

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
World Trade Centre, Centre No.1, 13<sup>th</sup> Floor, Cuffe Parade, Mumbai 400005.  
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**Case No. 67 of 2009**

**In the matter of**  
**Petition filed by Shri Charbhuj Sales Corporation against MSEDCL for non-compliance**  
**of Order dated 24.11.2003 passed by the Commission**

**Shri. V.P. Raja, Chairman**  
**Shri. S. B. Kulkarni, Member**  
**Shri. V. L. Sonavane, Member**

M/s. Shri Charbhuj Sales Corporation  
10/1202, Shri Niketan,  
Marathe Mills Corner, Date Mala,  
Ichalkaranji – 416 115

.....Petitioner

V/s

Maharashtra State Electricity Distribution Co. Limited  
Through its S.E. (TRC)  
5<sup>th</sup> Floor, Prakashgad,  
Bandra (East), Mumbai – 400 051

.....Respondent

**ORDER**

**Dated: 31<sup>st</sup> December, 2009**

M/s. Shri Charbhuj Sales Corporation submitted a petition under affidavit on 3.08.2009 (with corrected version filed on 25.8.2009) under Section 142 read with Section 62 of the Electricity Act, 2003 (“EA 2003”) seeking directives of the Commission against Maharashtra State Electricity Distribution Co. Ltd. (“MSEDCL”) alleging non-compliance of the Order dated 24.11.2003 passed by the Commission in Case No. 17(3), 3, 4 and 5 of 2002.

2. The prayers of the Petitioner are as follows:

“(a) MSEDCL be directed to suitably amend Clause No. 12.02 of the PPA dated 12-06-2006 and PPA dated 19-12-2006 as per Clause 1.6.7 of the Order dated 24-11-2003.



(b) *MSEDCL be directed to calculate and pay the interest on account of delayed payment as per the rectified PPA to the petitioner.*

(c) *Heavy penalty be imposed upon the MSEDCL for intentional and deliberate deviation from the order of this Hon'ble Commission."*

3. The Petitioner submitted that it has filed the present petition against the Respondent for deviating from the said Order dated 24.11.2003 while executing the Power Purchase Agreement ("PPA"), which has caused grave injustice and damage to the Petitioner and other wind mill owners.

4. The Petitioner submits that it has established a wind power project with installed capacity of 0.35 MW, consisting of one 0.35 MW Suzlon make WTG having rated output of 350 KW capacity at Vankusawade, Village – Goregaon, Taluka – Patan, Dist. – Satara in the State of Maharashtra for the purpose of generating electricity through wind power. For this purpose, the Petitioner has executed a PPA with MSEDCL on 12.06.2006. The Petitioner has also established a wind power project with installed capacity of 0.60 MW, consisting of one 0.60 MW Suzlon make WTG at Village – Garjewadi, Taluka – Kawathe-Mahakanl, Dist. – Sangli in the State of Maharashtra for the purpose of generating electricity through wind power. For this purpose, the Petitioner has executed a PPA with MSEDCL on 19.12.2006.

5. The Petitioner has stated that in the Order dated 24.11.2003 in Case No. 17(3), 3, 4 and 5 of 2002, the relevant terms and conditions are laid down which were required to be incorporated into the PPA. Clause 1.6.7 of the abovementioned order has been quoted by the Petitioner and is as follows:

***"Billing and Payment:** The Developer shall raise a monthly energy bill based on the joint meter reading taken by the Developer and the MSEB/Utility at the end of each month. The due date for the payment by the Utility shall be 45 days from the date of bill. In case of delay in payment beyond the due date, the Developer shall be entitled for an interest on delayed payment @ 2% above the State Bank of India short-term lending rates."*

6. However, MSEDCL has been stated to have wrongly made changes in the said clause to get unlawful gain and to cause unlawful loss to the Petitioner by deviating from Clause 1.6.7 of the abovementioned order and by incorporating Article 12.02 in the PPA dated 12.06.2006 and dated 19.12.2006, which reads as under:

***"Section 12.02 – Payment:** The due date of payment shall be 45 days from receipt of the Seller's monthly energy bills by the Board/Purchaser and will be paid....."*

7. The Petitioner states that while MSEDCL prepared the PPA, the Petitioner was under the belief that the terms and conditions incorporated in the PPA are in consonance with the aforesaid



directions of the Commission, and under that belief, the Petitioner signed the PPA. The abovementioned fact came to the notice of the Petitioner only when the question of payment of interest on account of delay arose.

8. The Petitioner alleges that MSEDCL is not regular in making payment of the bills and on many occasions have delayed the payment of the bills or have partially paid them. Thereafter, the Petitioner brought this fact to the notice of MSEDCL, but MSEDCL refused to act upon the same and relied on upon Clause No. 12.02 of the PPA. Being aggrieved, the Petitioner has filed the present Petition.

9. The grounds mentioned by the Petitioner in support of the present petition inter alia are:-

- a) The electricity generated by the wind mill is directly injected into the network of MSEDCL and thus MSEDCL is utilising the same from the very moment of its generation. Thus, when MSEDCL is taking benefits immediately it is not fair to delay the payment for the energy received.
- b) MSEDCL's average billing cycle to its customers is of one month and the due date is 15 days from the date of the bill and not from the date of receipt of bill. The Petitioner wants the same principle to be applicable to electricity generators also.
- c) The Petitioner states that issuance of bill is a mere formality and hence should not be used as an instrument for delaying the payment. This is so since the rates are fixed and bills are to be prepared only on the basis of joint meter reading. The moment the joint meter reading is done, MSEDCL will be in a position to calculate the charges and pay the same without waiting for a bill from the Petitioner.
- d) MSEDCL does not have a fixed system for presentation of bills. Initially, it had asked the Petitioner to submit the bills at its Head Office at Mumbai which would then be forwarded to the concerned office.
- e) The Petitioner also states that MSEDCL is not empowered to make any changes/amendment/alteration in the directives given by the Commission in its order.

10. The Respondent submitted its reply on 30.9.2009, contending as under:-

- a) The present petition is not maintainable since as per the order dated 24.11.2003 the due date of payment is taken at 45 days from the receipt of the invoice.
- b) In case of delay in payment beyond the due date the payment of interest on such delayed payment has duly been effected by the field officers of MSEDCL.
- c) MSEDCL Circular (Comm.) No. 664 dated 5.10.2001, states as under:
  - i. ...



- ii. *The payment for the energy fed to MSEDCL system will be made within each Quarter i.e. June/September/December/March within 45 days from the **date of receipt of bill**. Delay will attract interest at savings bank rate.*
- iii. *(iii)MERC should approve the standard draft EPA.”*

d) In reply to the grounds of the petition MSEDCL has quoted an order passed by the Commission dated 17.08.2009 (Para 15) in Case No. 148 of 2008 which states as follows:

- i. *“For cases, where JMR has been taken but no bills has been raised for whatever reasons, the submissions made by the Petitioner are that the payment becomes due to Wind Farm Developers from the time when the energy is fed into the grid, which is however not tenable as a bill or a claim has to be preferred for payment.”*

e) MSEDCL has also quoted Section 12.02 of the PPA which states that, *“...the due date of payment shall be 45 days from receipt of the seller’s monthly energy bills by the MSEDCL/Purchaser.”*, and therefore, the payment have been made within 45 days as per the order of the Commission dated 24.11.2003 and Section 12.02 of the PPA.

11. The Commission vide notice dated 23.11.2009 fixed a hearing in this matter on 1.12.2009. Shri S.C. Karandikar, Advocate appeared for the Petitioner and Shri Ravi Prakash, Advocate appeared for the Respondent.

12. Subsequently, the Petitioner submitted its written submissions on 9.12.2009 with a copy of a judgement of the Hon’ble Supreme Court in *Associated Hotels of India Ltd. v/s. S.B. Sardar Ranjit Singh (AIR 1968 SC 933)*.

13. Having heard the parties and after considering the materials placed on record, the Commission is of the view that the contention raised in the present petition is as to whether MSEDCL is bound to pay interest on delayed payment for energy received by it from the Petitioner even if MSEDCL has not received the bill or if it has received the bill the due date of payment should be reckoned from the date of the bill and not the date of receipt of the bill. In its reply MSEDCL has referred to an Order dated 17.08.2009 in Case No. 148 of 2008. In this Order, the Commission had dealt with facts and contentions similar to the contentions raised in the present petition. The Commission had held in the Order dated 17.08.2009 as under:-

*“15. Having heard the parties and after considering the materials placed on record the Commission is of the view that the present controversy can be seen in a narrow compass. For cases, where bills have been raised after Joint Meter Reading (“JMR”), there cannot be any ambiguity. For delayed payments beyond 45 days from the date of the bill, MSEDCL is liable to pay interest. For cases, where JMR has been taken but no bill has been raised for whatever reasons, the submissions made by the Petitioner are that the payment becomes due to Wind Farm Developers from the time when the energy is fed into the grid, which is however not tenable as a bill or a claim has to be preferred for payment. It is alleged that MSEDCL*



*stopped accepting invoices from the Wind Farm Developers, and/or MSEDCL insisted on quarterly invoices.*

*Since both the parties have failed to resolve the issue, the Commission without getting into metering and billing details rules that as a practical and reasonable solution, wherever invoices have not been issued/ accepted, 30 days from JMR would be deemed to be the date of "bill" and last due date of payment by MSEDCL would be 45 days thereafter and for payments beyond 45 days, interest would become due."*

On the controversy of date of bill viz-a-viz receipt of bill, the Commission is of the view that it is for the Petitioner to be prudent enough to have its bills reach the Respondent on time. It is possible for the Petitioner to prove the date on which his bill reached the Respondent. However, when invoices have not been issued/ accepted, taking the aforesaid decision in the Order dated 17.08.2009, 30 days from JMR would be deemed to be the date of "bill" and the due date of payment by MSEDCL would be 45 days thereafter and for payments beyond 45 days, interest would become due.

The Respondent is governed by the stipulation and direction given by the Commission in its aforesaid Order dated 17.08.2009. In view of the above, there is no case made out that requires the invoking of the provisions of Section 142 of the EA 2003.

14. The Petitioner has relied on a judgement in *Associated Hotels of India Ltd. v/s. S.B. Sardar Ranjit Singh (AIR 1968 SC 933)* as quoted above, to contend that a waiver is an intentional relinquishment of a known right. There can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of facts enabling him to take effectual action for the enforcement of such rights. It has been contended that there is no case of waiver by the Petitioner to seek the interest after a period of 45 days from the date of the bill. Considering the facts of this case, the judgment relied upon and the decision contained in the Commission's aforesaid Order dated 17.08.2009, there can be no doubt that the petitioner being a generator having generated energy and fed into the grid there is no question for waiver to seek interest from the Respondent herein if the Respondent has delayed the payment to be made for the energy received by it. Accordingly, the Respondent shall act and clear all dues of the Petitioner as required under law alongwith interest as may be applicable.

With the above the present petition stands disposed of.

(V. L. Sonavane)  
Member

(S. B. Kulkarni)  
Member

(V. P. Raja)  
Chairman



(Sanjay Sethi)  
Secretary, MERC