers and proceedings shall also be served on the Respondents by 14th August, 2024.

(a) The CERC is requested to take up the stay application of the Petitioner on 20th August, 2024.

(b) In the interregnum and until 20th August, 2024, it is directed that there shall be no reduction or withdrawal of access for sale and purchase of electricity as provided in Rule 7(c) of the said Rules. It is clarified that this will not affect the reduction. If any, that is already triggered and /or taken place.

(c) It is clarified that the interim protection granted by us will be subject to the orders passed by the CERC in the proposed stay application to be filed by the Petitioner. The CERC shall decide the Petition and the application for the interim reliefs of the Petitioner without being influenced by anything stated in this order.”

13. In the above background, MSEDCL has filed the present Petition (276/MP/2024) seeking the relief(s) as in para 1 above, along with IA No.67/2024 (seeking urgent interim reliefs), before this Commission, and submitted the following:

Submissions of the Petitioner, MSEDCL

14. MSEDCL, in the Petition, mainly submitted as under:

(a) During the pendency of the proceedings pertaining *inter-alia* to the interpretation of the terms of the PPA relating to declaration of capacity, the term of the GSA/GSTA executed between RGPPL and RIL and Neco Ltd, expired on 31.3.2014, resulting in RGPPL being without any approved GSA/GSTA required for supplying power to MSEDCL under the PPA. RGPPL was unable to find any viable fuel source which could be approved under Article 5.9 of the PPA, thereby resulting in RGPPL's consistent and irremediable failure to achieve even the relaxed NAPAF norms permitted by the Commission. Such failure by RGPPL dislodged the fundamental basis of the PPA, namely, to receive reliable and continuous supply of power in accordance with the terms of the PPA, rendering it frustrated.

(b) On account of such prolonged and incurable failure of RGPPL to identify a viable fuel source and its inability to ensure reliable and continuous power supply to MSEDCL at commercial rates, MSEDCL was constrained to terminate the PPA with effect from 1.4.2014, vide a termination letter dated 8.5.2014. The said termination was also in the public interest as the continuation of the PPA as a significant quantum of MSEDCL's power procurement, was blocked by an unreliable generator, which was unable to supply power to it, thereby



significantly affecting MSEDCL's ability to maintain a reliable supply of electricity to crores of its consumers, across the state.

(c) In the absence of a viable and approved gas source, RGPPL had incurably failed to discharge its obligations under the PPA, and MSEDCL was left with no other alternative but to terminate the PPA, post the expiry of the approved GSA/GSTA. Even otherwise, Article 10.8 of the PPA also stipulates that any failure in performance is caused by a Force Majeure event, which continues for an uninterrupted period of 365 days, then the other party has the right to terminate the PPA. It is pertinent to highlight that RGPPL, before this Commission in its pleading in Petition No. 166/MP/2012, specifically stated that its inability to achieve and maintain NPAF since September 2011, owing to the non-availability of domestic gas, was caused by the occurrence of the force majeure events. Hence, by their own admission, the unavailability of fuel is a consequence of an event of force majeure, namely, the stoppage of supply from the KG-D6 basin. However, this Commission did not consider the issue of admissibility of invoking the force majeure clause by RGPPL at that stage, for the issue was rendered academic by this Commission in relation to the reliefs sought by RGPPL in the said petition.

Finality of the termination of the PPA

(d) The aforesaid termination of the PPA attained finality, as RGPPL did not challenge the said termination, before any competent court, till date. Also, the validity of the termination itself cannot be called into question at this stage, as any such challenge, while bad even on merits, will be barred by the law of limitation. RGPPL responded to the aforesaid termination letter vide its letter dated 22.5.2014, raising various misconceived pleas against the termination and reiterating its non-maintainable and non-est claims for the payment of capacity charges. Notably, even as RGPPL objected to the termination of the PPA by its aforesaid letter, it took no steps whatsoever to challenge such termination by pursuing appropriate legal remedies.

(e) Further, the Additional Secretary, MOP, GOI also addressed a letter dated 23.5.2014 to the Principal Secretary, Energy, Govt. of Maharashtra, inter alia stating that RGPPL is required to repay its lenders a sum of Rs. 195 crores by 28.5.2014 in order to avoid being declared a non-performing asset (NPA), and on this basis, requested MSEDCL to release at least Rs. 195 crores to RGPPL before the said deadline. MSEDCL responded to the aforesaid letter dated vide its letter dated 29.5.2014 reiterating that the PPA between RGPPL and MSEDCL stood terminated, and that any further payment to RGPPL shall be in contravention of the terms of such PPA and detrimental to the interests of the consumers of MSEDCL. MSEDCL further set out the basis of its claims and provided a detailed justification thereof in the said letter.



(f) Despite MSEDCL's clear position on this aspect and in spite of the PPA being terminated, RGPPL issued a letter dated 3.6.2014 to MSEDCL, informing that the termination of the PPA dated 10.4.2007 by MSEDCL was not acceptable. Accordingly, RGPPL requested MSEDCL to clear its outstanding dues. RGPPL continued to raise several misconceived invoices on MSEDCL, including towards Late Payment Surcharge, Western Regional Load Despatch Centre Fee & Charges, and other statutory fees like fees to the Maharashtra Pollution Control Board, Consent fee, Panchayat tax, and electricity duty & tax on sale for colony power consumption, etc. The said invoices were justifiably not honoured by MSEDCL for being void, illegal, and *non-est*, as having been issued in the absence of a valid PPA.

Continuation of proceedings on the interpretation of the PPA, in relation to the declaration of capacity by RGPPL, based on an unapproved fuel source, and the judgments of APTEL and the Hon'ble Supreme Court on this issue

a) On 22.4.2015, the APTEL dismissed Appeal No. 261/2013 filed by MSEDCL. The proceedings before the APTEL were restricted to the issues raised in Petition No. 166/MP/2012, namely, the dispute concerning the interpretation of Articles 4.3 and 5.9 of the PPA, in relation to the declaration of capacity by RGPPL, based on an unapproved fuel source. The said proceedings, in no manner, concerned the issue of termination of the PPA as the PPA was terminated post the filing of Petition No.166/MP/2012 and the appeal itself. Being aggrieved by the judgement dated 22.4.2015, MSEDCL filed Civil Appeal No. 4228/2015 before the Hon'ble Supreme Court and the Hon'ble Court disposed of the said Civil Appeal by order dated 13.5.2015, noting that the questions raised in the appeal appear to be academic in nature in the absence of any coercive steps against MSEDCL. However, the Hon'ble Supreme Court granted liberty to MSEDCL to approach the Hon'ble Court at an appropriate stage, if required.

b) RGPPL filed Execution Petition (18/2022) before APTEL seeking the payments in the amount of Rs. 53,06,02,81,257/- from MSEDCL purportedly towards outstanding dues, including capacity charges, purportedly due and payable to RGPPL by MSEDCL, along with Late Payment Charges, in lieu of the invoices raised on MSEDCL by RGPPL, on a monthly basis from 2013 till October 2022, for the availability declared by it, purportedly in terms of the PPA. On 25.11.2022, the APTEL issued a notice in the Execution Petition and listed the same for hearing. At this stage, MSEDCL preferred Civil Appeal (1922/2023) before the Hon'ble Supreme Court against the APTEL judgement dated 22.4.2015. The said Civil Appeal was filed in furtherance of the liberty granted by the Hon'ble Supreme Court vide its order dated 13.5.2015 in Civil Appeal No. 4228 of 2015. Pertinently, on 6.2.2023, the Hon'ble Supreme Court, while hearing the Civil Appeal (1922/2023) granted MSEDCL interim protection against any coercive steps in the Execution Petition (18/2022).



c) On account of the aforesaid order dated 6.2.2023 of the Hon'ble Supreme Court in Civil Appeal, RGPPL withdrew its Execution Petition, with liberty to approach the Hon'ble Tribunal at an appropriate stage. The Hon'ble Supreme Court subsequently dismissed MSEDCL's Civil Appeal (1922/2023) vide its judgment dated 9.11.2023, thereby confirming this Commission's order dated 30.7.2012 in Petition No. 166/MP/2012. On 5.12.2023, MSEDCL filed Review Petition No. 1997/2023 before the Hon'ble Supreme Court seeking review of the judgement dated 9.11.2023, which was also dismissed by the Hon'ble Supreme Court vide its order dated 19.3.2024, without expressing any opinion on the merits of the issues raised thereunder.

Consistent stand and conduct of MSEDCL in respect of the termination of PPA

d) Since the issuance of the termination letter, MSEDCL has been consistent in its position and stand, and has categorically clarified to RGPPL and other authorities in its various communications that the PPA stands terminated and MSEDCL has no liability towards RGPPL with effect from 1.4.2014. A table setting out the communication exchanged between MSEDCL and other parties, including RGPPL, on this aspect post the termination of the PPA, has been set out.

Inconsistent and opportunistic stand of RGPPL in respect of the termination of the PPA

e) The stand of RGPPL in respect of the termination of the PPA has been manifestly opportunistic and inconsistent. RGPPL has, on the one hand, made illusory and misconceived claims for the capacity charges, post the termination of the PPA, but, on the other hand, agreed to accept and enjoyed the benefits and concessions granted to it, putatively, premised on the termination of the PPA itself. The relevant facts and instances in this regard are as follows:

PMO Meetings and decisions on the revival of RGPPL's stalled plant

(i) On 17.8.2015, a meeting was convened by the Principal Secretary to the Hon'ble Prime Minister, in PMO, to review the status of the Project. A plan to revive the Project was discussed in the said meeting, wherein, along with the representatives of RGPPL, the representatives of GoM were also present. As a part of the revival plan, it was discussed that power from the RGPPL plant would be sold to Indian Railways and GoM, which would extend full support in this regard, so as to revive the RGPPL plant. In the said meeting itself, it was decided that the recovery of outstanding amount by RGPPL, from the State Discom towards the alleged fixed cost charges to the tune of Rs. 1800 crores to be kept in abeyance, as this would enable the GoM to extend full support in return for the revival of the plant and accordingly, the same was so directed in the said meeting. Notably, the aforesaid understanding is also borne out from a letter dated 14.10.2015, addressed by the Hon'ble Chief Minister, Maharashtra, to the Hon'ble Prime Minister, the receipt whereof was duly acknowledged by the Hon'ble Prime Minister vide his letter dated 27.10.2015. As such, it is clear that MSEDCL's submissions regarding the understanding to keep the past dues of RGPPL in abeyance are evidenced by a



contemporaneous correspondence and are not a mere afterthought on the part of MSEDCL, as alleged or otherwise.

(ii) Pursuant to the aforesaid meeting at the PMO, a further meeting was held at 30.9.2015 in the PMO, where it was agreed between the parties, including RGPPL and its promoter entities, that initially a PPA will be executed between the Indian Railways and RGPPL, for a supply of 500 MW of capacity from RGPPL's Project. It was further emphasised in the said meeting that while immediate steps are to be taken for the commencement of generation in respect of 500 MW, the ultimate objective is to restart the entire Project. Agreement and consensus of all stakeholders on such a course of action effectively confirmed and acknowledged the understanding that the PPA between RGPPL and MSEDCL stood terminated, as on the date of the meeting. As any further PPA for the supply of power from the Project could not have been contractually permissible during the validity of the PPA with MSEDCL, as 95% of the capacity of RGPPL's Project was tied to MSEDCL. Notably, with a view to facilitating such a revival of RGPPL's Project, it was also agreed in the said meeting that GoM would, in return, waive tax liability such as CST, VAT, Entry Tax, Octroi, and also waive the liability of transmission charges/ losses recoverable from RGPPL.

Grant of waivers and concessions to RGPPL by the GoM

(iii) In furtherance of the action points agreed in the aforementioned meeting at the PMO, a Cabinet note was put up for consideration of the GoM on 6.9.2015, wherein, the waiver of VAT, CST, Octroi & Entry Tax to the tune of Rs.150 crores was proposed. It was also proposed for the waiver of transmission charges and losses for two years, to the tune of Rs. 175 crores. The Cabinet note also records the understanding that the said waivers and concessions are being granted on the basis that RGPPL will keep in abeyance its past claims and that the dispute will be amicably closed. In furtherance of the aforesaid Cabinet note, the GoM on 26.10.2015, published Government Resolutions for the exemption of VAT from 26.10.2015 to 31.3.2017 and CST from 26.10.2015 to 31.3.2017. Further, the MERC also approved the waiver of the transmission charges and losses through a Notification dated 20.1.2016, for the period till 31.3.2017. The GoM on 16.9.2017 further extended the exemption of VAT from 31.3.2017 to 31.3.2022. On account of such facilitation of its revival, RGPPL started supplying about 500 MW of power to the Indian Railways from 26.11.2015. Notably, by its letters dated 16.12.2016 and 22.12.2020 addressed to the GoM, RGPPL accepted and acknowledged the aforesaid waivers and concessions accorded by the GoM.

(iv) Basis the aforesaid, it was clear that RGPPL had not only proceeded and acted on the basis that the PPA with MSEDCL stood terminated, but also accepted waivers and concessions to its benefit, which accorded purely on the basis that the PPA stood terminated. It is stated that MSEDCL has received benefits to the tune of Rs. 1140 crores, in respect of the said waivers and transmission charges/losses in the amounts of approximately Rs. 342 crores. However, subsequently, acting in a manifestly contrary and opportunistic manner, RGPPL issued a letter dated 10.5.2021 on MSEDCL raising an allegedly outstanding claim of Rs. 4458.20 crores for the period till 31.3.2021, towards recovery of the alleged capacity charges.



Presumably, such an action was initiated by RGPPL since the supply to Indian Railways was coming to an end in 2022.

(v) MSEDCL vide its letter dated 18.11.2021, strongly opposed RGPPL's aforesaid opportunistic demands and reiterated that the PPA had been terminated and that MSEDCL was not liable to pay any amounts. RGPPL, thereafter, followed up on its aforesaid claim by filing an execution petition on 22.11.2022 for enforcement of the APTEL's judgment dated 22.4.2015, after a period of almost 7 years, since its passing, thereby, once again demonstrating its self-serving and opportunistic motives

RGPPL's actions post Hon'ble Supreme Court judgment dated 9.11.2023

f) RGPPL has sought to unjustly and illegally recover amounts not due and payable by MSEDCL, based on a patently erroneous and misconstrued reading of the Hon'ble Supreme Court judgment dated 9.11.2023. MSEDCL is constrained to approach this Commission as RGPPL has resorted to abuse of process to promote its self-serving interests and extort wrongful sums from MSEDCL, with a threat of curtailment of its open access under the LPS Rules. MSEDCL also filed the Review Petition 1997/2023 before the Hon'ble Supreme Court against the order dated 9.11.2023, and the same was dismissed vide its order dated 19.3.2024. RGPPL, based on an erroneous reading of the Hon'ble Supreme Court's judgment dated 9.11.2023 (which had merely confirmed this Hon'ble Commission's order dated 30.7.2013 regarding the interpretation of Article 4.3 of the PPA) and deliberately ignoring the termination of the PPA, addressed a letter dated 14.11.2023, seeking the payment of approximately Rs. 6017 crores, towards allegedly outstanding dues for the period from 2013-14 till 2023-24.

g) In furtherance of its aforesaid letter, RGPPL also raised an invoice dated 23.11.2023 on MSEDCL, demanding the payment of approximately Rs. 6017 crores, towards the outstanding dues for the period 2013-14 to 2023-24. It has continued to issue further illegal and void invoices on MSEDCL towards capacity charges and late payment surcharge. Without prejudice to MSEDCL's contentions regarding the correctness or validity of the said amount, it is clear from a bare perusal of the said letter and the invoice that only a claim of approximately Rs 1400 crores for 2013-14 pertains to the period during which the PPA was in existence. The remainder claim pertains to 2014-15 onwards, during which there was no valid PPA between the parties, and hence, such claims are bad and illegal on this ground alone.

h) Even the claim in respect of 2013-14 is sought to be recovered in a manifestly illegal and self-serving manner as RGPPL itself admittedly and indisputably, agreed to keep its claims pertaining to 2013-14 and 2014-15 in abeyance, in accordance with the PMO MoM, in lieu of which, it benefitted from the various concessions and waivers from GoM, including waiver from the payment of VAT, CST, Entry Tax, Octroi to the tune of Rs. 1140 crores and transmission



charges/losses in the amounts of approximately Rs. 342 crores. After deriving the aforesaid benefits based on the understanding as set out in the PMO MoM, RGPPL ought not to be permitted to resile from its promise, and claim the recovery of amounts due for 2013-14, including any LPS.

Regulation of Petitioner's General Network Access (GNA) and Open Access

i) The LPS Rules were notified by the MOP, GOI, to provide a mechanism for the settlement of genuine outstanding dues of the Generating Companies, Inter-State Transmission Licensees, and Electricity Trading Licensees. Further, in terms of the provisions of the LPS Rules, non-payment of the current dues by distribution companies, one month, after the due date of payment or two and half months, after the presentation of power bill, whichever is later, shall attract the regulation of GNA and open access as laid down in the LPS Rules. In case of the non-payment of dues, by Discom, even after two and half months, after presentation of bill, or in case of default in the payment of instalments as per the LPS Rules, the short-term power supply to the defaulting entity shall be regulated entirely, as per the process set in LPS Rules. Continuing default after regulation of short-term power supply, or continuing default in non-payment for three and a half months, would result in the regulation of long-term access and medium-term access by 10%, with a progressive increase of 10% for each month of default.

j) In a case of blatant misuse of the aforementioned provisions, and with a view to wrongfully and illegally coerce MSEDCL, into paying the undue sums, RGPPL has been uploading the aforesaid void, illegal and non-est invoices of the entire quantum of its bogus claims, including for the period subsequent to 1.4.2014, on the PRAAPTI Portal. As a consequence of such an arbitrary action, MSEDCL is facing the prospect of regulation of its open access and GNA under the LPS Rules. A table setting out the details of the invoices uploaded by RGPPL on the PRAAPTI portal as of 31.7.2024 is annexed hereto.

k) MSEDCL duly disputed the said invoices as per the mechanism provided under the LPS Rules. On 7.2.2024, NLDC, which is entrusted with the responsibility of operating the national grid and also implementing the provisions of the LPS Rules, informed MSEDCL by way of an email that, as per the statement available in the PRAAPTI portal on 6.2.2024 (statement for trigger date 8.2.2024), payments were due by MSEDCL. MSEDCL, without prejudice to its rights and contentions, made the payment of Rs. 100 crores to RGPPL on 5.2.2024, under protest, to avoid the curtailment and regulation of its open access under the LPS Rules.

l) Subsequently, on 6.3.2024, WRLDC wrote a letter to MSEDCL stating that as per the statement on the PRAAPTI portal, MSEDCL was in default of payments for more than thirty days, and that because of such delay there would be applicable regulation of open access, whereby the Petitioner's access will be



curtailed by 10% with effect from 8.3.2024. Aggrieved by the curtailment of GNA and open access, MSEDCL was constrained to approach RGPPL for the withdrawal of said invoices. MSEDCL also had a meeting with the representatives of RGPPL on 8.3.2024 and issued a formal letter to RGPPL reiterating its request for the withdrawal of invoices from the PRAAPTI portal, pending resolution of the issue. RGPPL responded vide its letter dated 11.3.2024, stating that in order to withdraw the invoices from the PRAAPTI portal, it would require MSEDCL to provide a payment plan for the entire amount, subject to reconciliation. RGPPL further sought a liquidation plan for payment of the allegedly outstanding amounts from MSEDCL.

m) MSEDCL responded to RGPPL's aforesaid request, by which it stated that any plan for liquidation of arrears will be submitted after the reconciliation of claims. RGPPL, by letter dated 12.3.2024, responded to MSEDCL's letter, in which it provided its computation of the amounts allegedly due and requested MSEDCL to verify the amounts. In the meantime, based on discussions with RGPPL and due to severe curtailment of T-GNA and open access, MSEDCL was constrained to pay a further sum of Rs. 400 crores to RGPPL in order to seek the restoration of its T-GNA and open access, thereby making an aggregate payment of Rs. 500 crores to RGPPL under protest. In this regard, MSEDCL also addressed a letter dated 14.03.2024 to RGPPL, stating that it has made such a payment without prejudice to its rights and contentions and that the said payment is subject to reconciliation.

n) After taking into account the benefit derived by RGPPL in the form of tax waivers and other concessions accorded by GoM to the tune of about Rs. 1482 crores and the aforementioned payment of Rs. 500 crores by the Petitioner, there is no amount outstanding to be paid to RGPPL for the period prior to the termination. Further, post termination of the PPA, there cannot be any liability on MSEDCL. In fact, MSEDCL has been constrained to make a surplus payment to RGPPL under protest. MSEDCL reserves its rights and contentions to initiate appropriate proceedings for the recovery of such amounts.

o) In view of the payment made by MSEDCL on 14.3.2024, T-GNA and full open access of MSEDCL were restored temporarily. Separately, a meeting was held on 15.3.2024 in the chairmanship of the Hon'ble Minister of Power, regarding the issue of allegedly outstanding dues payable by MSEDCL to RGPPL. The minutes of the aforementioned meeting were issued on 28.3.2024 vide an OM issued by MOP. Notably, the GoM addressed the appropriate communication to MOP, clarifying that some of the points raised by the GoM, have not been properly recorded in the said MoM, and a correction of the minutes has been sought. MSEDCL craves liberty to place such communication on the record, if and when directed by this Commission, or otherwise deemed necessary.



p) After the aforementioned meeting, further correspondence was exchanged between MSEDCL and RGPPL. Notably, in one of the said communications exchanged between the parties, namely the RGPPL letter dated 28.3.2024, it has clearly admitted to having received waivers from the GoM, in the amount of approximately Rs. 611.58 crore. While MSEDCL disputes the amount stated by RGPPL, it is pertinent to highlight that receipt of the monetary benefit to the tune of Rs. 611.58 crore by RGPPL from the GoM is indisputable. Subsequently, another meeting was held on 4.4.2024 under the chairmanship of the Secretary, MOP, regarding the issue of allegedly outstanding dues payable by MSEDCL to RGPPL. MSEDCL's stand was reiterated at the meeting by its representatives. The minutes of the aforementioned meeting were issued on 22.4.2024 vide an OM issued by the MoP.

q) Relying on the aforementioned minutes of the meeting, RGPPL addressed another letter dated 23.4.2024 seeking payment of Rs. 4841.35 crore (considering invoices up to February 2024), payable in 40 instalments commencing from April 2024 onwards. RGPPL also sought the payment of regular energy bills from March 2024 onwards. MSEDCL duly responded vide its letter dated 25.4.2024, stating that the minutes of the meeting relied upon by RGPPL have been incorrectly recorded and that GoM is in the process of raising these concerns with MoP. MSEDCL further stated that it would be inappropriate on the part of RGPPL to make any claims on the basis of the said incorrectly recorded minutes, when its representatives were also a part of the meeting and were aware of what actually transpired. MSEDCL further urged RGPPL not to resort to the mechanism under the LPS Rules and seek regulation of MSEDCL's open access through the PRAAPTI portal. However, despite the aforesaid, RGPPL has continued to upload further illegal, void, and non-est invoices on the PRAAPTI portal.

r) RGPPL has also uploaded invoices pertaining to the period prior to 3.6.2022, which is the date from which the provisions of the LPS Rules came into effect, for seeking regulation of Petitioner's open access, thereby, effectively seeking the retrospective application of the LPS Rules, which is not contemplated in the LPS Rules. Rule 5 of the LPS Rules provides for the treatment of any outstanding dues up to the date of the notification of the LPS Rules, and contemplates that such dues may be liquidated by way of equated monthly instalments. However, Rule 5(2) states that such liquidation of past dues can be done in the manner specified, only upon a written request from the concerned distribution licensee. In the present case, MSEDCL has neither admitted, nor requested, nor agreed to any liquidation of any alleged past dues of RGPPL, and hence the LPS Rules are ipso facto inapplicable to any purported claims of RGPPL pertaining to the period prior to the date of notification of the LPS Rules, i.e., 3.6.2022.

s) The operation of the LPS Rules necessarily contemplates the existence of a binding agreement between the generating company and the distribution



licensee, which is conspicuously absent in the present case, as MSEDCL already terminated the PPA, which has attained finality. In this regard, reference may be had to the letter dated 11.4.2023 issued by the MOP to PFC, the Respondent herein, wherein the MOP issued a revised SOP for the implementation of the LPS Rules. The MOP in the said revised SOP is in Paragraph 3. IX has mandated that in case the discom raises a dispute regarding its liability to pay an invoice, the generating company *inter alia* is required to file an affidavit “to the effect that the invoice has been raised in accordance with the provisions of PPA or any other order from competent court or Tribunal or dispute resolution agency as designated in the Power Purchase Agreement.” The said requirement reinforces the aforementioned interpretation that the existence of a valid power purchase agreement is a sine qua non for seeking application of the LPS Rules.

t) Any other interpretation of the provisions of the LPS Rules, would result in a manifestly unjust, arbitrary and anomalous outcome, namely, that any generating company may issue any illegal invoice on a distribution company, without even having a valid power purchase agreement with it, and upload the same on the PRAAPTI portal, causing regulation of such distribution licensee’s open access. It is humbly submitted that such an interpretation would be contrary to the salutary objectives of the Electricity Act and would also be patently violative of Articles 14 and 19(1)(g) of the Constitution of India, and therefore, must be eschewed. As stated, there is no existing PPA between MSEDCL and RGPPL, and neither has RGPPL obtained any order from a competent court, directing the payment of any sum of money to it.

u) Therefore, RGPPL is not entitled to seek any remedy or relief under the LPS Rules as the provisions of the said rules are inapplicable to the present case, especially in respect of the period prior to 3.6.2022, as the LPS Rules cannot be applied retrospectively. However, despite the aforesaid, PFC, has effectively permitted RGPPL to misuse the provisions of the LPS Rules, by taking into consideration the void, illegal and non-est invoices (pertaining to the period after PPA termination as well as invoices issued prior to applicability of LPS Rules) uploaded by it on the PRAAPTI Portal, which has resulted in full curtailment of MSEDCL’s open access for procuring short term power from bilateral contracts or from power exchanges with effect from 17.6.2024 and 10% curtailment of the GNA, with effect from 16.7.2024, as MSEDCL refused to accede to RGPPL’s wrongful and unjust demands for payments of sums not due and payable by MSEDCL.

v) Aggrieved by the aforesaid, MSEDCL filed Writ Petition (L) 24685/2024, before the Hon’ble High Court of Bombay, seeking urgent intervention of the Hon’ble Court, as grave prejudice was being caused to MSEDCL on account of such curtailment and the anticipated additional curtailment. The said Writ Petition was filed before the Hon’ble Bombay High Court *inter alia* on account of the fact



that this Commission, as on the date of filing of the said Writ Petition, did not have the requisite quorum to decide adjudicatory matters as the post of Member (Legal) was vacant. As such, this Commission was not taking up matters involving the adjudication of disputes at the time.

w) The Writ Petition was urgently heard by the Hon'ble High Court of Bombay on 08.08.2024, and the Hon'ble Court, recognising the urgency involved and gravity of the prejudice which may be caused to MSEDCL in case urgent reliefs are not granted, directed status quo, in respect of the regulation of MSEDCL's access to be maintained until 20.8.2024. The High Court of Bombay further directed MSEDCL to file the present Petition before this Commission and requested this Commission to take up the Petitioner's application for grant of interim relief on 20.8. 2024. The present Petition is in compliance with the aforesaid directions of the Hon'ble High Court.

Execution proceedings before the APTEL

x) In addition to the aforesaid, RGPPL also filed Execution Petition No. 12 of 2023 before the APTEL seeking execution of the APTEL judgement dated 13.5.2015 in Appeal No. 261 of 2013. The said Execution Petition is pending adjudication before the APTEL. Notably, the APTEL has not considered the issue of the termination of the PPA, and the impact thereof, in the aforementioned proceedings, as the said issue did not form a part of the original proceedings before it. The said Execution Petition was taken up for hearing, wherein, permission was granted to MSEDCL to withdraw its I.A. seeking stay of the said petition. MSEDCL has not approached any other forum seeking the reliefs sought hereunder.

y) MSEDCL has, therefore, been constrained to approach this Commission seeking appropriate declaratory and substantive reliefs, to the effect that the invoices raised by the Respondent RGPPL are void, illegal and non-est, at least in so far as they relate to the period post the termination of the PPA, i.e., 1.4.2014, and consequent quashing thereof. MSEDCL, by way of the present Petition, also seeks directions against the RGPPL restraining any further invoices, and/or uploading the same on the PRAAPTI portal. The grant of such declaratory and substantive reliefs is necessary to ensure that RGPPL is not able to abuse the process and seek unlawful recovery of unjustified sums from the Petitioner, including by threatening coercive action under the LPS Rules.

Grounds for Relief

Re: PPA stands terminated, and such termination has attained finality

z) MSEDCL has no liability towards RGPPL from 1.4.2014, as the PPA stood terminated from the said date, and as such, any invoices raised by RGPPL or claims made for the period thereafter are without any contractual or legal backing and are hence bad in law. Moreover, RGPPL has not challenged the termination



of the PPA before any court or forum till date. Approximately ten years have elapsed since the termination of the PPA, and as such, the termination of the PPA has attained finality, and any potential belated challenge to such termination would not only be bad on merits, but is impermissible for being barred by the law of limitation.

aa) As per the settled law even if RGPPL was aggrieved by the termination of the PPA by MSEDCL and considered it to be bad in law, it would have had to challenge the same before a competent court/forum, alleging breach of terms of the PPA by the Petitioner, within the statutorily prescribed limitation period. Entry No. 55 of the Schedule to the Limitation Act 1963 clearly lays down that for any breach or claim under a contract, the period of limitation will be for three years and shall commence on the day of the commission of such breach. Without prejudice, even if the termination of the PPA is a breach giving rise to a cause of action, the said cause of action commenced from 8.5.2014, i.e., the date on which the termination letter was issued by MSEDCL. Since more than three years have elapsed since such date, the period of limitation has also ended, and hence any action against any purported or alleged breach is barred by law and beyond any judicial review.

Re. PPA was validly terminated by MSEDCL

bb) Without prejudice to the aforesaid submissions, even on merits, the PPA was validly terminated by MSEDCL. The term of the GSA/GSTA executed between RGPPL with RIL and Neco Ltd., expired on 31.3.2014, resulting in RGPPL being without any approved GSA/GSTA required for supplying power to MSEDCL under the PPA. RGPPL was unable to find any viable fuel source that could be approved under Article 5.9 of the PPA, thereby resulting in RGPPL's consistent and irremediable failure to achieve even the relaxed NAPAF norms permitted by this Commission.

cc) Such continued and irremediable failure by RGPPL dislodged the fundamental basis of the PPA, namely to receive a reliable and continuous supply of power in accordance with the terms of the PPA, causing it to stand frustrated. RGPPL itself had claimed in Petition No. 166/MP/2012 filed before this Commission that its inability to achieve and maintain NAPAF is caused on account of the occurrence of force majeure events, commencing from September 2011. As such, by virtue of RGPPL's own admission, the PPA was liable to be terminated by MSEDCL also under Article 10.8 of the PPA, which entitles the party not claiming force majeure, i.e., MSEDCL in the present case, to terminate such PPA upon expiry of 365 days from the occurrence of a force majeure event.

dd) The inclusion of Article 10.8 in the PPA leaves no doubt that the parties intended to have a long stop date for any disruption in performance of the PPA, after which the other party shall be permitted to terminate the PPA. Such an article is critical to ensure that MSEDCL is not stuck with a stalled/non-performing



generator which is unable to reliably supply power under the PPA for whatever reasons, and MSEDCL is able to tie-up sufficient firm capacity from other sources to cater to its consumers' demand on commercially competitive rates. As such, the PPA has been validly terminated by MSEDCL, and such termination has since attained finality.

ee) Pertinently, the termination of the PPA was in the public interest, as the continuation of the said PPA, as a significant quantum of MSEDCL's power procurement was blocked by an unreliable generator, which was unable to supply power to it, thereby significantly affecting MSEDCL's ability to maintain reliable supply to electricity to crores of its consumers across the state. MSEDCL cannot be saddled with any liability towards the capacity charges at least from 1.4.2014 onwards, particularly considering that there was no valid contract existing between the parties from 1.4.2014 onwards. As such, RGPPL also does not have any legal basis to unilaterally seek the scheduling of power from the Petitioner and claim payment of tariff, when the PPA itself stands terminated. The invoices raised on MSEDCL by RGPPL for the period after the termination of the PPA are void, bogus, misconceived, and have no legal basis.

Re: Scope of proceedings before this Commission in Petition No. 166/MP/2012, before the APTEL and the Hon'ble Supreme Court in the appeals arising out of the said proceedings

ff) Reliance placed by RGPPL on the orders passed by this Commission, APTEL and the Hon'ble Supreme Court in proceedings arising out of Petition No. 166/MP/2012 to claim payment of tariff/capacity charges, for the period post the termination of the PPA, is manifestly misplaced, and is in the nature of a self-serving afterthought, having failed to challenge the termination of the PPA, at an appropriate stage. By order dated 30.7.2013, this Commission decided on the principle based on which RGPPL can claim capacity charges during the subsistence of the PPA, at the relevant point in time, owing to the validity and prevalence of active GSA/GTA, which at that point in time was valid till 31.3.2014. This Commission held that RGPPL is entitled to declare availability and claim capacity charges based on R-LNG as per Article 4.3 of the PPA, de hors any lack of approval for a fuel source under Article 5.9 of the PPA, primarily since R-LNG is regarded as a 'primary' fuel under the PPA itself. Notably, this Commission did not compute the amount of capacity charges payable, nor did it opine on the period for which such charges may be claimed.

gg) The issue pertaining to the termination of the PPA did not form the subject matter of dispute before this Commission, as it was terminated by MSEDCL, subsequent to the culmination of proceedings before this Commission. Therefore, this Commission had no occasion to consider and take into account the aspect of termination of the PPA, and hence, the order passed by this Commission has to be necessarily construed in the said context. In its judgement dated 22.4.2015 in Appeal No. 261/2013, even the APTEL merely confirmed the



findings of this Commission and reiterated the principle based on which RGPPL can claim capacity charges, based on R-LNG as primary fuel. The scope of adjudication for the APTEL was limited to matters raised before this Commission by virtue of the settled principles of law, and hence cannot be read or interpreted qua an issue, i.e., of termination and post-termination claims, which was never formulated, argued, and adjudicated.

hh) Similarly, even the Hon'ble Supreme Court, by way of its judgement dated 9.11.2023, restricted its findings to the interpretation of the contractual provisions and did not opine on the quantum or period for which capacity charges are payable. It is evident there has not been any determination or finding with respect to the quantum of capacity charges payable or the period for which it is applicable and hence to infer or deduce such determination from the chain of actions taken by RGPPL, as narrated above, is completely erroneous and contrary to the settled legal principles. In such a scenario, it is impermissible for RGPPL to raise arbitrary, wrongful, and self-serving invoices and upload the same on the PRAAPTI portal, as if they have the force of law, and seek payment as well as coercive action against MSEDCL.

Re: Validity of RGPPL's claims for the period prior to the termination of the PPA

ii) RGPPL's purported claim of approximately Rs. 1400 crore for the period prior to termination of the PPA is also grossly inflated and illegal. RGPPL had itself admittedly and indisputably agreed to keep its claims pertaining to 2013-14 and 2014-15 in abeyance in accordance with the PMO MoM, in lieu of which it benefitted from various concessions and waivers from the GoM. After deriving the aforesaid benefits, based on the understanding, as set out in the PMO MoM, RGPPL ought not to be permitted to resile from its promise, and claim the recovery of amounts due for 2013-14, including any LPS. In any event, there is no basis for RGPPL to claim any LPS for the past period, after having agreed to keep the said claims in abeyance. The entire purpose of keeping the claims in abeyance will stand negated if RGPPL is permitted to claim LPS for the said period.

jj) After taking into account the benefit derived by RGPPL in the form of tax waivers and other concessions accorded by GoM to the tune of about Rs. 1482 crores and the aforementioned payment of Rs. 500 crores by the Petitioner, there is no amount outstanding to be paid to RGPPL for the period prior to termination. In any event, without prejudice to the fact that RGPPL has enjoyed the benefit of Rs. 1482 crore and MSEDCL was compelled to make further payment of Rs.500 crore, the payment of any claim prior to termination has to be made only after reconciliation thereof, between the parties and subject to production of appropriate documentary evidence. RGPPL's attempts to enforce such wrongful claims by misusing the mechanism provided under the LPS Rules are patently illegal and self-serving, and ought to be disallowed by this Commission, in the



interest of justice. Moreover, MSEDCL has not purchased any power from RGPPL after the termination of the PPA. Payment of such an undue amount to RGPPL will not only result in unjust and undue commercial gain to RGPPL, but also be tantamount to unjust enrichment by RGPPL at the cost of consumers of MSEDCL.

Re. Regulation of Petitioner's GNA and open access

kk) The manner in which RGPPL sought to invoke the provisions of the LPS Rules to illegally and wrongfully coerce MSEDCL into making payments, which are not legally payable and due to RGPPL, cannot be considered to be an intended objective of the LPS Rules, as the salutary objective of the LPS Rules is to ensure recovery of genuine dues of generators. The wrongful recovery of baseless and bogus invoices cannot be construed to be an objective of the LPS Rules, particularly when the PPA itself has been terminated and the same heaving attained finality. Therefore, it is prayed that this Commission ought not allow RGPPL to abuse the framework under the LPS Rules for seeking recovery of impermissible, inapplicable, and non-est invoices by merely uploading such invoices on the PRAAPTI portal with a threat of causing regulation of Petitioner's GNA and open access.

ll) Further, as aforesaid, RGPPL is not entitled to seek any remedy or relief under the LPS Rules, as the provisions of the said rules are inapplicable to the present case, by virtue of there being no valid power purchase agreement between the parties. Further, RGPPL cannot seek any remedy under the LPS Rules in respect of the period prior to the date of notification of the LPS Rules, as the LPS Rules cannot be applied retrospectively. Such unlawful and unjustified regulation of open access and GNA of MSEDCL on account of RGPPL's patently self-serving and illegal quest for unjust enrichment is also violative of Article 21 of the Constitution as it effectively and directly affects the rights of crores of consumers of MSEDCL in the state, to have reliable and adequate supply of power.

Interlocutory Application No. 67/2024

15. The IA, along with the Petitioner, was heard on 23.8.2024, and the Commission, vide its order dated 30.9.2024, disposed of the IA, holding as under:

"26. Considering the fact that neither the test of balance of inconvenience nor that of irreparable injury has been satisfied, MSEDCL is not entitled to the grant of interim reliefs as sought by them in the IA. IA stands disposed of in terms of the above. This is however, subject to the final decision of the Commission in the main petition.

27. It is evident from the submissions of RGPPL that a total amount recoverable from MSEDCL is in excess of Rs. 7000 crores, out of which an amount of Rs.1400 crores related to the period 2013-14. However, it is noticed that an amount of Rs 471 crores was only payable by MSEDCL in terms of the invoices uploaded in the PRRAPTI portal by RGPPL to avoid the curtailment of power. Since MSEDCL is found not entitled to the grant of interim reliefs, as aforesaid, we direct MSEDCL to make the payment of Rs.471 crore to RGPPL within 15 days from the date of this order. Upon such payment by



MSEDCL, RGPPL shall withdraw such restrictions from the PRAAPTI portal. The recovery of the balance amounts by RGPPL shall, however, await the final decision of this Commission in the main petition. Accordingly, we direct that no further coercive / precipitative action shall be taken by RGPPL with regard to the recovery of the balance amounts. Having said so, we direct RGPPL to ensure that the plant remains in operation.

28. We note that RGPPL has filed Execution Petition No.12/2023 before the APTEL seeking execution of the APTEL's judgment dated 22.4.2015 in Appeal No. 261/2013, and the same is pending consideration. Needless to say, the decision of the Commission, in this order, shall abide by the decision of APTEL in the said execution proceedings.

29. IA 67/2024 stands disposed of accordingly..."

Reply of the Respondent RGPPL

16. RGPPL vide its reply affidavit dated 8.11.2024, indicated the background of the case and has mainly submitted the following:

Conduct of MSEDCL

(a) The conduct of MSEDCL itself should disentitle it from any relief. After having raised the issue in its Civil Appeal which was dismissed vide judgement dated 9.11.2023 as well as in its Review Petition No. 1997/2023 which was also dismissed by order dated 19.3.2024, MSEDCL raised the aspect of a unilateral, illegal termination made by it vide its letter dated 8.5.2014 as a defence to the E P No. 12/2023. MSEDCL argued this in detail and waited for the conclusion of arguments, i.e., on 31.7.2024, to see the reaction of APTEL to such a contention.

(b) The regulation of the STOA of MSEDCL began on 17.6.2024. Since the trigger date was approaching, MSEDCL filed applications seeking a direction to RGPPL not to take any coercive steps with regard to the PRAAPTI portal. After several failed attempts to get any order during the hearing and after the final hearing before the APTEL on 30.7.2024, MSEDCL filed Writ Petition (Civil) No. (L) 24685/2024 before the Hon'ble High Court of Bombay, without even filing a formal petition before invoking the Writ jurisdiction of the Hon'ble Court. At the hearing before the Hon'ble High Court on 8.8.2024, MSEDCL realised that the bench of this Commission is available to invoke its adjudicatory remedies and sought protection till the I.A. could be listed. The Hon'ble High Court directed MSEDCL to file its petition by 14.8.2024 with a further direction to this Commission to hear the I.A. on 20.8.2024. On 20.08.2024, this Commission heard the I.A for stay (in I.A No. 67 of 2024), filed by MSEDCL and reserved it for orders and vide order dated 30.9.2024, this Commission passed an interim order.

(c) On 3.10.2024, MSEDCL filed an application (I.A No.1671/2024) in E.P No. 12/2023, for bringing on record the interim order dated 30.9.2024 as well as raising several fresh pleas. A copy of the application filed by MSEDCL is attached hereto and marked as Annexure OO. On 7.10.2024, the above I.A came up for



hearing before APTEL and after granting time to RGPPL to file reply, the APTEL vide order dated 7.10.2024, held that whatever be the other contentions of MSEDCL, they would be permitted to put forth submissions only on the consequences of the interim order dated 30.09.2024 and the IA No. 1671 of 2024 would be heard on this aspect only. On 8.10.2024, MSEDCL filed another application (I.A No. 726/2024), raising the same pleas which were rejected by APTEL vide daily order dated 7.10.2024. A subsequent application, raising the very issues sought to be raised before the Appellate Court and which go beyond the scope of the main petition and are, in fact, completely destructive to the main contention of MSEDCL regarding termination, is impermissible. [Ref: Sarva Shramik Sangh V. Indian Oil Corporation Limited and others (2009) 11 SCC 609].

(d) On 14.10.2024, MSEDCL filed another application (I.A No.746 of 2024) in seeking a stay of the invoices dated 5.10.2024, raised by RGPPL on the PRAAPTI portal, for being contrary to the order dated 30.9.2024. The aforesaid I.A suit filed by MSEDCL, which is an abuse of the process of law and a delay tactics. MSEDCL is well aware that RGPPL has not acted contrary to the order dated 30.9.2024. The raising of the invoices is a requirement as per PPA/ CERC, and uploading on PRAAPTI is the procedural requirement of PFC, as per which, every entity has to upload the bill within 5 days of the date of the invoice every month, after which they are not allowed to upload the same. However, RGPPL had put up a note as well as an email to PFC in regard to the interim order dated 30.9.2024, for not giving effect to these bills. In the above background, RGPPL is replying to the present petition as under:

Re: PPA stands terminated, and such termination has attained finality

(e) The contention of MSEDCL that the PPA stood terminated from the said date in terms of its communication dated 8.5.2014, and as such, any invoice raised by RGPPL or claims made for the further period thereafter are without any legal backing, are wrong, and denied. It is MSEDCL, that is re-agitating the issue of alleged termination of the PPA, without any legal or contractual backing. A perusal of the MSEDCL letter dated 8.5.2014, on which the declaration is sought, gives the reason for termination as the incorrect interpretation of Articles 4.3 and 5.9 of the PPA by RGPPL. However, since the Hon'ble Supreme Court in its judgment dated 9.11.2023, has conclusively held that RGPPL's interpretation is correct, there can be no question of accepting a termination by MSEDCL on the very same grounds. MSEDCL cannot be permitted to rely on a letter of termination, which is against the ratio decided by the Hon'ble Supreme Court.

(f) There is no provision in the PPA enabling either of the parties to terminate the PPA unilaterally. MSEDCL had raised this ground in its civil appeal before the Hon'ble Supreme Court (paras MM and NN), and the said civil appeal was dismissed, confirming the judgment of APTEL and the order of this Commission. MSEDCL sought to review the said judgment by filing a Review Petition, and one of the grounds taken is with regard to the issue of the alleged termination not



being decided. Vide order dated 19.3.2024, the Review Petition was dismissed by the Hon'ble Supreme Court. In these circumstances, to raise the issue of alleged termination once again in the present petition will amount to rearguing the grounds that it raised in the civil appeal and the review petition before the Hon'ble Supreme Court. The Hon'ble Court cannot be understood to have left the question of termination open, especially when the review petition was dismissed on merits, after perusal of the grounds taken.

(g) Even otherwise, the ground of termination is without merit for the following reasons (i) The PPA between the parties is valid for a period of 25 years from COD of the last generating unit, i.e, till 18.5.2034 (ii) There is no provision in the PPA for an early termination and both the parties are bound to perform the PPA till 18.5.2034 (iii) the purported termination attempted by MSEDCL vide letter dated 8.5.2014 was immediately repudiated by RGPPL vide letter dated 22.5.2014 (iv) The position of RGPPL with regard to the unilateral termination as sought by MSEDCL was conveyed in several letters including letters dated 22.5.2014, 3.6.2014, 13.4.2016, 21.6.2019, 10.5.2021, 24.11.2021 & 29.10.2022 (v) with effect from 1.4.2014, RGPPL has been faithfully declaring the availability as per Article 4.3 of the PPA and all the schedule and energy accounting is being maintained by WRLDC (vi) As per Section 28 of the Act as well as the PPA, WRLDC has to accept the declaration of availability by RGPPL. It prepares the Regional Energy Accounts, which reflect the availability declared by all generating stations in the Western Region, including RGPPL.

(h) MSEDCL's contention that RGPPL should have challenged the unilateral termination is preposterous. RGPPL had promptly repudiated the termination and continued to do so through several of its communications over the years. RGPPL has a decree in its favour from all the courts requiring MSEDCL to make payment of the capacity charges and also approving its interpretation of the PPA. The bills raised are strictly in terms of this interpretation, which has also been affirmed by the Hon'ble Supreme Court and the tariff orders issued by this Commission.

(i) MSEDCL is seeking to avoid the payment of capacity charges, relying on its act of termination. If so, it was for MSEDCL at the relevant time to seek such a declaration by filing appropriate proceedings before this Commission in accordance with law. It is MSEDCL that cannot sleep over its rights and having attempted successfully over the last several years to force RGPPL to challenge the unilateral termination, now seeks to belatedly challenge and seek a declaration that its termination was correct.

(j) The PPA is valid and subsisting and is being performed by RGPPL till date. MSEDCL, on the other hand is seeking to take advantage of its own wrong, one by engaging in a unilateral termination, two, by claiming that it is for RGPPL to go and challenge such termination, even if indirectly done, and three, by



reiterating this issue after having been denied the relief prayed under the very same grounds before the Hon'ble Supreme Court.

(k) The cause of action, if any, arose on 22.5.2014 when RGPPL repudiated the unilateral termination of the PPA by MSEDCL. Therefore, a petition seeking a declaration that the termination was correct could have been filed by MSEDCL latest by 21.4.2017. Both, the Hon'ble Supreme Court and the APTEL, have now settled that the principles of limitation would apply in case a party seeking adjudication of their rights under Section 79 of the Act, before this Commission (Reliance placed on the judgments of the Hon'ble Supreme court in AP Power Co-ordination Committee & ors v M/s Lanco Kondapalli Power Ltd (2016) 3 SCC 468 and N. Balakrishnan v M. Krishnamurthy (1998) 7 SCC 123. The petition is therefore barred by limitation.

(l) The Petition is also barred by the principles of Explanation V to Section 11 of the CPC 1908. Apart from this, MSEDCL did not even bring up this aspect of termination as an alternative argument in its appeal, which was then pending before the APTEL. However, MSEDCL, after losing the appeal, did bring this aspect squarely in its contention when it filed the Civil Appeal (1922/2023) before the Hon'ble Supreme Court. The Civil Appeal was dismissed on 9.11.2023 and the Review Petition filed by MSEDCL on the specific ground that the issue of termination had not been dealt with by the Hon'ble Supreme Court, which amounts to an error apparent on the face of the record, was once again rejected by the Hon'ble Supreme Court vide order dated 19.3.2024. In these circumstances, for MSEDCL to once again raise the issue of termination, ignoring the above two judgments of the Hon'ble Supreme Court is unjust and unfair.

Re: PPA was validly terminated by MSEDCL

(m) The contention of MSEDCL that even on merits, the PPA was validly terminated by MSEDCL, as RGPPL was unable to find any viable fuel source which dislodged the fundamental basis of the PPA (to receive reliable and continuous power supply) and hence the PPA stood frustrated, is wrong and denied. MSEDCL is once again trying to re-agitate the issue, which stood settled by the Commission, the APTEL, and the Hon'ble Supreme Court. A perusal of the MSEDCL letter dated 8.5.2014, on which a declaration is being sought, gives the only reason for termination as the incorrect interpretation of Articles 4.3 and 5.9 of the PPA by RGPPL. However, since the Hon'ble Supreme Court vide its judgment dated 9.11.2023 conclusively held that RGPPL's interpretation of the said Articles of the PPA is correct, there can be no question of accepting a termination by MSEDCL on the very same grounds. When the interpretation of RGPPL has been settled in favour of RGPPL, MSEDCL cannot be permitted to rely on a letter of purported termination, which is against the ratio decided by the Hon'ble Supreme Court. In fact, the APTEL and the Hon'ble Supreme Court have



concurrently given the finding that for the payment of fixed/capacity charges, it is the declared capacity that is relevant. For the purpose of declared capacity, no further agreement or approval of MSEDCL for the use of RLNG is required. The claim of RGPPL is only towards the fixed/capacity charges and not for any claim arising out of either energy charges or under the Gas supply or gas transportation agreement entered into with the gas suppliers/transporters.

(n) The contention of MSEDCL that RGPPL in its Petition No. 166/MP/2012 itself claimed its inability to achieve NAPAF, caused due to the occurrence of force majeure events, and therefore, the PPA was liable to be terminated under Article 10.8 of the PPA, is wrong and denied. RGPPL sought relaxation of NAPAF on account of force majeure for want of domestic gas and the need to use RLNG fuel. This Commission rejected the said prayer of RGPPL and held that any declaration of capacity by RGPPL based on RLNG as primary fuel qualifies for the computation of availability of the generating station for the recovery of the fixed charges.

(o) Article 10.8 of the PPA dated 10.4.2007 provides that in the event that the delay or failure of performance caused by a force majeure event continues for an uninterrupted period of three hundred and sixty-five days from its occurrence or inception, the party not claiming such force majeure event may, at any time following the end of such 365-day period, terminate the agreement upon written notice to the affected party. In the present case, there is no breach by RGPPL of the PPA, which would give the right to termination in favour of MSEDCL. As per the REA issued by WRPC for the month of July, 2016, out of the MSEDCL's entitlement of 17889283 units of electricity from RGPL, 531860 units were scheduled by MSEDCL. It is clear that RGPPL was running its plant and was ready to provide reliable power to MSEDCL throughout the different periods, but MSEDCL has chosen not to schedule any power for reasons known only to itself. MSEDCL cannot, therefore, state that the PPA was frustrated on account of the inability of RGPPL to supply reliable power to MSEDCL. MSEDCL is seeking to rely on an averment of RGPPL, which has been rejected by this Commission, to contend that it was a force majeure event, enabling MSEDCL to terminate the PPA. Also, MSEDCL never invoked the force majeure under Article 10.8 at any time, and rather scheduled power from RGPPL in the month of July 2016.

(p) MSEDCL has never, in any of its communications to RGPPL or in any pleadings before any of the forums, claimed that the termination was valid on account of the force majeure claimed by RGPPL. Having not complied with the notice conditions provided for in the PPA in order to claim such a termination within the said time period, the same cannot be exercised. Also, the contention of MSEDCL that termination was in public interest, since its power procurement was blocked by an unreliable generator, which was unable to supply power, is denied. PPA is a contract between the parties, and no element of public interest can be relied upon for terminating a valid contract by one party, without there



being any breach on the part of the other party. All through the years with effect from 1.4.2014, RGPPL has been faithfully declaring the availability as per Article 4.3 of the PPA, and scheduling and energy accounting is being maintained by WRLDC. The contention of MSEDCL with regard to public/consumer interest was reacted by this Commission vide order dated 30.7.2013 and noted by APTEL in its judgment dated 22.4.2015 in Appeal No.261/2013.

(q) The contentions of MSEDCL that it cannot be saddled with any liability from 1.4.2014, since there was no valid contract, and that RGPPL had raised bogus invoices without any basis, are wrong and denied. As shown with considerable proof that the PA stands valid, MSEDCL is clearly liable to pay capacity charges for the complete period when RGPPL declared power availability based on RLNG. Except for the year 2013-14 and for the month of July, 2016 (during which power was scheduled by MSEDCL), no energy charges have been billed by MSEDCL for the period the power was not scheduled by them. The bills are pertaining to fixed charges, as per the judgment of the Hon'ble Supreme Court, APTEL, and this Commission, and MSEDCL is liable to pay the same to RGPPL.

Re: Scope of the proceedings before the Commission, APTEL and the Hon'ble Supreme Court

(r) The contention of MSEDCL that the scope of proceedings before the Commission, APTEL and the Hon'ble Supreme Court was on the issues on interpretation of the PPA only and did not involve the question of validity of termination, would amount to hair splitting of the issues, which have attained finality inter-parties, till the Hon'ble Supreme Court.

(s) A specific prayer claiming a direction to MSEDCL to pay the fixed charges was made in Petition No.166/MP/2012 filed by RGPPL and the Commission in paras 25 and 26, clearly holding that MSEDCL cannot disown its liability to pay the fixed charges, when RGPPL declares capacity, based on RLNG as a primary fuel in para 25. In para 26, the Commission directed that the fixed charges recovery be made by RGPL, based on availability, after accounting for the declaration of capacity by RLNG. During the pendency of Appeal No.261/2013 filed by MSEDCL, it issued a communication of purported termination on 8.5.2014, which was repudiated by RGPPL on 22.5.2014.

(t) APTEL vide judgment dated 22.4.2015 held that MSEDCL is required to pay the capacity charges to RGPPL and that it is under an obligation to pay the capacity charges to RGPPL, even if it does not give consent to the GSA/GTA, for procuring the RLNG. The above are not mere declarations or principles as being contended by MSEDCL now, but on the fixation of liability on MSEDCL to pay the capacity charges to RGPPL so long as RGPPL declares availability based on RLNG. The judgments of the courts are not paper decrees, but are meant to decide the liabilities of the litigating parties before them . For MSEDCL



to once again raise the issue of termination, ignoring the above judgments of the Hon'ble Supreme Court is unfair and unjust.

(u) The contention of MSEDCL with regard to there being no finding in the order, upon the quantum of capacity charge payable, is misconceived. This issue has already been argued by both parties in E.P No. 12/2023 and cannot be re-agitated by MSEDCL in the present petition.

Re: Validity of RGPPL's claim for the period prior to the termination of the PPA

(v) The contention of MSEDCL that RGPPL's claim for Rs 1400 crore (approx.) for the period prior to the termination is grossly inflated and illegal. Also, the contention that RGPPL had agreed to keep its claim for 2013-14 and 2014-15 in abeyance in accordance with the PMO minutes of the meeting, and hence RGPPL ought not to be permitted to resile from its promise and claim the recovery of the amounts due for 2013-14 is denied. The meeting held by the MOP, GOI on 17.8.2015 was only to discuss the sale of a certain amount of electricity from the RGPPL substation to Indian Railways. One of the proposals was to keep the issue of recovery of the outstanding amounts from MSEDCL to RGPL in abeyance. However, there is no finding in favour of MSEDCL with regard to the purported termination. MSEDCL is referring to the minutes selectively, whereas there were further meetings and discussions under the aegis of the MOP on 15.3.2024 and 23.3.2024, wherein the factual status has been captured in detail. There is also no basis for MSEDCL to claim that the LPS should not run on the amount of Rs 1400 crores, since the same was kept in abeyance.

(w) The contention of MSEDCL that after taking into account the benefit derived by RGPPL in the form of tax waivers and other concessions accorded by the Govt of Maharashtra to the tune of Rs 1482 crores and payment of Rs 500 crores by MSEDCL, there is no amount pending to be paid to RGPPL for the period prior to termination, is misleading. The concessions or exemptions granted by the Government of Maharashtra claimed as Rs 1482 crore, are imaginary and fictional. These have nothing to do with the present petition. MSEDCL cannot claim that waivers for the said amounts were granted by the Government of Maharashtra, without producing any document to show the veracity of the same and as to how it relates to the capacity charges payable to RGPPL. No arrangements were made with the Government of Maharashtra with RGPPL towards receiving waivers or concessions, in lieu of the capacity charge payments to be made by MSEDCL.

(x) It is incorrect on the part of MSEDCL to claim that RGPPL is not entitled to any fixed charges prior to the alleged termination of the PPA. There can be no bifurcation of the claims as alleged by MSEDCL towards pre and post, purported



termination. Apart from all, these arguments have been specifically taken as a defense in the execution petition which has been reserved for orders by APTEL. MSEDCL is re-raising the grounds for the purpose of creating confusion and misleading this Commission even on facts.

(y) The contention of MSEDCL that it had not purchased any power from RGPPL, after the termination of the PPA, and therefore, any payment claimed would only amount to unjust enrichment and undue commercial gain is wrong and denied. The purchase of power is completely irrelevant when the claim by RGPPL is mainly for the capacity charges for declaration of availability from its plant. Each invoice raised by RGPPL is mainly towards the capacity charges as per the various tariff orders of this Commission from time to time, reconciled with the NAPAF declared by WRPC on daily basis. RGPPL has not raised any invoice on energy charges, where MSEDCL did not consume electricity, except for 2013-14 and July 2016, wherein, energy was scheduled by MSEDCL. The invoices raised mainly have been toward capacity charges and LPS. MSEDCL having not purchased power after the alleged termination is not factually correct and not a relevant fact for the determination of MSEDCL's liability to pay the capacity charges to RGPPL.

Re: Regulation of MSEDCL GNA and Open Access

(a) MSEDCL's contention that RGPPL has sought to invoke the provisions of the LPS Rules in an illegal and wrongful manner to coerce MSEDCL to make payments to it is factually misleading. From the time APTEL dismissed the MSEDCL appeal, RGPPL has been endeavoring to settle the matter by negotiations and discussions with MSEDCL. When this failed, RGPPL filed an Execution Petition (18/2022) before APTEL on 13.1.2023, and to stall the said petition, MSEDCL filed Civil Appeal (1922/2023) before the Hon'ble Supreme Court and obtained a stay for a period of 9 months vide order dated 6.2.2023. Even after dismissal of the Civil Appeal on 9.11.2023 and the Review Petition vide order dated 19.3.2024, MSEDCL did not honour its commitment towards the payment of fixed charges.

(b) The execution petition before APTEL was also delayed by both MSEDCL and the Government of Maharashtra by first seeking a postponement due to the pendency of the Review Petition and then attempting to get the Government of Maharashtra impleaded as a necessary party to the said EP. After the Hon'ble Supreme Court's judgment, RGPPL first uploaded the bill on 23.11.2023, and subsequently, bills have been consistently uploaded by RGPPL in the PRAAPTI portal. With respect to the invoice uploaded for outstanding dues, including monthly capacity charges and LPS from July 2013 onwards to January 2024, MSEDCL temporarily closed the same by paying Rs 500 crores in the interim.

(c) LPS Rules have been framed by the MOP, GOI, under Section 176 of the Electricity Act and apply not just to RGPPL, but to all entities involved in the



electricity sector. MSEDCL has no difficulty in paying over Rs 22000 crores to private generators, as a change in law claims, but is frustrating every possible attempt at a resolution of the pending bills of RGPPL before every forum. It is MSEDCL that is acting in an illegal manner, and a cost should be imposed on it for such conduct and hiding behind the curtain of public interest.

Hearing dated 9.12.2024

17. During the hearing, learned Senior counsel for MSEDCL pointed out that while IA No. 99/2024 has been filed seeking to amend the petition, IA No. 100/2024 has been filed seeking interim reliefs. He, however, submitted that since the reply has been filed by the Respondent RGPPL, MSEDCL may be granted two weeks' time to file its rejoinder to the same. The learned Senior counsel for the Respondent RGPPL did not oppose the said request of MSEDCL, but pointed out that the reliefs sought in the IAs were not maintainable, being consequential in nature, which may arise only after a decision in the main petition. He accordingly prayed that the Commission may dispose of the main petition after hearing the parties. The Commission, after hearing the learned Senior Counsels for both parties, permitted MSEDCL to file its rejoinder. In response, MSEDCL filed its rejoinder vide affidavit dated 3.1.2025.

Rejoinder of the Petitioner MSEDCL

18. MSEDCL, in its rejoinder, has mainly submitted the following:

Orders of the Hon'ble Supreme Court in Civil Appeal and the Review Petition do not operate as constructive res judicata

(a) As per the law settled by the Hon'ble Supreme Court in catena of judgments, the scope of the appellate and review proceedings before the APTEL and the Hon'ble Supreme Court, was limited to the issues involved in the original proceedings and MSEDCL herein, being the Respondent in the original proceedings (166/MP/2012) could not have enlarged the scope of such appellate proceedings in any event. On a bare perusal of the prayer in the original proceedings as well as the order passed by the Commission, the issues involved pertained to purely matters of interpretation of the then existing PPA, in particular, the interplay between Articles 4.3 and 5.9 of the PPA.

(b) Even the relief granted by the Commission was declaratory in nature, wherein this Commission merely laid down its interpretation of certain terms of



the then existing PPA. As the termination of the PPA occurred subsequent to the filing of the appeal before APTEL, the factum of termination of the PPA by MSEDCL was not indicated thereunder. Since the issue of termination did not form part of the original proceedings and constituted a separate cause of action to be agitated by RGPPL, the issue of termination was beyond the scope of the APTEL appeal. Even the APTEL's judgment was purely declaratory in nature, wherein it merely confined the Commission's interpretation of certain terms of the then existing PPA regarding the payment of the capacity charges, without quantifying the amounts to be paid or the period for which the amounts are payable.

(c) As per the settled law, the scope of civil appeal was limited to the issues raised in the original proceedings and the grounds taken before APTEL, the said position becomes clear by a bare perusal of the questions of law and the prayer set out in the civil appeal. No adjudication was sought, expressly or impliedly, of the validity of the termination of the PPA by MSEDCL. Given that the civil appeal was filed subsequent to the termination of the PPA, MSEDCL, in the interest of justice, merely disclosed the factum of termination of the PPA in the civil appeal raising the grounds MM and NN, and no prayer, qua the termination of the PPA was made by MSEDCL. Even the Hon'ble Supreme Court merely decided on the principle of interpretation of the then existing PPA and did not opine or render any finding on the issue of termination of the PPA, as such adjudication was beyond the scope of the proceedings.

(d) The contention of RGPPL that a mere mentioning of the factum of termination before the Hon'ble Supreme Court amounts to a constructive *res judicata*, by virtue of Explanation V to section 11 of the CPC, is erroneous and has no application, as the said explanation applies only in respect of the relief claimed, and not in respect of any facts urged or the grounds taken. MSEDCL never sought any relief whatsoever in relation to the termination of the PPA. Further, the reference to the factum of termination and grounds raised on that basis in the Review Petition (1997/2023) filed by MSEDCL does not constitute constructive *res judicata* and the provisions of Explanation V are not attracted, even qua the pleadings in the review petition. Moreover, the orders of the Hon'ble Supreme Court in the review petition were passed in chambers by circulation, without expressing any opinion on the merits of the issues raised thereunder. The said order amounted to a summary dismissal of the Review Petition, which does not amount to a *res judicata* by virtue of the law settled by the Hon'ble Supreme Court (relied on the judgment of the Hon'ble Supreme Court in *Yogendra Narayan Chowdhury v Union of India* (1996)7 SCC 1.

Re: The captioned Petition is not barred by limitation

(e) It is denied that the present petition is barred by limitation, as MSEDCL had not challenged the so-called repudiation of the termination letter dated 22.4.2014 of RGPPL.



The termination of the PPA attained finality as RGPPL failed to challenge the same before a competent court within the prescribed limitation period. The issuance of 'repudiation' letters by RGPPL has no basis in law, unless the termination of the PPA was sought to be set aside by a competent court by RGPPL, which it has indisputably failed to do so. In any event, MSEDCL has not sought any declaration on the validity of the termination of the PPA in this petition. It is a settled factual and legal position that the PPA stands terminated with effect from 1.4.2014, and the said position has attained finality. MSEDCL has sought the quashing of the illegal invoices issued by RGPPL. The case law cited by the RGPPL supports the case of MSEDCL that any belated objection or challenge to the termination of the PPA by RGPPL is barred by limitation.

Re: Enforcement of the PPA based on LPS Rules, without the declaratory relief that the termination is bad in law, is not tenable.

(f) RGPPL has sought to enforce the provisions of the PPA and seek specific performance thereof, even after it has been terminated by MSEDCL, by blatantly misusing the provisions of the LPS Rules, 2022. RGPPL has, in no manner, challenged the termination of the PPA before any competent court till date, and the termination has, therefore, attained finality. As per the settled law, specific performance of a terminated agreement cannot be sought without seeking any declaratory relief against such termination (reliance placed on the Hon'ble Supreme Court's judgment in I.S.Sikandar v K.Subramani & ors (2013) 15 SCC 27. The judgment also clarifies that the onus of obtaining such declaratory relief rests on the party that is aggrieved by the termination (and not on the party terminating the contract). In fact, the limitation began to run qua RGPPL upon issuance of MSEDCL's termination letter, as it was RGPPL that was said to be purportedly aggrieved by the termination. RGPPL, having not opted to challenge the said termination, despite expressing its objections thereto, has rendered the termination final, and any potential challenge thereto is barred by limitation.

Re: Termination of PPA valid even on merits

(g) Without prejudice to the above submission that the termination of the PPA has attained finality and its validity cannot be challenged at this stage, PPA has been validly terminated and the orders of this Commission, the judgments of the APTEL and the Hon'ble Supreme Court, have no bearing on the issue of termination of the PPA, being a completely separate cause of action. Accordingly, the following is submitted:

The existence of a termination clause is not essential for terminating a contract

(i) The contention that termination of PPA is not valid since there is no clause in the PPA that allows termination thereof is misconceived. The absence of a termination clause does not render a commercial contract non-determinable (Relied upon the judgment of the Hon'ble Delhi High Court in Rajasthan Breweries Ltd v The Stroh Brewery Ltd (2000 (55) DRJ(DB).

(ii) If such interpretation of RGPPL is to be accepted, it would amount to an



anomalous and patently unjust situation, where an aggrieved party is barred from terminating the agreement, even if there is a fundamental breach of the terms thereof by the other party.

Termination of the PPA is not vitiated by the orders passed in the original proceedings and is also justified by continuous force majeure conditions.

(iii) The contention of RGPPL that the termination is bad in law as MSEDCL has terminated the PPA on the same issues as decided in the orders passed in the original proceedings is misconceived and without basis for multiple reasons. Firstly, the termination of the PPA is a separate, subsequent event and hence a different cause of action, which was not within the scope of the original proceedings. As such, any orders passed in the original proceedings have no bearing whatsoever on the issue of termination of the PPA. The basis of termination of the PPA is entirely different from the issues raised in the original proceedings. As is evident from the termination letter, the PPA was terminated inter alia on account of the fact that RGPPL has failed to secure a viable long-term gas supply agreement, the existence of which is fundamental to the performance of its obligations under the PPA.

(iv) RGPPL's inability to supply power under the PPA due to the unavailability of gas is clearly evidenced by its consistent failure to meet the NAPAF norms over the entire period of the PPA. As such, MSEDCL was entitled to terminate the PPA as RGPPL was on constant breach of its supply obligations under the PPA, and the said breach was further exacerbated and rendered irremediable due to its failure to secure a viable and long-term gas supply agreement with effect from 1.4.2014. MSEDCL could not be reasonably expected to continue with a long-term PPA of such a large contracted capacity with no visibility of the reliability of supply.

(v) The issue involved in the original proceedings was purely and strictly limited to RGPPL's ability to declare capacity and claim fixed charges under Article 4.3. As such, given that the termination did not concern the said issue, the orders passed in the original proceedings have no application to the issue of termination of the PPA. In addition, the termination of the PPA was also justified in accordance with Article 10.8 of the PPA, which entitled one party to terminate the PPA if force majeure conditions persisted beyond 365 days. Even if it is assumed that lack of a long-term gas supply agreement and RGPPL's consistent and irremediable failure to meet the NAPAF norms were beyond its control and caused due to force majeure conditions (as admitted by RGPPL itself), the said situation, having continued much beyond a period of 365 days (and continuing till date) entitles MSEDCL to validly terminate the PPA.

(vi) The Commission rejected RGPPL's claim of force majeure in its order dated 30.7.2013 and had not rendered any finding on the issue of force majeure, as the issue had become academic in the context of the reliefs sought in the said



proceedings. As such, no reliance can be placed on the said order to contend that this Commission rejected the issue of force majeure due to the unavailability of fuel.

Termination of PPA was in the public interest

(vii) It is denied that the termination of the PPA was not in public interest and that public interest is not a relevant consideration for termination of the PPA as contended by RGPPL. Any findings of this Commission or APTEL were purely in the context of MSEDCL's liability to pay the fixed charges to RGPPL, and no finding whatsoever has been rendered on whether the termination of the PPA was in public interest, as the issue was not agitated before the said fora. As such, the termination of the PPA was in the public interest, as MSEDCL, as the responsible utility, was expected to act in a prudent manner and procure its power from reliable sources.

MSEDCL had not scheduled any power from the RGPPLs project post-termination of the PPA.

(viii) It is denied that MSEDCL has scheduled any power from RGPPL's project post the termination of the PPA, including in the month of July 2016, as contended by RGPPL. WRPC has incorrectly recorded in the provisional REA for the month of July, 2016, that MSEDCL had scheduled energy from RGPPLs' project on 15.7.2016. The said error was pointed out to WRLDC, and after recognizing the discrepancy, the error was rectified, and the MSEDCL's schedule from RGPPL's project was revised to Zero MW for 15.7.2016. (A copy of the e-mails issued by ERLDC along with the revised schedule on 15.7.2016 is annexed.) Thus, no power was scheduled from RGPPL's project post the termination of the PPA.

MSEDCL is not liable to pay any fixed charges for the period prior to the termination of the PPA.

(ix) The termination of the PPA was a critical event having significant legal and contractual implications, including the direct implication of MSEDCL having no liability to RGPPL under the PPA, post-termination. It is denied that MSEDCL remains liable to pay Rs 1400 crore or any other sum claimed by RGPPL, for the period prior to the termination of the PPA (2013-14). Any such liability of MSEDCL for such period stands discharged by virtue of various concessions granted to RGPPL by MSEDCL and the Govt. of Maharashtra, in furtherance of the MoM held at the PM office on 17.8.2015 and the various payments to the tune of Rs 972 crore, which MSEDCL was constrained to make to avoid regulation of open access under the LPS Rules and in compliance of the Commission's order dated 30.9.2024. The said concessions were not provided to RGPPL gratuitously.

(x) In fact, MSEDCL stands to recover a significant sum from RGPPL, being the overpayment made to it, subject to the outcome of the present proceedings.



RGPPL's reliance on certain other MoM held on 15.3.2024 and 4.4.2024 is misplaced as the said minutes did not correctly record the discussion held during the said meetings, and MSEDCL has already addressed appropriate communication to MOP, GOI, seeking correction of the said minutes. This has also been communicated to RGPPL vide letter dated 25.4.2024, and as such, any reliance on the said minutes by RGPPL to substantiate its claims is misconceived and without any basis.

(xi) It is denied that any LPS is payable on any amount claimed by RGPPL for the pre-termination period, as it was categorically decided that the GoM had agreed to support RGPPL in the revival of its project to supply power to Indian Railways on the clear understanding that the past claims of RGPPL shall be kept in abeyance. From the documents on record, it is clear that both parties acted based on this understanding. The clause to keep the claims in abeyance in the PMO MoM will be rendered otiose and meaningless if RGPPL is permitted to claim any LPS on such illegal claims.

Hearing dated 16.1.2025

19. After hearing the learned Senior counsel for MSEDCL and the Respondent, RGPPL at length, the Commission reserved its order in the petition. At the request of the learned Senior Counsels, the Commission permitted the parties to file their respective notes of argument. In terms of this, MSEDCL filed its note of arguments dated 15.1.2025, and RGPPL filed its written submissions dated 14.2.2025.

Note of arguments of MSEDCL

20. MSEDCL, in its note of arguments dated 15.1.2025, mainly reiterated the submissions made in the petition and in its rejoinder above, and the same is not mentioned herein, for the sake of brevity. However, in addition, MSEDCL has submitted the following:

- (a) As per the settled law, the principles of res-judicata have no application in respect of the issues arising out of a subsequent cause of action. The termination of the PPA was a subsequent event, which occurred after this Commission passed an order in the original proceedings, and as such, indisputably constituted a separate cause of action. Reliance placed on the judgments of the Hon'ble Supreme Court in (i) Shamanur Sugars Ltd v Bescom (2014 SCC Online APTEL 6), N. Suresh Nathan & ors v UOI & ors (2010) 5 SCC 962, Mudunuri Subbaraju V State of AP (1988 SCC Online AP 23), and Thakuruddin Ramjash v S.N Mukherjee (1981 SCC Online Cal 200).



- (b) It is also MSEDCL's case that the said invoices are also illegal and bad in law as RGPPL failed to comply with the provisions of the terminated PPAS, which it seeks to illegally enforce. Any invoices raised under the terminated PPA ought to have been in line with Article 2.2.3, which categorically states that in case of default in payment of bills beyond 90 days from the presentation of bills, RGPPL may re-allocate power to other parties under the aegis of the Govt of India at the risk and cost of MSEDCL. However, the said clause also states that MSEDCL shall also be liable to pay the capacity charges to RGPPL only till the time power is re-allocated to the third party. Article 2.2.3 further provides that the surplus over the energy charges recovered from the sale of such power to other parties shall be adjusted against the capacity charge liability of MSEDCL.
- (c) RGPPL re-allocated power to the Indian Railways in 2015, thus triggering the applicability of Article 2.2.3 of the PPA. RGPPL has, thereafter, also been selling power on the trading exchange, which must also be accounted for in terms of Article 2.2.3. RGPPL failed to make any such adjustments in its illegal invoices raised on MSEDCL, as was required to be done even as per the terminated PPA. In addition, RGPPL failed to give effect to the Commission's order dated 8.3.2021 in Petition No. 434/GT/2020 (truing up of tariff for the period 2014-19) and also the order dated 25.10.2021 in Petition No.410/GT/2020 (tariff for the period 2019-24). RGPPL has not disputed the above contentions and has merely stated that the aforesaid issues are a subject matter of reconciliation.

APTEL judgment in Execution Petition No.12/2023

21. While so, APTEL vide its judgment dated 17.1.2025 allowed the Execution Petition No. 12/2023 (filed by RGPPL seeking execution of the APTEL judgment dated 22.4.2015 in Appeal No. 261/2013) holding as under:

XII. Conclusion

The Execution Petition is allowed to the extent indicated hereinabove and MSEDCL shall pay RGPPL capacity charges of Rs.31,27,48,66,735/-, (Rupees Three Thousand One Hundred and Twenty-Seven Crores Forty-Eight Lakhs Sixty-Six Thousand Seven Hundred and Thirty-Five only) less the amount realized of Rs.6,50,28,02,079/- (Rupees Six Hundred and Fifty Crores Twenty-Eight Lakhs Two Thousand and Seventy-Nine only). Consequently, MSEDCL shall pay RGPPL Rs. 2477,20,64,656/- (Rupees Two Thousand Four Hundred and Seventy-Seven Crores Twenty Lakhs Sixty-Four Thousand Six Hundred and Fifty-Six only), (capacity charges of Rs. 31,27,48,66,735/- minus realization of Rs.6,50,28.02,079/-), within four months from the date of receipt of a copy of this order.

In case MSEDCL has paid Rs.471 Crores as directed by the CERC in its order in IA No. 67 of 2024 in Petition No. 276/MP/2024 dated 30.09.2024, and if the said amount was payable towards capacity charges for the period covered by the present EP, MSEDCL may deduct Rs. 471 Crores from Rs. 2477,20,64,656/-, and pay RGPPL Rs. 2006,20,94,656/- (Rupees Two Thousand and Six Crores Twenty Lakhs Ninety-Four



Thousand Six Hundred and Fifty-Six only) within four months from the date of receipt of a copy of this order.

It is made clear that, in case payment of Rs. 2477,20,64,656/- (Rupees Two Thousand Four Hundred and Seventy Seven Crores Twenty Lakhs Sixty Four Thousand Six Hundred and Fifty Six only), or Rs.2006,20,94,656/- (Rupees Two Thousand and Six Crores Twenty Lakhs Ninety Four Thousand Six Hundred and Fifty Six only), as the case may be, is not made within four months from the date of receipt of a copy of this order, Bank Account No. 0239256010710 of MSEDCL with Mumbai Industrial Finance Branch of Canara Bank and A/c No. 016020110000033 of MSEDCL at Mumbai Large Corporate Branch of the Bank of India shall stand attached, and the afore-said amounts shall be realized from the said bank accounts.

The Execution Petition is, accordingly, disposed of. All the IAs therein shall, consequently, also stand disposed of..."

Written submissions of RGPPL

22. Thereafter, RGPPL vide its written submissions dated 14.2.2025 mainly reiterated the submissions made in its reply, and the same is not mentioned herein, for the sake of brevity. However, in addition, RGPPL has submitted the following:

APTEL judgment dated 17.1.2025 in Execution Petition No.12/2023

(a) APTEL has passed an order dated 17.1.2025 in EP No.12/20223 in favour of RGPPL. Apart from raising several other technical objections, MSEDCL raised the issue of the validity of the termination letter dated 8.5.2014 as a defence to the EP. APTEL in order dated 17.1.2025 observed that the reasons/basis on which MSEDCL terminated the PPA were rejected not only by this Commission but also in appeal by APTEL and in a Second appeal by the Hon'ble Supreme Court.

(b) While delivering the judgment, APTEL also took note of the fact that the issue of the validity of termination letter dated 8.5.2014 was raised by MSEDCL and rejected by the Hon'ble Supreme Court in Civil Appeal (1922/2023) as well as in the Review Petition (1997/20223) filed by MSEDCL. Though APTEL has not expressed any conclusive opinion on the merits of the present petition, its order notes that the grounds cited for terminating the PPA (as detailed in the termination letter dated 8.5.2014) have been rejected by this Commission, APTEL, and the Hon'ble Supreme Court. The above reinforces the invalidity of the termination letter, underscoring the finality and authoritative nature of the rulings. Thus, any attempts to revisit the matter would be both legally untenable and contrary to the established judicial consensus.

Re: Miscellaneous

(c) MSEDCL's reliance on Article 10.8 of the PPA to claim termination is also an afterthought. On a plain reading, the clause applies only if there is a failure of performance or a breach on the part of one of the parties. However, there is no breach by RGPPL, which would give a right of termination in favour of MSEDCL. MSEDCL has never invoked Article 10.8 at any time till the filing of the present



petition. There is no public interest involved as claimed by MSEDCL on its right to terminate the PPA. In fact, such a contention, i.e., with regard to public/consumer interest, was rejected by this Commission in an order dated 30.7.2013 and noted by the APTEL in para 11.1 of its judgment dated 22.4.2015.

(d) The PPA is in force till 18.5.2034, and RGPPL has continuously performed the PPA without any default or breach. RGPPL has faithfully declared the availability from the generating station as per Article 4.3 of the PPA, and the WRLDC, under Section 28 of the Act, has accepted the availability and conducted the scheduling and energy accounting, while preparing the REA. For the period prior to the purported termination i.e., for 2013-14, MSEDCL itself has admitted the claim of RGPPL to be Rs 1400 crores. There is no answer to this claim except to state that RGPPL had agreed to keep its claim for this period in abeyance in accordance with the MOM held on 17.8.2015 in PMO. This contention is misconceived, and a reference to an old meeting of 17.8.2015 is not permissible, in view of the several subsequent meetings, including the ones held by MOP on 15.3.2024 (MoM issued on 28.3.2024) and 4.4.2024 (MoM issued on 22.4.2024).

(e) The claims regarding alleged waivers given by the Govt. of Maharashtra have no correlation with the present petition. The Govt. of Maharashtra is not even a Petitioner, and MSEDCL cannot indirectly be a claimant on their behalf. It is wrong and denied that any waivers were granted by the Government of Maharashtra to RGPPL. MSEDCL has raised several unfounded and unsubstantiated allegations about the operation of the PRAAPTI Portal by RGPPL. The portal is a product of the LPS Rules framed by the MOP under Sec 176 and applies not just to RGPPL but to all entities in the electricity sector. RGPPL had prepared two separate detailed replies in I.A Nos. 99/2024 and 100/2024, dealing in detail with the allegations of MSEDCL with regard to the PRAAPTI Portal. The said replies have been served on MSEDCL. However, no notice has been issued in the said applications. It is submitted that RGPPL has strictly followed the process prescribed on the PRAAPTI Portal.

(f) The other application of MSEDCL seeking an amendment of its pleadings cannot be permitted as per the principles of Order VI Rule 17 of the CPC. MSEDCL cannot set up a completely new and mutually destructive plea while also trying to plead two sets of contrary facts in the very same litigation. Such iniquitous application with vague prayers and seeking to slide an amended petition which goes beyond the scope of the original petition is not permissible. MSEDCL is complaining of the non-compliance of Article 2.2.3 of the PPA by RGPPL in the application, while its ground in the main petition is that the PPA stands terminated. A detailed reply of this application has been served on the counsel for MSEDCL and is uploaded to present the correct facts on the additional pleas sought to be raised at the fag end of the litigation, which is impermissible.



23. Based on the submissions of the parties, the issues that emerge for consideration are:

Issue No. (A): *Whether the issue of termination of PPA dated 10.4.2007 has attained finality, as on 1.4.2014, as contended by MSEDCL?*

Issue No. (B): *Whether the principles of law of limitation and constructive res judicata is applicable in the present case?*

Issue No.(C): *Relief(s) to be granted.*

24. Before proceeding, we take note that in the Execution Petition 12/2023 filed by RGPPL before APTEL, MSEDCL had filed an IA, bringing on record the information/ documents viz., Petition No. 276/MP/2024 (the present petition) along with IA No.67/2024 and the Commission's order dated 30.9.2024 in the said IA. In the said execution case, MSEDCL also raised some pleas, including the question of PPA termination finality and that it has no liability to RGPPL from 1.4.2014 (as raised in the present Petition), and APTEL vide its judgment dated 17.1.2025, disposed of the same as under:

"...The validity of termination of the PPA, vide letter dated 8.05.2014, is neither in issue nor are we required to consider its validity in the present execution proceedings. All that we have observed is that the grounds, which formed the basis of termination of the PPA, appear to have been considered and held against MSEDCL, by the CERC, this Tribunal and the Supreme Court. Suffice it to make it clear that the aforesaid-observations made in this regard shall not be understood as our conclusive opinion on this issue, for these are matters for the CERC to consider in Petition No.276/MP/2024..."

Xxxx

As has been made clear by the CERC itself, in its order dated IA No. 67/2024 in Petition No.276/MP/2014 dated 30.09.2024, the question whether termination by MSEDCL of the PPA dated 10.4.0207 has attained finality is a matter to be adjudicated in the main petition pending before the CERC. Needless to state that payments made by MSEDCL to the Execution Petitioner, including those in terms of the order which we are now passing in the present Execution Proceedings, shall not disable MSEDCL, in case any such relief is granted by CERC in the Petition pending before it, from recovering the amounts from the Execution Petitioner, along with interest, if any, awarded by the CERC."

Accordingly, we proceed to examine the issues (A) and (B) together, as under:



Issue No. (A): Whether the issue of termination of PPA dated 10.4.2007 has attained finality, as on 1.4.2014, as contended by MSEDCL? and

Issue No. (B): Whether the principles of law of limitation and constructive res judicata is applicable in the present case

25. MSEDCL has submitted that it has no liability towards RGPPL from 1.4.2014, as the PPA stood terminated from the said date, in terms of its letter dated 8.5.2014, and any such invoices raised or the claims made thereafter by RGPPL, are without any contractual or legal backing and hence are bad in law. It also stated that RGPPL has not challenged the termination of the PPA before any court or forum, and as such, the termination has attained finality. MSEDCL has also stated that approximately ten years have elapsed since the termination of the PPA, and as such, the termination of the PPA has attained finality and any potential challenge to such termination would not only be bad on merits, but is impermissible, for being barred by the law of limitation. MSEDCL has argued that even if the termination of the PPA is a breach giving rise to a cause of action, the said cause of action commenced on 8.5.2014, i.e, the date on which the termination letter was issued by MSEDCL. It has been stated that since more than three years have elapsed since such date and the period of limitation has also ended, any action against the purported or alleged breach is barred by law and beyond any judicial review. MSEDCL has contended that since the termination of the PPA has not been challenged till date, such termination has attained finality, and any claim to the contrary, after approximately 10 years from the date of such termination, ought to be barred by limitation.

26. *Per contra*, RGPPL has argued that MSEDCL is not entitled to terminate the PPA unilaterally and that it had, vide letters dated 22.5.2014 and 3.6.2014, repudiated the purported termination, with a request to clear its outstanding dues. RGPPL has submitted that it has a decree in its favour from all the Courts requiring MSEDCL to



make payments of the capacity charges and also approving the interpretation of the PPA. While pointing out that it is MSEDCL who is re-agitating the issue of alleged termination of the PPA, without any legal or contractual backing, RGPPL has stated that if MSEDCL is seeking to avoid the payment of capacity charges, relying on its act of termination, it was for MSEDCL, at the relevant time, to seek such declaration by filing appropriate proceedings before this Commission, in accordance with law. RGPPL has contended that MSEDCL cannot sleep over its rights and, having attempted unsuccessfully over the last several years to force RGPPL to challenge the unilateral termination, now seeks to belatedly challenge and seek a declaration that its termination was correct. Stating that the cause of action arose on 22.5.2014, when RGPPL repudiated the unilateral termination of the PPA by MSEDCL, RGPPL has contended that a petition seeking a declaration could have been filed by MSEDCL, latest by 21.4.2017, and having not done so, the petition is barred by limitation, in terms of the Hon'ble Supreme Court's judgment in APPCC & ors v Lanco Kondapalli Power Ltd (2016) 3 SCC 468. RGPPL has also submitted that the petition is barred by the principles of Explanation V to Section 11 of the CPC. Pointing out that MSEDCL did not even bring up this aspect of termination as an alternate argument in its appeal before APTEL, which was then pending, RGPPL has stated that MSEDCL, after losing the appeal before APTEL, raised the issue of termination in the Civil Appeal filed by it before the Hon'ble Supreme Court which was rejected on 9.11.2023, and later in the Review Petition filed by it on the specific ground that the issue of termination had not been dealt with by the Hon'ble Supreme Court, which was also rejected vide order dated 19.3.2024. In these circumstances, RGPPL has stated that for MSEDCL to raise the issue of termination, ignoring the above orders of the Hon'ble Supreme Court is unjust and unfair.



27. *In response*, MSEDCL has argued that since the issue of termination did not form part of the original proceedings and constituted a separate cause of action to be agitated by RGPPL, the same was beyond the scope of the APTEL appeal. Pointing out that no adjudication was sought, expressly or impliedly as to the validity of termination of the PPA, MSEDCL has submitted that, as the civil appeal was filed subsequent to the termination, it has in the interest of justice, merely disclosed the factum of termination of PPA raising grounds in the civil appeal and no prayer qua the termination of PPA was made by it. It has further submitted that the Hon'ble Supreme Court merely decided on the principle of interpretation of the then existing PPA and did not opine or render any finding on the issue of termination of PPA, and as such, any adjudication was beyond the scope of the proceedings. MSEDCL, while contending that the principles of Explanation V of Section 11 of CPC has no application, as the same applies only in respect of the relief claimed and not in respect of the facts urged or the grounds taken, has submitted that it never sought any relief, whatsoever, in relation to the termination of the PPA and the reference of the factum of termination and grounds raised on that basis in the review petition filed by MSEDCL does not constitute constructive res judicata and the provisions of Explanation V are not attracted even qua the pleadings in the review petition. MSEDCL has added that the orders of the Hon'ble Supreme Court in the review petition were passed in the chambers by circulation, without expressing any opinion on the merits of the issues raised and the said order amounted to a summary dismissal of the review petition, which does not amount to a *res judicata* by virtue of the law settled by the Hon'ble Supreme Court in its judgment in *Yogendra Narayan Choudhury v UOI* (1996) 7 SCC 1. Accordingly, MSEDCL has argued that the scope of the appellate and review proceedings before APTEL and the Hon'ble Supreme Court was limited to the issues



involved in the original proceedings, which are purely matters of interpretation of the then-existing PPA, in particular, the interplay between Articles 4.3 and 5.9 of the PPA.

Analysis and Decision

28. We have examined the rival contentions. In terms of Article 4.3 of the PPA, the primary fuel for the generating station is Natural Gas and/or RLNG, and the provision mandates that the capacity of the generating station is to be declared on LNG/RLNG and the arrangement for which is to be made by RGPPL as per MSEDCL's requirement. According to Article 5.9 of the PPA, RGPPL is required to obtain the approval of MSEDCL prior to entering into any contracts for gas supply or gas transportation. In view of the steady decline in the supply of domestic gas since September 2011, RGPPL entered into an arrangement with GAIL for the supply of RLNG. As RGPPL started declaring capacity on alternate fuel (RLNG), MSEDCL had reservations and started defaulting in the payment of capacity charges, corresponding to the availability declaration by RGPPL on RLNG. Accordingly, Petition No. 166/MP/2012 was filed by RGPPL before this Commission to (i) resolve the issues arising out of the non-availability of domestic gas of the required quantum and the reservations of the beneficiaries to allow RGPPL to enter into contracts for available alternate fuel, i.e., RLNG and consequences thereof (ii) revise the NAPAF for RGPPL for full fixed cost recovery at the actually achieved NAPAF level till fuel supply is restored to the allocated contracted capacity and (c) direct the beneficiaries to pay the fixed charges due to RGPPL. By order dated 30.7.2013, the Commission disposed of the said petition holding as under:

“25....In our view, the interpretation placed by MSEDCL on Article 5.9 is not sustainable since it negates the provisions of Article 4.3 of the PPA. It is established principle of interpretation of contracts that the contract is to be read as a whole and the different provisions of the contract are to be harmoniously interpreted so that effect is given to each one of them and no part of the contract becomes otiose. This principle needs to be adhered to while interpreting Articles 4.3 and 5.9 of the PPA. When Article 5.9 is so interpreted it would mean that consent of MSEDCL on the contracting terms of supply



of gas and its price is needed to enable it examine the implications on payment of variable charge. The agreement between RGPPL and MSEDCL on the contracting terms and price for supply of fuel to RGPPL, as provided under Article 5.9 is not a necessary condition for declaration of capacity of the generating station under Article 4.3 of the PPA. The declaration of capacity under Article 4.3 of the PPA is independent of the provision of Article 5.9 and is not dependent on any other factor, such as price of fuel, etc. The recovery of fixed charges is to be governed by the declared capacity of the generating station. It is true that making arrangement for supply of fuel for the generating station is the responsibility of RGPPL. RGPPL has made arrangements for supply of RLNG since it was not able to arrange supply of domestic gas because of the overall shortage of gas in the country. MSEDCL in its discretion may not schedule the capacity declared on RLNG since it has implications on the variable charges. However, it cannot disown its liability to pay the fixed charges when RGPPL declares capacity based on RLNG as the primary fuel in accordance with Article 4.3 of the PPA.

26. In the light of the above discussions, any declaration of capacity by RGPPL based on RLNG as the primary fuel qualifies for the computation of availability of the generating station for recovery of the fixed charges and accordingly the fixed charge recovery be made by the petitioner based on availability after accounting for declaration of capacity on RLNG.

27. In view of the above finding, we do not consider it necessary to get into the issues of relaxation of NAPAF already approved by the Commission or the admissibility of invoking Force Majeure clause by RGPPL."

29. Pursuant to the above, RGPPL started declaring capacity on RLNG. However, MSEDCL did not schedule power from the project and also declined to make payments due to RGPPL for the declared DC, including the capacity charges in terms of its obligations under the PPA and the Commission's order. Accordingly, MSEDCL filed Appeal No. 261/2013 before APTEL, and during the pendency of the said appeal, MSEDCL vide letter dated 8.5.2014, terminated the PPA (with effect from 1.4.2014), mainly on the ground that RGPPL has not been able to enter into GSA and that it was not viable for MSEDCL to accept the supply from an alternate source (RLNG) in light of the increased cost. In response, RGPPL, while pointing out that the PPA was valid for a period of 25 years from COD (till 18.5.2034), repudiated the said termination by MSEDCL as illegal, vide its various correspondences, and with directions to MSEDCL to clear all its outstanding dues. Admittedly, RGPPL did not challenge the PPA termination, perhaps on the count that it had a favourable order from the Commission, nor had MSEDCL approached any forum seeking a declaration that its termination of



the PPA with effect from 1.4.2014, was valid, perhaps on the count that the reasons for termination in letter dated 8.5.2014, which involved the interpretation of Articles 4.3 and 5.9 were already pending consideration in the appeal filed before APTEL. Pursuant to the APTEL judgment dated 22.4.2015 (in Appeal No. 261/2013) affirming the Commission's order dated 30.7.2013, MSEDCL filed Civil Appeal (1922/2023) before the Hon'ble Supreme Court and raised amongst others, the issue of termination of the PPA vide grounds MM and NN, as extracted below:

MM. The Appellant on 8.5.2014 had terminated the PPA dated 10.4.2007 with the Respondent No.1 with effect from 1.4.2014 i.e immediately after expiry of the last GSA duly approved by MSEDCL and because no GSA has since been approved by Appellant herein as required in clause 5.9 of the said PPA and continuing with PPA without GSA would not have served any legal purpose.

NN. Respondent No.1, after termination of PPA, is raising monthly capacity charges bills to Appellant from January, 2019, however Appellant has returned the bills raised by Respondent No.1 as there is no valid contract in existence between RGPPL and MSEDCL"

30. In case, MSEDCL felt that the issue of termination had attained finality and that the same was a separate cause of action, to be agitated by RGPPL, there was no reason for MSEDCL to raise the ground of PPA termination in the civil appeal and seek a decision of the Hon'ble Supreme Court. By raising such grounds in the civil appeal, MSEDCL had expressly sought an adjudication on the issue of PPA termination, which was rejected by the Hon'ble Court vide its order dated 9.11.2023 on merits (as in para 9 above) with a direction that the execution proceedings filed by the RGPPL before APTEL to be continued. Further, the contention of MSEDCL that it had merely disclosed the factum of PPA termination in the civil appeal and that it had not sought any adjudication on the validity of the PPA termination or any relief was sought in relation to the PPA termination, cannot be accepted, considering the fact that MSEDCL had, in grounds (I) and (J) of the review petition by it (against order dated 9.11.2023) raised a specific plea of PPA termination with effect from 1.4.2014



having attained finality, and that it cannot be saddled with any liability towards capacity charges from 1.4.2014, under the head '*Re: Termination of the PPA has not been considered despite attaining finality*', which are extracted below:

(I) Because the Impugned Order failed to address the fact that the appellant had terminated the PPA on 08.05.2014 with effect from 01.04.2014 i.e immediately after expiry of the last GSA duly approved by MSEDCL, since no consent has been sought for any GSA from MSEDCL (as was required in Article 5.9 of the said PPA), thereafter continuing the PPA without GSA would not have served any useful purpose. The impugned order does not discuss this aspect."

(J) Because the Impugned Order has failed to consider that the PPA is a determinable contract and that RGPPL has not challenged the termination of the PPA before any forum till date. Thus, the said termination attained finality. Therefore, without prejudice to the contentions as raised hereinabove, MSEDCL cannot be saddled with any liability towards capacity charges from 1.4.2014, particularly considering that there was /is no valid contract existing between the parties from 01.04.2014."

31. The review petition was also dismissed by the Hon'ble Supreme Court vide order dated 19.3.2024, holding that there was no error apparent on the face of the record and that no case for review under Order 47 Rule 1 of the Supreme Court Rules, 2013 had been established. MSEDCL, having raised the issue of PPA termination from 1.4.2014 in the civil appeal vide grounds MM and NN and thereafter, in the review petition vide grounds I and J stating that the PPA termination attained finality and that it has no liability to pay the capacity charges, which were rejected by the Hon'ble Supreme Court, cannot now argue that the scope of the civil appeal/review petition was limited to the issues raised in the original proceedings and that no relief whatsoever, was sought by it in relation to the PPA termination. The Hon'ble Supreme Court, in our view, cannot be understood to have left open the question of the PPA termination by MSEDCL from 1.4.2014, when the civil appeal was rejected on 9.11.2023, without any liberty being granted to MSEDCL and when the review petition was also dismissed subsequently vide order dated 19.3.2024, on the ground that there was no error apparent on the face of the order dated 9.11.2023. In our view, MSEDCL's contention that the PPA termination attained finality from 1.4.2014 and that



it cannot be saddled with any liability towards the capacity charges from 1.4.2014, stood rejected by the Hon'ble Supreme Court, vide its orders above. In this background, it would be grossly unfair and illegal for MSEDCL to re-agitate/re-argue the same issues before this Commission, in this petition. In our view, the relief(s) sought for by MSEDCL, in the present petition (under para 1 above), is nothing but an attempt by MSEDCL to seek a declaration that the PPA termination from 1.4.2014 was correct and that it has no liability towards RGPPL to pay the capacity charges from 1.4.2014. This is not permissible as the question of PPA termination from 1.4.2014 attaining finality was deemed to have been rejected by the Hon'ble Supreme Court, despite MSEDCL raising the same. Even otherwise, we notice that the APTEL judgment dated 22.4.2015 and the Hon'ble Supreme Court judgment dated 9.11.2023 have specifically rejected the contentions, which formed the basis of the termination of the PPA by MSEDCL. In the above backdrop, the submissions of MSEDCL stand rejected, and we hold that the present Petition is not maintainable. In our view, the PPA stands valid as on 1.4.2014, and MSEDCL is therefore, liable to pay the capacity charges, in terms of the Commission's order dated 30.7.2013 and the judgment of APTEL dated 22.4.2015, which stood confirmed by the Hon'ble Supreme Court orders dated 9.11.2023 and 19.3.2024, for the period when RGPPL declared power availability based on RLNG.

Limitation

32. RGPPL has submitted that in response to the MSEDCL's letter dated 8.5.2014, unilaterally terminating the PPA with effect from 1.4.2014, it has repudiated the said termination vide letter dated 22.5.2014 and through several other correspondences. Pointing out that a petition seeking declaration that the termination was correct could have been filed by MSEDCL latest by 21.4.2017, RGPPL has contended that



MSEDCL having not done so, the principles of limitation, in case of a party seeking adjudication of the disputes under Section 79 of the Act would apply and is squarely covered by the judgment of the Hon'ble Supreme Court in APPCC v Lanco Kodapalli Power Ltd (2016) 3 SCC 468. Accordingly, RGPPL has submitted that the petition is barred by limitation. *Per contra*, MSEDCL has argued that the termination of the PPA attained finality as RGPPL failed to challenge the same before a competent court, within the prescribed limitation period. It has been stated that the issuance of repudiation letters by RGPPL has no basis in law unless the termination of the PPA was sought to be set aside by a competent court, which RGPPL, undisputedly, failed to do so. MSEDCL, stating that it has not sought any declaration on the validity of the termination of the PPA, but has only sought the quashing of the illegal invoices raised by RGPPL, has added that the PPA stands terminated with effect from 1.4.2014, and the said position has attained finality.

33. We have considered the rival submissions. As stated earlier, MSEDCL had unilaterally terminated the PPA vide letter dated 8.5.2014 (with effect from 1.4.2014), and the same was repudiated by RGPPL vide letter dated 22.5.2014 with direction upon MSEDCL to pay the fixed charges in terms of the PPA. RGPPL has not challenged the PPA termination, and MSEDCL has also not sought any declaration that its termination was correct, and it cannot be saddled with the liability for fixed charges. However, the issue of PPA termination was raised before the Hon'ble Supreme Court by MSEDCL in the civil appeal filed by it, which was rejected by the Hon'ble Court vide order dated 9.11.2023 and thereafter, specifically in the review petition mainly contending that (i) RGPPL had not challenged the PPA termination (ii) the PPA termination has attained finality and (iii) MSEDCL cannot be saddled with the liability of fixed charges after 1.4.2014, which was also rejected by the Hon'ble



Supreme court on 19.3.2024. Though MSEDCL has contended that it has only sought the quashing of the illegal invoices raised by RGPPL, the same is on the backdrop of its contention that the PPA termination attained finality with effect from 1.4.2014, which was not entertained by the Hon'ble Supreme Court in its orders dated 9.11.2023 and 19.3.2024, as stated above. Even the submission of MSEDCL that RGPPL having not opted to challenge the termination, has rendered the termination final and hence any potential challenge thereto is barred by limitation is also not acceptable, keeping in view that the same issue raised by MSEDCL for a specific finding, in the review petition, was rejected by the Hon'ble Supreme Court. It is pertinent to mention that RGPPL had a decree in its favour from all the courts, requiring MSEDCL to make the payment of the capacity charges. Thus, MSEDCL, having raised the issue of PPA termination, which stood rejected by the Hon'ble Supreme Court, cannot now, based on the prayers in this petition, belatedly seek a declaration that the PPA termination from 1.4.2014 was correct and that the same had attained finality as on 1.4.2014. Even assuming, without admitting, that the PPA termination was effective from 1.4.2014, MSEDCL ought to have filed a petition seeking such declaration, within the period of three years from the date when the right to sue first accrued, i.e., when RGPPL repudiated the termination on 22.5.2014, in terms of Part-II (Section 58) to the Schedule of the Limitation Act 1963. Having not done so, MSEDCL cannot now make submissions to the contrary and claim the reliefs, based on the premise that PPA termination attained finality from 1.4.2014, and it has, therefore, no liability to pay RGPPL the capacity charges from 1.4.2014, as no valid contract exists between the parties. The present petition is therefore barred by limitation.

Explanation V to Section 11 of CPC

34. RGPPL has also contended that the petition is barred by the principles of



Explanation V to Section 11 of the CPC 1908. Stating that MSEDCL did not even bring up the aspect of termination as an alternate argument in its appeal before APTEL, which was then pending, RGPPL has stated that MSEDCL, after losing the appeal before APTEL, raised the issue of termination in the Civil Appeal and later, in the Review Petition filed by it before the Hon'ble Supreme Court (on the specific ground that the issue of termination had not been dealt with by the Hon'ble Supreme Court), and the same were rejected vide orders dated 9.11.2023 and 19.3.2024 respectively. In these circumstances, RGPPL has stated that MSEDCL cannot be permitted to raise the issue of termination, ignoring the above orders of the Hon'ble Supreme Court. Per contra, MSEDCL has argued that the principles of Explanation V of Section 11 of CPC have no application, as the same applies only in respect of the relief claimed and not in respect of the facts urged or the grounds taken. Reiterating that it never sought any relief, whatsoever, in relation to the termination of the PPA and the grounds raised on that basis in the review petition filed by MSEDCL, does not constitute a 'constructive res judicata' MSEDCL has submitted that the provisions of Explanation V are not attracted even qua the pleadings in the review petition. MSEDCL has added that the orders of the Hon'ble Supreme Court in the review petition was passed in the chambers by circulation, without expressing any opinion on the merits of the issues raised and the said order amounted to a summary dismissal of the review petition, which does not amount to a *res judicata* by virtue of the law settled by the Hon'ble Supreme Court in its judgment in *Yogendra Narayan Choudhury v UOI* (1996) 7 SCC 1. Accordingly, MSEDCL has argued that the scope of the appellate and review proceedings before APTEL and the Hon'ble Supreme Court was limited to the issues involved in the original proceedings, which are purely matters of interpretation of the then existing PPA, in particular, the interplay between Articles 4.3 and 5.9 of the PPA



35. The submissions have been considered. Explanation V to Section 11 of the CPC provides as under:

Section 11 Res judicata

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I-xxx.

Explanation II.-- xxxx.

Explanation III.--xxxx.

Explanation IV.-- xxx.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Xxx

36. Section 11 of the Code of Civil Procedure, 1908 (CPC) embodies the doctrine of res judicata or the rule of conclusiveness of a judgment. It enacts that once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. MSEDCL has relied upon the judgment of the Hon'ble Supreme court in Yogendra Narayan Choudhury v UOI (1996) 7 SCC 1 to contend that since the order in the review petition was passed in chambers by circulation, without expressing any opinion on merits of the issues raised, the said order amounted to a summary dismissal of the review petition which does not amount to res judicata. In our view, the judgment relied upon by MSEDCL is not applicable in the present case. While the said judgment is on the dismissal of SLP *in limine* without assigning any reasons, in the present case, MSEDCL did not file any SLP, but raised the issue of PPA termination in the civil appeal. The civil appeal having been dismissed, Explanation IV and V of Section 11 of the CPC are applicable, and the issue of PPA termination is deemed to have been negated by the Hon'ble Supreme Court. The Hon'ble Court having perused the Review Petition and having held that there is no error apparent on the face of the record and that no case for review was made out by MSEDCL, under



Order 47 Rule 1 of CPC, by no stretch of imagination can the same be *in limine* dismissal, but a dismissal on merits. When the civil appeal, wherein the issue of PPA termination was raised by MSEDCL, was dismissed by the Hon'ble Supreme Court vide order dated 9.11.2023, it cannot be argued that the Hon'ble Court was not seized of the issue of PPA termination by MSEDCL. Further, MSEDCL having raised the same issue in the review petition, which was also dismissed by the Hon'ble Supreme Court on 19.3.2024, MSEDCL cannot now contend that the issue of PPA termination can be raised again in this petition. This is not permissible. In our view, the dismissal of the civil appeal and the review petition by the Hon'ble Supreme Court reinforces the finality of the original judgment, which continues in full force. The principles of constructive res judicata are squarely applicable in the present case, and therefore, the submissions of MSEDCL are rejected. The petition is therefore, not maintainable on this count.

Termination on merits

37. MSEDCL has also made submissions stating that the termination of the PPA is valid on merits by pointing out in detail that RGPPL was on constant breach of its supply obligations under the PPA, termination of PPA was in public interest, and that the termination of the PPA was in accordance with Article 10.8 of the PPA. Per contra, RGPPL has objected to the aforesaid submissions of MSEDCL. However, considering the fact that the present petition filed by MSEDCL is held to be not maintainable in law, as per our discussions in the previous paragraphs, we refrain from examining the submissions of the parties on merits.

Other Issues

38. MSEDCL has submitted that RGPPL claims for the period prior to the termination of the PPA (i.e., 1.4.2014) are also grossly inflated and illegal. MSEDCL has pointed



out that RGPPL had itself admittedly and indisputably agreed to keep its claims pertaining to 2013-14 and 2014-15 in abeyance in accordance with the PMO MoM, in lieu of which it benefitted from the various concessions and waivers from GOM. It has also pointed out that after deriving the aforesaid benefits-based on the understanding, as set out in the PMO, MOM dated 17.8.2015, RGPPL ought not to be permitted to resile from its promise and claim the recovery of the amounts due for 2013-14, including LPS. MSEDCL has further submitted that after taking into count the benefit derived by RGPPL in the form of tax waivers and concessions accorded by GOM to the tune of Rs 1482 crores and the payment of Rs 500 crores by MSEDCL, there is no outstanding amount to be paid to RGPPL for the period prior to the termination. It has argued that without prejudice to the fact that RGPPL has enjoyed the benefit of Rs. 1482 crore and MSEDCL was compelled to make further payment of Rs.500 crore, the payment of any claim prior to termination has to be made only after reconciliation thereof, between the parties and subject to production of appropriate documentary evidence. MSEDCL has contended that RGPPL's attempts to enforce such wrongful claims by misusing the mechanism provided under the LPS Rules are patently illegal and self-serving, and ought to be disallowed by this Commission, in the interest of justice. MSEDCL has added that it had not purchased any power from RGPPL after the termination of the PPA, and payment of such undue amount to RGPPL will not only result in unjust and undue commercial gain to RGPPL but also be tantamount to unjust enrichment by RGPPL at the cost of consumers of MSEDCL. *Per contra*, RGPPL has clarified that the meeting held by the PMO on 17.8.2015 was only to discuss the sale of certain quantum of electricity from the RGPPL station to Indian Railways and one of the proposals was to keep the issue of recovery of the outstanding amounts from MSEDCL to RGPPL in abeyance, but, there is no finding in favour of



MSEDCL with regard to the purported termination. While pointing out that MSEDCL is referring to the minutes selectively, RGPPL has stated that there were further meetings and discussions under the aegis of the MOP on 15.3.2024 and 4.4.2024, wherein the factual status has been captured in detail. RGPPL has submitted that the concessions or exemptions granted by the Government of Maharashtra (claimed as Rs 1482 crore) are imaginary and fictional, and these have nothing to do with the present petition. It has been argued that MSEDCL cannot claim that waivers for the said amounts were granted by the Government of Maharashtra, without producing any document to show the veracity of the same and as to how it relates to the capacity charges payable to RGPPL. MSEDCL has added that no arrangements were made with the Government of Maharashtra with RGPPL towards receiving waivers or concessions, in lieu of the capacity charge payments to be made by MSEDCL. RGPPL has contended that these arguments have been specifically taken as a defense in the execution petition, and MSEDCL is re-raising the grounds for the purpose of creating confusion and misleading this Commission, even on facts. RGPPL has clarified that the purchase of power is completely irrelevant, when the claim by RGPPL is mainly for the capacity charges for declaration of availability from its plant as each invoice raised is mainly towards the capacity charges, as per the various tariff orders of this Commission, reconciled with the NAPAF declared by WRPC on a daily basis. RGPPL has also stated that it has not raised any invoice on energy charges, where MSEDCL did not consume electricity, except for 2013-14 and July 2016, wherein energy was scheduled by MSEDCL, and the invoices raised mainly have been towards the capacity charges and LPS.

39. We have examined the rival submissions. MSEDCL has contended that there is no amount pending to be paid to RGPPL, taking into account the benefit derived by



RGPPL in the form of tax waivers and other concessions accorded by the Government of Maharashtra to the tune of Rs 1482 crores and payment of Rs 500 crores by MSEDCL. We note that the Government of Maharashtra had specifically raised the issues of tax waiver and concessions alleged to have been granted to RGPPL, as a defense in the Execution Petition (12/2023) filed by RGPPL before APTEL, and APTEL vide its order dated 17.1.2025 held as under:

“Both on the ground that the Government of Maharashtra is neither a necessary nor a proper party to the present execution proceedings, and also on the ground that the objection raised by them, to the grant of the relief sought for by the Execution Petitioner, does not merit acceptance, we see no reason to entertain the impleadment petition or the objection raised by the Government of Maharashtra on the merits of the EP filed by RGPPL.

Needless to state that any claim, which the Government of Maharashtra may have against the Execution Petitioner, can always be agitated by them in independent legal proceedings”

40. RGPPL has also submitted that no arrangements were made by it with the Government of Maharashtra towards receiving waivers or concessions. It is pertinent to mention that the Government of Maharashtra was not a party to the proceedings in the present case. Also, no documents have been produced before us by MSEDCL to show that waivers/concessions were granted by the Government of Maharashtra as set-off against the payment of capacity charges by MSEDCL to RGPPL. Accordingly, the submissions of MSEDCL on this count are disposed of in terms of the decision of APTEL in the execution proceedings as above. However, with regard the contention of MSEDCL that RGPPL agreed to keep its claims for the years 2013-14 and 2014-15 in abeyance, in accordance with the PMO minutes of meeting, it has been pointed out by RGPPL that the said meeting held by the PMO on 17.8.2015 was only to discuss the sale of certain amount of power from RGPPL generating station to the Indian Railways. Though these issues were also raised in the execution proceedings, we note from the record that further meetings were held under the aegis of the MOP, GOI



on 15.3.2024 and 4.4.2024, wherein MSEDCL has been directed/MSEDCL had agreed to make the payment of outstanding dues to MSEDCL. The relevant portions of the MOM dated 15.3.2024 and 4.4.2024 are extracted below:

MOM dated 15.3.2024

On the basis of the above discussion, following was directed by Hon'ble Minister:

As Hon'ble Supreme Court has already given its verdict in the matter and further since no stay is granted by the Court, in the revision petition filed by the MSEDCL, the Outstanding Dues, subject to reconciliation, needs to be paid by MSEDCL to RGPPL. Accordingly, it is advised that both the parties; MSEDCL and RGPPL, shall complete the process of reconciliation of the bills in next 15 days, as per the discussions held in the meeting between Secretary (Power) and CMD-MSEDCL and submit the action taken to this Ministry.

RGPPL may facilitate recovery of reconciled arrear amount in suitable instalments in alignment with provision of LPS Rules.

MOM dated 4.4.2024

After detailed deliberations, the following was agreed:

I. Considering the regulator provisions and terms of PPA, the judgments of CERC, APTEL and Hon'ble Supreme Court, MSEDCL will honour the principal amount of dues as claimed by RGPPL, except for the fixed cost billed to MSEDCL during the period of sale to railways which would stand withdrawn.

II. Considering the background of the entire matter, instead of a penal rate of LPS calculated as per CERC regulation, RGPPL shall levy interest on the net outstanding principal amount so as to only cover their cost of borrowings. In this regard RGPPL shall levy interest @8% with quarterly compounding.

III. Based on the above, the net due amount calculated by RGPPL shall be payable by MSEDCL to RGPPL in 40 equal instalments without further levy of LPS if the due instalment is paid on respective due dates. The regular bills from March 2024 onwards shall be payable as per PPA/prevaling LPS rules.

IV. As a precedence to the above, both MSEDCL and RGPPL shall agree that the plan for settlement as above shall prevail over any outcome of ongoing legal proceedings.

V. The power offtake from the project would continue with MSEDCL till the term of PPA and MSEDCL shall continue to honour the future bills raised by RGPPL.

VI. As a long-term solution MSEDCL may consider the transfer; (i) of the dedicated power evacuation EHV lines to RGPPL/NTPC, at depreciated value as per books of accounts and (ii) of its equity stake in RGPPL to NTPC, as per mutually agreed valuation. NTPC in turn may explore alternatives means to utilize this capacity of RGPPL.

VII. The above resolution was apprised to the Hon'ble Minister for Power and New & Renewable Energy.

41. MSEDCL, therefore, cannot rely upon the minutes of the meeting selectively and raise frivolous pleas to deny the rightful claims of RGPPL. In our view, RGPPL is



entitled to the payment of tariff in terms of the tariff orders issued by the Commission, for the complete period when it declared power availability, based on RLNG, read with the orders of the APTEL and the Hon'ble Supreme Court.

Issue (C): Relief(s) to be granted

42. MSEDCL in this petition has sought relief(s), amongst others, a declaration that the invoices raised by RGPPL against MSEDCL are non-est and illegal, and also to restrain RGPPL from issuing further invoices under the terminated PPA dated 10.4.2007 and from uploading any invoices on the PRAAPTI portal seeking payment (s) thereof. Pursuant to our findings in this order that the Petition filed by MSEDCL is not maintainable, the reliefs sought by MSEDCL under para 1 of this order stand rejected. MSEDCL has submitted that RGPPL is misusing the provisions of the LPS Rules, 2022, by seeking the specific performance thereof, even after the PPA has been terminated by MSEDCL. It is pertinent to mention that the LPS Rules, 2022, were notified by the MOP, GOI, in exercise of its powers under Section 176 of the Electricity Act, 2003, and are applicable to all the entities in the power sector, including RGPPL. We have in our interim order dated 30.9.2024 in IA No. 67/2024 (in Petition No.276/MP/2024) directed that no further coercive/precipitative action shall be taken by RGPPL with regard to the recovery of the balance amounts and the same shall await a final decision of this Commission in this petition. The relevant portion of the said order is extracted below:

"27. It is evident from the submissions of RGPPL that a total amount recoverable from MSEDCL is in excess of Rs. 7000 crores, out of which an amount of Rs.1400 crores related to the period 2013-14. However, it is noticed that an amount of Rs 471 crores was only payable by MSEDCL in terms of the invoices uploaded in the PRRAPTI portal by RGPPL to avoid the curtailment of power. Since MSEDCL is found not entitled to the grant of interim reliefs, as aforesaid, we direct MSEDCL to make the payment of Rs.471 crore to RGPPL within 15 days from the date of this order. Upon such payment by MSEDCL, RGPPL shall withdraw such restrictions from the PRAAPTI portal. The recovery of the balance amounts by RGPPL shall, however, await the final decision of this Commission in the main petition. Accordingly, we direct that no further coercive/precipitative action shall be taken by RGPPL with regard to the recovery of



the balance amounts. Having said so, we direct RGPPL to ensure that the plant remains in operation.”

43. It is noticed, that an amount of Rs. 471 crore has been paid by MSEDCL to RGPPL, in terms of the interim order above. Since we have, in this order, rejected the submissions of MSEDCL as not maintainable, and held that the PPA dated 10.4.2007 is valid even after 1.4.2014, RGPPL is entitled to claim the amounts outstanding from MSEDCL by uploading the bills in the PRAAPTI portal. Consequent upon this, the interim order directing RGPPL not to take any coercive/precipitative action against MSEDCL, for recovery of the balance amounts, stands discharged.

44. It is pertinent to mention that our order dated 30.9.2024 in the said IA was subject to the decision of APTEL in the Execution Petition No. 12/2023 pending before APTEL. However, APTEL vide its order dated 17.1.2025, disposed of the said Petition, as under:

XII. CONCLUSION:

The Execution Petition is allowed to the extent indicated hereinabove and MSEDCL shall pay RGPPL capacity charges of Rs.31,27,48,66,735/-(Rupees Three Thousand One Hundred and Twenty Seven Crores Forty Eight Lakhs Sixty Six Thousand Seven Hundred and Thirty Five only) less the amount realized of Rs.6,50,28,02,079/- (Rupees Six Hundred and Fifty Crores Twenty Eight Lakhs Two Thousand and Seventy Nine only). Consequently, MSEDCL shall pay RGPPL Rs. 2477,20,64,656/- (Rupees Two Thousand Four Hundred and Seventy-Seven Crores Twenty Lakhs Sixty-Four Thousand Six Hundred and Fifty-Six only), (capacity charges of Rs. 31,27,48,66,735/- minus realization of Rs.6,50,28,02,079/-), within four months from the date of receipt of a copy of this order. In case MSEDCL has paid Rs.471 Crores as directed by the CERC in its order in IA No. 67 of 2024 in Petition No. 276/MP/2024 dated 30.09.2024, and if the said amount was payable towards capacity charges for the period covered by the present EP, MSEDCL may deduct Rs. 471 Crores from Rs.2477,20,64,656/-, and pay RGPPL Rs. 2006,20,94,656/- (Rupees Two Thousand and Six Crores Twenty Lakhs Ninety-Four Thousand Six Hundred and Fifty-Six only) within four months from the date of receipt of a copy of this order.

It is made clear that, in case payment of Rs. 2477,20,64,656/- (Rupees Two Thousand Four Hundred and Seventy-Seven Crores Twenty Lakhs Sixty-Four Thousand Six Hundred and Fifty-Six only), or Rs. 2006,20,94,656/- (Rupees Two Thousand and Six Crores Twenty Lakhs Ninety Four Thousand Six Hundred and Fifty Six only), as the case may be, is not made within four months from the date of receipt of a copy of this order, Bank Account No. 0239256010710 of MSEDCL with Mumbai Industrial Finance Branch of Canara Bank and A/c No. 016020110000033 of MSEDCL at Mumbai Large Corporate Branch of the Bank of India shall stand attached, and the afore-said amounts shall be realized from the said bank accounts.



The Execution Petition is, accordingly, disposed of. All the IAs therein shall, consequently, also stand disposed of.

45. It is further noticed that MSEDCL has filed an appeal (Civil Appeal No.4286/2025) before the Hon'ble Supreme Court against the APTEL judgment dated 17.1.2025, and the Hon'ble Court on 6.5.2025, passed the following interim order:

The appellant, Maharashtra State Electricity Distribution Company Limited, shall pay half of the amount as computed, that is, half of Rs.2477.20 crores, to the Respondents by way of six equal monthly instalments, beginning from 15.07.2025.

The instalments shall be paid as per the time fixed. Upon failure to pay the instalments within time, the appellant MSEDCL, shall be liable to pay interest, as fixed and payable by the Discom(s) to the generating companies in terms of the regulations or tariff orders etc.

List the appeal for consideration in the week commencing 18.08.2025.

46. Accordingly, Petition No. 276/MP/2024 (along with the IAs) is disposed of in terms of our discussion and findings.

**Sd/-
(Harish Dudani)
Member**

**Sd/-
(Ramesh Babu V)
Member**

**Sd/-
(Jishnu Barua)
Chairperson**

