

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 173/MP/2022

Coram:

Shri Jishnu Barua, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of order: 9th August, 2023

In the matter of

Petition under Section 79(1)(b) read with Section 79(1)(f) of the Electricity Act, 2003 read with Purchase Orders dated 18.9.2018 and 29.10.2018 issued by distribution companies of the State of Andhra Pradesh for recovery of Late Payment Surcharge on delayed payments of invoices raised by Sembcorp Energy India Limited.

And

In the matter of

Sembcorp Energy India Limited,
5th Floor, Tower C, Building No 8,
DLF Cybercity, Gurgaon,
Haryana – 122002

Petitioner

Vs.

1. Andhra Pradesh Power Coordination Committee,
1st Floor, APPCC Building, Vidyut Soudha,
Near Eluru Road, Gunadala,
Vijayawada-520004.

2. Southern Power Distribution Company of Andhra Pradesh Limited,
Through its Chairman & Managing Director,
19-13-65/A,
Srinivasapuram, Tiruchanoor Road, Tirupati,
Chittoor District, A.P.-517503

3. Eastern Power Distribution Company of Andhra Pradesh Limited,
Through its Chairman & Managing Director,
P&T Colony, Seethammadhara,
Visakhapatnam-530013

4. Central Power Distribution Company of Andhra Pradesh Limited,
Through its Chairman & Managing Director,
Beside Polytechnic College, ITI Road,
Vijayawada-520008

5. Transmission Corporation of Andhra Pradesh Limited,
Through its Chairman & Managing Director,
Vidyut Soudha,
Gunadala, Eluru Rd,
Vijayawada, Andhra Pradesh – 520004

The following were present:

Shri Vishrov Mukerjee, Advocate, SEIL
Shri Yashaswi Kant, Advocate, SEIL
Ms. Juhi Senguttuvan, Advocate, SEIL
Shri Sidhant Kumar, Advocate, AP Discoms
Ms. Muskan Gopal, Advocate, AP Discoms

ORDER

The Petitioner, Sembcorp Energy India Limited (SEIL), has filed the present Petition under clauses (b) and (f) of Sub-section (1) of Section 79 of the Electricity Act, 2003 (hereinafter referred to as “Act”) along with the following prayers:

*“(a) Direct AP Discoms (Respondent Nos. 1 to 5) to pay **Rs. 26,31,84,557/-** to SEIL, towards Late Payment Surcharge for delayed payment of the weekly energy bills for the billing period of 17.9.2018 to 30.11.2018 along with interest till actual date of payment;*

(b) As an interim measure, direct AP Discoms (Respondent Nos. 1 to 5) to release 75% of the aforesaid outstanding amount of LPS payable to SEIL;

(c) Direct AP Discoms (Respondent Nos. 1 to 5) to pay Late Payment Surcharge pendente lite till actual payment of Late Payment Surcharge amounts; and

(d) Pass any other order or direction as this Commission may deem fit in light of facts and circumstances of the present Petition.”

Background

2. The Petitioner is a generating company within the meaning of Section 2(28) of the Act as it is engaged in the business of generation, operation, and maintenance of generating plants, including owning and operating Sembcorp Energy India Limited (P1 Project), and Sembcorp Energy India Limited (P2 Project) comprising 1320 MW (2x660 MW), respectively located in the State of Andhra Pradesh. Earlier, Project P2 was owned and operated by Sembcorp Gayatri Power Limited (SGPL). However, pursuant to the order dated 31.10.2018 issued by the Regional Director, South East Region, Ministry of Corporate Affairs, SGPL came to be amalgamated into Sembcorp Energy India Limited.

3. On 18.9.2018, Respondent No.1, Andhra Pradesh Power Purchase Coordination Committee (APPCC) issued the Purchase Order ("PO 1") to SGPL (now, SEIL) for supply of power to the AP Discoms, which comprised the supply of (i) 150 MW during 17.9.2018 to 30.9.2018 and duration 00:00 Hrs. to 06:00 Hrs. (ii) 300 MW during the period 17.9.2018 to 30.9.2018 and duration 22:00 Hrs. to 24:00 Hrs. and (iii) 400 MW during 1.10.2018 to 31.10.2018. Thereafter, on 29.10.2018, APPCC issued another Purchase Order ("PO 2") in favour of the SGPL (now, SEIL) for the supply of 250 MW from 1.11.2018 to 30.11.2018 for a duration of 00:00 Hrs. to 24:00 Hrs. It is submitted that, in terms of both the above POs, the bills were to be raised on a weekly basis, and in the event of a delay in payment for more than 30 days, a surcharge @1.25% per month is payable on the pending amounts till the date of payment. It is submitted that in terms of the provisions of the POs, the Petitioner raised several invoices for the energy supplied to the AP Discoms under PO 1 and PO 2. However, the AP Discoms delayed

the payment of the amount against the said invoices, and accordingly, the Petitioner raised the invoices for Late Payment Surcharge (LPS), against which the AP Discoms have failed to make any payment to the Petitioner. In this backdrop, the Petitioner has filed the present Petition.

Submissions of the Petitioner

4. The Petitioner has mainly submitted as under:

(a) For the energy supplied to the AP Discoms under PO 1 & 2, the Petitioner had raised invoices of Rs. 1,86,48,90,949/- in accordance with the terms and conditions of the said POs. However, since AP Discoms delayed the payment, they are liable to pay LPS in terms of the POs.

(b) The Petitioner vide its letters dated 8.3.2021, 6.4.2021, 7.6.2021, 7.7.2021, 5.8.2021, 7.9.2021, and 5.10.2021, requested the AP Discoms to pay Rs. 26,31,84,557 towards LPS.

(c) On 10.11.2021, the Petitioner issued notice to the Respondents in terms of POs, *inter-alia*, stating that the Petitioner submitted LPS invoices on the delayed payment of weekly energy invoices (from January, 2019 to January 2020) and AP Discoms have neither disputed the weekly energy invoices nor the LPS invoices raised by the Petitioner. Therefore, liability to pay LPS stands admitted. The AP Discoms was requested to make payment within 15 days from the receipt of the letter dated 10.11.2021 failing which the Petitioner will be constrained to initiate appropriate proceedings.

(d) The Hon`ble Supreme Court in the case of Adoni Ginning Factory Vs. Secretary, Andhra Pradesh Electricity Board [AIR 1979 SC 1511] and the Hon`ble Kolkata High Court in the case of Tapan Kumar Sinha Vs. West Bengal State Electricity Board [1997 SCC Online CAL 13] have held that LPS is a provision for interest by way of compensation for delayed payment.

(e) The Appellate Tribunal for Electricity (APTEL), vide its judgment in Appeal No. 56 of 2020 in the case of DB Power Limited Vs. CERC and others, taking serious note of the non-payment of LPS by the distribution licensee of Tamil Nadu, summoned the concerned official for an explanation on the payment defaults. Accordingly, this Commission ought to direct AP Discoms to pay outstanding dues along with LPS as per the findings of the APTEL in its judgment dated 27.4.2021 in Appeal No. 77 of 2018 in the case of Maharashtra State

Electricity Distribution Company Limited v. MERC & others. The above judgment of the APTEL dated 27.4.2021 was confirmed by the Hon`ble Supreme Court vide its judgment dated 8.10.2021 in Civil Appeal No. 1843 of 2021 and held that the parties cannot pass on the burden of delay in making the payment to the generating companies.

(f) With regard to the payment of LPS, a High-Level Empowered Committee (HLEC) headed by the Cabinet Secretary, in its report dated 12.11.2018, has acknowledged a trend whereby the State Discoms are delaying the payment of monthly bills and are not paying LPS on delayed payment, despite the PPA providing for the same. Subsequently, a Group of Ministers was constituted to examine the recommendation of HLEC. On 7.3.2019, CCEA approved the recommendation of the GOM to make the payment of LPS mandatory. The Ministry of Power, vide its office Memorandum dated 8.3.2019 approved the recommendation of the GOM qua mandatory payment of LPS.

(g) Subsequently, on 22.2.2021, the Ministry of Power issued the Electricity Late Payment Surcharge and Related Matters Rules, 2022 (hereinafter referred to as 'the LPS Rules'). As per the LPS Rules, payment of LPS is mandatory, and non-payment of outstanding dues for more than a period 7 months will bar the Discoms from procuring power through a Power Exchange or granting short-term open access till such a bill is paid.

(h) The Petitioner is facing severe financial constraint on account of delay in payment of outstanding dues beyond the due date owing to non-payment/delayed payment of bills by Discoms.

(i) In terms of the various arrangements of supply as indicated in the Petition, it is evident that the P2 Project is for the supply of power to more than one State, and this Commission is the Appropriate Commission under Section 79(1)(b) of the Act and consequently, has the jurisdiction to entertain the present Petition as settled by the Hon`ble Supreme Court in the case of Energy Watchdog v. CERC & Ors. [(2017) 14 SCC 80]. In any case, the terminology used in Section 79(1) is a generating company as contrary to generating station, and this Commission has already held that it would have jurisdiction over the disputes involving the P1 Project in its previous orders. Since the P1 Project and the P2 Project are both under the same generating company, this Commission will have the jurisdiction in the present matter.

(j) The Petitioner's claim of LPS on delayed payment of energy bills for the supply of power for the period from September to November 2018 is within the period of limitation in accordance with the Limitation Act, 1963, and Order dated

10.1.2022 passed by the Hon'ble Supreme Court in MA No.29 of 2022, wherein the limitation period was extended on account of the Covid-19 pandemic.

Hearing dated 11.10.2022

5. The Petition was admitted on 11.10.2022 and notices were issued to the Respondents to file their replies. The Respondents and the Petitioner have filed their respective replies and rejoinders. The Petitioner, vide Record of Proceedings for the hearing dated 11.10.2022, was directed to file its submission on the issue of limitation.

6. The Petitioner, vide its affidavit dated 28.10.2022, has mainly submitted as under:

(a) The Petition is within the period of limitation and is covered by the Orders of the Hon'ble Supreme Court in terms of which the period of limitation was extended due to the Covid-19 pandemic.

(b) The Hon'ble Supreme Court, vide Order dated 10.01.2022 in M.A. No. 21 of 2022 and Batch, has held that the period from 15.3.2020 till 28.2.2022 shall stand excluded for the purposes of computing limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. In cases where the limitation would have expired during the period between 15.3.2020 and 28.2.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1.3.2022. In light of the above, the Petitioner's claims are covered by both, the dispensation granted by the Hon'ble Supreme Court and the general limitation period, i.e., 3 years.

(c) In terms of Rule 5 (2) of the LPS Rules, the Respondents are required to communicate, in writing, to the Petitioner, details of the outstanding dues and the number of instalments through which the outstanding dues would be paid. The time limit prescribed under the LPS Rules for such communication is within 30 days of the notification of the LPS Rules. The proviso to Rule 5(2) of the LPS

Rules provides that in case no communication is received, the LPS Rules will not be applicable to the payment of outstanding dues.

(d) The Petitioner has not received any correspondence/communication from the Respondents regarding payment of outstanding dues forming the subject matter of the present Petition in terms of the LPS Rules. Thus, the payment mechanism available under Rule 5(1) of the LPS Rules will not be applicable to the outstanding LPS in the present Petition.

Hearing dated 10.1.2023 & 21.3.2023

7. The matter was thereafter listed on 10.1.2023 and 21.3.2023. However, since the Respondents had failed to file any reply in the matter in terms of the direction vide Record of Proceedings for hearing dated 11.10.2022, they were again given opportunities to file their reply on the above dates. Finally, the matter was reserved for order on 21.3.2023, while granting a last opportunity to the Respondents to file their reply, if any.

Reply of AP Discoms

8. The Respondents, AP Discoms, in their reply dated 31.3.2023, have mainly submitted as under:

(a) The instant Petition is not maintainable since the Petitioner has failed to establish the existence of a 'composite scheme' in respect of the Sembcorp Energy India Limited (P2 Project). In any event, this Petition is liable to be dismissed as the LPS claims raised are barred by limitation. Without prejudice, the disputes raised in the Petition which are non-tariff money claims, can be effectively adjudicated in arbitration proceedings.

(b) That Petition and the reliefs claimed are contrary to the settled principles of compensation/ damages and penalty. Therefore, even on this ground, the Petition is liable to be dismissed by the Commission.

RE- State Commission is the appropriate forum to adjudicate the present dispute

(c) The P2 Project of the Petitioner is located in Andhra Pradesh. The Respondents Nos. 2 to 4 are distribution companies operating within the State of Andhra Pradesh. Admittedly, power has been supplied to the Respondents from this P2 Project. Clearly, therefore, the generation and sale of electricity in respect of the subject Purchase Orders, have taken place within the State of Andhra Pradesh. Therefore, as per Section 86(1)(f) of the Act, the Andhra Pradesh State Electricity Regulatory Commission is the appropriate authority to adjudicate upon the present dispute.

(d) That contrary to the legislative scheme, the Petitioner has invoked the jurisdiction of this Commission under Section 79(1)(b) and (f) of the Act to recover the arrear amount from the Respondents. It is on the purported basis that the P2 Project of the Petitioner is part of a 'composite scheme' since power from the said Project is supplied outside the State of Andhra Pradesh. However, no documents have been placed on record by the Petitioner to establish this position. The Petition is bereft of any proof for showing that the Petitioner supplied power from the P2 Project outside the State of Andhra Pradesh, at the relevant time, *i.e.*, during the time power was supplied to the Respondents.

(e) Without prejudice, the Petitioner has sought to rely upon power allegedly supplied inter-State during January 2018, May 2018, July 2018, January 2019, September 2021, and February 2022 under various Power Purchase Agreements, contracts, and purchase orders. None of these agreements, or contracts *i.e.* purchase orders have been placed on record and hence cannot be considered for deciding the maintainability of this Petition.

(f) The reliance placed by the Petitioner is misplaced since its does not pertain to the relevant period of September 2018 to November 2018, when power was supplied, the period of power supplied to the Respondents under the subject Purchase Orders from the P2 Project.

(g) In the absence of any proof furnished by the Petitioner that the P2 Project formed part of a 'composite scheme' during the relevant period, the present Petition is not maintainable

RE- LPS claims of the Petitioner are barred by limitation

(h) Pursuant to the order dated 11.10.2022 passed in the captioned matter, the Petitioner filed an affidavit on 27.10.2022 on the issue of its claims being within the statutory limitation period. The invoices of the Petitioner can be bifurcated into two categories, (i) Invoice Batch 1, which have been said to be within the period of limitation, and (ii) Invoice Batch 2 which have been said to be covered by the order dated 10.10.2022 of the Hon'ble Supreme Court ('Limitation Order').

Sr.	Invoice No.	Petitioner's justification on the issue of limitation
1	SGPL/2018-19/097/ST/AP SGPL/2018 -19/114/ST/AP SGPL/2018 -19/117/ST/AP SGPL/2018 -19/122/ST/AP SGPL/2018 -19/124/ST/AP SGPL/2018 -19/130/ST/AP SGPL/2018 -19/135/ST/AP SGPL/2018 -19/140/ST/AP ('Invoice Batch 1')	Petition filed within the limitation period of 3 three years.
2	SGPL/2018-19/099/ST/AP SGPL/2018 -19/110/ST/AP ('Invoice Batch 2')	Petition filed within the limitation period, in accordance with the order dated 10.01.2022 passed by the Hon'ble Supreme Court in M.A. No. 21 of 2022 in MA 665/2021 in SMW(C) No. 3/2020 'In Re: Cognizance for Extension of Limitation'.

RE- LPS claim due in respect of Invoice Batch 1

(i) The contention of the Petitioner to the effect that the LPS claims to the tune of Rs. 25,38,00,597/- are within the prescribed limitation period of 3 years

as per Section 137 of the Limitation Act, 1963 ('**Limitation Act**'), is misconceived and contrary to Section 137 as well as the terms of the Purchase Orders.

(j) Section 137 of the Limitation Act stipulates that the limitation period shall start running from the date "*the right to apply accrues*" i.e., when the cause of action first arises. The LPS clause in the Purchase Order provides that the LPS shall be levied if payment for the power supplied is not made within 30 days from the date of receipt of the invoice. Clearly, therefore, the limitation period for the Petitioner to claim LPS, if any, shall start running immediately after a lapse of 30 days from the date of receipt of the invoice. The period of 30 days for payment of Batch 1 invoices are 24.10.2018, 15.11.2018, 23.11.2018, 2.12.2018, 9.12.2018, 16.12.2018 and 2.1.2019. Therefore, the limitation period to claim LPS in respect of these invoices, lapsed after expiry of 3 years from the said dates, i.e., on 25.10.2021, 16.11.2021, 24.11.2021, 3.12.2021, 10.12.2021, 17.12.2021, and 3.1.2022.

(k) This position is further fortified by the fact that the Petitioner has itself stated that the dates on which cause of action first arose in respect of Invoice Batch 1 are 25.10.2018, 16.11.2018, 23.11.2018, 2.12.2018, 9.12.2018, 16.12.2018, and 4.1.2019.

The Petitioner has failed to establish any reasons for claiming the benefit of the Limitation Order. Consequently, LPS claims to the tune of Rs. 93,83,960/- due in respect of Invoice Batch 2 are barred by limitation.

(l) The Petitioner has contended that the above claims are covered by the Limitation Order passed by the Hon'ble Supreme Court. However, the Petitioner has failed to plead or establish any reason for the delay in approaching the appropriate Commission to claim the arrear amount. The Hon'ble Supreme Court in the case of *Sagufa Ahmed & Ors. v. Upper Assam Polywood Products* [(2021) 2 SCC 317] has clearly held that the refuge of the orders of the Court in SMW (C) 3/2020 is only for the benefit of vigilant citizens who were prevented from initiating proceedings within the limitation period.

(m) The instant Petition does not disclose any reason that prevented the Petitioner from approaching the appropriate Commission or filing the present Petition within the statutory period of limitation *i.e.* on or before 3.11.2021 and 9.11.2021. Therefore, the Petitioner is not entitled to claim the benefit of the Limitation Order, without establishing any reasons for filing the present Petition beyond the period of limitation.

LPS claims, being compensatory in nature, can be effectively adjudicated in arbitration proceedings.

(n) Without prejudice to the foregoing, it is the admitted position of the parties that the payment of LPS is compensatory in nature. Consequently, in accordance with the mandate of Sections 73 and 74 of the Indian Contract Act, 1872, the Petitioner will have to lead evidence and prove its entitlement to the compensation or damages claimed in the form of outstanding LPS.

(n) Since the present disputes pertaining to non-tariff and money claims can be effectively and appropriately adjudicated in arbitration proceedings. Therefore, the Commission, in exercise of its powers conferred under Section 79(1)(f) read with Section 158 of the Act, may refer the present dispute to arbitration.

The Petitioner has failed to satisfy the mandatory pre-requisites for recovering the arrear amount

(o) The Petitioner has sought LPS towards delayed payment of the invoices in respect of power supplied under the Purchase Orders. It is trite that the liability to pay interest or LPS is founded on the doctrine of compensation and damages. This position is also admitted by the Petitioner itself. Despite this admitted position, the Petitioner has failed to plead or prove damages or loss caused to it due to delayed payment by the Respondents, in order to substantiate its entitlement to LPS.

(q) It is settled law that any party claiming liquidated damages and compensation is required to show mitigation of such damages, in addition to

proof of such damages. The Petitioner has not even attempted to mitigate the damages/ loss caused to it, if any, on account of delayed payment by the Respondents.

(r) The Petitioner, by its admitted conduct, has consciously opted to continue supplying power to the Respondents despite the delay in payment of its invoices within the due date. This is distinct from the petitioner's entitlement to (i) terminate the Purchase Orders for non-payment by the Respondents, or (ii) curtail the power supply and sell the excess power to third parties to recover the price for such power.

(s) The conduct of the Petitioner clearly demonstrates its intention to take advantage of the LPS provision in the Purchase Orders without taking any mitigating measures. Therefore, the *ex-facie* Petitioner is not entitled to claim any LPS against the Respondents.

(t) If this Commission finds the Petitioner to be entitled to any compensation, the same shall be subject to reconciliation and prudence checks by the Respondents as well as this Commission.

Relief of interest on LPS amounts to a penalty, which is impermissible in law.

(u) In addition to the outstanding LPS amount, the Petitioner has sought interest on such LPS amount till the date of actual payment. Admittedly, LPS is a provision for interest on delayed payments. Therefore, the Petitioner's claim for interest on the outstanding LPS amount constitutes a claim of 'interest on interest'. Payment of such interest amounts to penalty is impermissible in law. The Hon'ble Supreme Court in the case of *Central Bank of India v. Ravindra & Ors.* [(2002) 1 SCC 367] has clearly laid down that 'interest on interest', whether simple, compound, or penal, cannot be claimed on the amount of interest charged by way of penalty for non-payment.

(v) LPS is charged for non-payment within a stipulated period. Clearly, LPS amounts to interest of a penal nature and therefore, cannot be capitalised, *i.e.*, it cannot be added to the principal amount for claiming additional interest. Therefore, the Petitioner's claim for interest on the outstanding LPS amount, is opposed to public policy and unsustainable in law.

Rejoinder by the Petitioner

9. The Petitioner, in its rejoinder dated 19.4.2023, has mainly submitted as under:

(a) The Petitioner is engaged in inter-State as well as cross-border supply of power from SEIL P1 and SEIL P2. The Petitioner has agreements for the supply of power with Gujarat Urja Vikas Nigam Ltd. (GUVNL), Bangladesh Power Development Board, Nepal, UP Discoms, Telangana Discoms and short-term supply contracts with traders such as PTC India Limited, Arunachal Pradesh Power Corporation Private Limited and GMR Energy Trading Limited.

(b) During the relevant period of supply of power to the Respondents, the Petitioner was supplying power to Telangana Discoms, UP Discoms, GUVNL and Nepal. The Petitioner has a composite scheme for generation and sale of electricity in more than one State and has a 'composite supply' under Section 79 (1) (b) of the Act. Therefore, this Commission has jurisdiction over the present dispute.

(c) Terminology used in Section 79 (1) of the Act is generating company as opposed to generating station. Since SEIL P1 and SEIL P2 are both under the same generating company, this Commission will have jurisdiction. The Commission in its order dated 26.11.2019 in IA No. 100/IA/2018 in Petition No. 275/MP/2018 titled *Tata Power Trading Co. Ltd. vs. SKS Power Generation (Chhattisgarh) Ltd.* held that this Commission would have jurisdiction on the basis that the dispute involved multiple States, even though the PPA had been terminated as on date of institution of proceedings. Accordingly, this Commission will have jurisdiction to entertain the present Petition.

(d) The Respondents in their reply have bifurcated the Petitioners claims into Invoice Batch 1 i.e., claims covered under the Limitation Act and Invoice Batch 2 i.e., claims covered by order dated 10.1.2022 (passed in continuation to orders dated 23.3.2020, 8.3.2021, 27.4.2021 and 23.9.2021) in M.A No. 21/2022 in M.A No. 665/2021 in Suo Motu Writ Petition (Civil) No. 3 of 2020 in re. Cognizance for Extension of Limitation (SC Covid-19 Orders).

(e) As regards Invoice Batch 1, the contention of the Respondents that the Petitioner has incorrectly calculated limitation from the date of payment instead of from the date 'the right to apply accrues' in terms of Article 137 of the Limitation Act is incorrect. The APTEL in its judgment dated 2.11.2020 in Appeal No. 10 of 2020 and batch titled *Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd.* (Udupi Judgment) held that the period of limitation for LPS claims will be governed by Article 113 of Limitation Act (Part X: Suits for which there is no prescribed period) under which the limitation period shall be calculated as three years from the date on which the "right to sue accrues" or the "cause of action" arises.

(f) The Udupi Judgment has attained finality and holds the field with respect to law pertaining to limitation period for claiming LPS. The Hon'ble Supreme Court vide order dated 8.2.2022 has dismissed the Civil Appeal filed against the Udupi Judgment holding that there exists no substantial question of law which merits consideration.

(g) The Petitioners claim for LPS is not barred by limitation as the period of limitation for claiming LPS commences from the date of receipt of complete payment of the monthly tariff invoices by the Respondents i.e., the date on which Respondent's liability to pay LPS gets crystalized.

(h) The Respondents' failure to pay LPS constitutes a "continuing breach" giving rise to a fresh cause of action every day, till the breach continues. Thus, there exists a continuing cause of action.

(i) The Respondents' contention that the limitation period for Invoice Batch 1 would have lapsed on the end of the 30th day of the particular invoice is

misplaced. Without prejudice, even if the Respondents' contention is accepted and the limitation period for Invoice Batch 1 expired on 25.10.2021, 16.11.2021, 24.11.2021, 3.12.2021, 10.12.2021, 17.12.2021 and 3.1.2022, etc., which would still be within the period of limitation in view of the Hon'ble Supreme Court's Covid-19 Orders.

(j) The Respondents in their reply have admitted that the limitation for claims under Invoice Batch 1 expired between October 2021 to January 2022 (*Para 19 of the Reply*). Without prejudice, even if the same is accepted, the present Petition is covered by SC Covid-19 Orders as October 2021 to January 2022 falls within the period from 15.3.2020 to 28.2.2022 which has been excluded by the Hon'ble Supreme Court. As per Hon'ble Supreme Court's directions, for claims wherein limitation expired between 15.3.2020 to 28.2.2022, an additional period of 90 days calculated from 1.3.2022 was granted. Thus, for the present claims, the Petitioner's limitation period would have expired on 30.5.2022. Since the Petitioner has filed the present Petition on 29.5.2022, the Petitioner's claims under Invoice Batch 1 are within the period of limitation.

(k) The contention of the Respondents that since the Petitioner has failed to establish any reason for delay in approaching this Commission within the statutory period of limitation, it is not entitled to the benefit of SC Covid-19 Orders, is contrary and is misplaced. The order of the Hon'ble Supreme Court, granting unfettered dispensation to the parties in terms of which, the period from 15.3.2020 till 28.2.2022 was to be excluded for the purposes of computing limitation. The dispensation was unfettered and unqualified. Therefore, the Petitioner was not required to provide any explanation for availing the dispensation granted by the Hon'ble Supreme Court.

(l) Without prejudice, the Respondents failure to pay LPS constitutes a "continuing breach" which gives rise to fresh cause of action till the breach continues. Thus, the bar of limitation will not apply in the present case since Respondents have not paid LPS, till date.

(m) APTEL in the Udupi Judgment, while adjudicating an identical issue (i.e., limitation period for claiming LPS), has held that a continuing wrong comprises 2 (two) elements i.e., it creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. Default by the Respondents to pay LPS partakes the character of a continuing wrong under Section 22 of the Limitation Act, and for every breach, the Petitioner gets a fresh cause of action.

(n) Without prejudice, the Hon'ble Supreme Court in the case of *Andhra Pradesh Power Co-ordination Committee & Ors v. Lanco Kondapalli Power Limited & Ors* [(2016) 3 SCC 468] (Lanco Judgment) has restricted the applicability of Limitation Act only to adjudicatory powers and functions of the State Commission under Section 86(1)(f) of the Act. The Hon'ble Supreme Court held that the principles of Limitation Act would not apply to the powers and functions of the Regulatory Commission, which are administrative and regulatory in nature. The ratio of the Lanco Judgment with respect to the Limitation Act not being applicable to administrative and regulatory functions of the Regulatory Commission was reiterated by APTEL in the Udupi Judgment. The APTEL in the Udupi Judgment (while adjudicating an identical issue i.e., limitation period for claiming LPS) has categorically held that since LPS has statutory character, the Limitation Act will not apply in the present case.

(o) The contention of the Respondents that payment of LPS is compensatory in nature and consequently, in terms of Section 73 and Section 74 of the Contract Act, the Petitioner ought to prove damages or loss caused due to delayed payment by the Respondents in order to substantiate its LPS claim, is misplaced and contrary to the settled position of law. It is trite that payment of LPS for delayed payment of bills is mandatory. Further, the objective of LPS is to enforce/encourage timely payment by the procurer. LPS dissuades the procurer from delaying payment.

(p) LPS is a genuine pre-estimate of damages and is a statutory liability. It is settled law that once the 'compensation' stipulated in the agreement is a genuine pre-estimate of damages, there is no requirement to prove loss.

(q) Since the Respondents have failed to make timely payments in terms of the Purchase Orders, the Petitioner is entitled to claim a surcharge @ 1.25% per month on the pending amounts, till the date of payment. Thus, LPS cannot be equated with a genuine pre-estimate of damages and is rather a statutory liability, and Section 73 and Section 74 of the Contract Act are inapplicable in the present case.

(r) If the Respondents' contention qua proving actual damage/loss incurred is accepted, it would lead to a situation where, despite the Respondents being in breach of their obligations under the Purchase Orders to pay LPS in the event of delayed payment of invoices, the Petitioner would be saddled with the additional obligation/burden of proving damages, which is not contemplated under the Purchase Orders and is impermissible.

(s) The Purchase Orders do not contemplate the resolution of disputes through arbitration. The Respondents are indirectly relying on the Judgment dated 14.11.2022 passed by the APTEL in Appeal Nos. 397 of 2022 and 147 of 2021 in the case of *Southern Power Distribution Co. of Andhra Pradesh Limited v. JSW Power Trading Company Limited*, (JSW Judgment) wherein it was held that the existence of an arbitration agreement prior or post the dispute is not *sin qua non* under Section 79 (1) (f) of the Act and that non-tariff related disputes / money claims can be referred for arbitration. The operation of the findings and guidelines framed by the APTEL in the JSW Judgment has been stayed by the Hon'ble Supreme Court vide Order dated 16.1.2023 in Civil Appeal Nos. 86-87 of 2023 titled *JSW Power Trading Company Ltd. v. Southern Power Distribution Company of Andhra Pradesh Limited & Anr.* The stay has been extended vide Order dated 23.1.2023 in Civil Appeal Nos. 309-310 of 2023 filed by the Respondents. Since the present dispute pertains to non-payment of outstanding LPS arising out of delay in payment of weekly Invoices towards power supplied

under the Purchase Orders from the months of September, 2018 to November 2018, this Commission has the jurisdiction to adjudicate on the present dispute.

(t) The contention of the Respondents that the Petitioner's conduct of not terminating the Purchase Orders due to non-payment of Invoices or curtailing the power supply and selling the excess power to third parties is indicative of its intention to take advantage of the LPS provision without taking mitigating measures is erroneous. The additional rights available to the Petitioner under the Purchase Orders do not limit or restrict the Petitioner's contractual right to claim LPS for delayed payments. The Purchase Orders recognize the Petitioner's entitlement to claim LPS for delayed payments, and accordingly, the Petitioner is entitled to LPS under the Purchase Orders.

(u) The Petitioner had raised LPS invoices in terms of the Purchase Order on account of delayed payment by the Respondents. The Purchase Orders specify that an LPS of 1.25% is leviable on all dues remaining unpaid for more than 30 days. The term 'all dues' would necessarily include the LPS dues payable by the Respondents. Accordingly, the Petitioner is entitled to further interest on the outstanding LPS till the date of actual payment.

(v) The LPS Invoices claimed in the present Petition would form part of the principal amount as on date of the order to be passed by this Commission on which the interest is payable by the Respondents as per the Hon'ble Supreme Court Judgment in the case of *Hyder Consultancy (UK) Ltd. v. Governor, State of Orissa* [reported as (2015) 2 SCC 189].

(w) If the contention of the Respondents is to be accepted, it would cause prejudice and harm to the Petitioner. For instance, a party is liable to pay the principal amount by 2015. However, payment is delayed, and complete payment is made in 2017. Accordingly, LPS is leviable for the period of 2 years. However, the LPS invoices are finally paid in 2023. It cannot be the case that for the delay of 8 years, there is no liability for interest. This would result in an entity taking advantage of their own wrong, which is impermissible as held by Hon'ble

Supreme Court in the case of *Devendra Kumar v. State of Uttaranchal & Ors.*, [(2013) 9 SCC 363].

(x) Without prejudice, the issue qua payment of interest is in the nature of time value of money which ought to be paid. This issue is no longer *res integra*. The Hon'ble Supreme Court has recognized payment of interest as the time value of money. [*Central Bank Judgment* (Para 37) and *Indian Council of Enviro-Legal Action vs. Union of India & Ors.* [2011 (8) SCC 161 (Para 177-178)]

(y) This Commission ought to take note of the conduct of the Respondents in the present proceedings. The Respondents have willfully not complied with the Commission's directions to file the reply within the period prescribed by this Commission in RoPs dated 11.10.2022 and 10.1.2023. The reply filed by the Respondents was finally filed on 5.4.2023, after a cumulative delay of over 6 months. Further, the primary issue raised by the Respondents in the reply pertains to the issue of jurisdiction and limitation, which is a frivolous attempt to obfuscate from the merits of the matter and to delay the proceedings further.

Analysis and Decision

10. After considering the submissions of the parties and perusal of documents placed on record, the following issues arise for our consideration:

Issue No. 1: Whether this Commission has the jurisdiction to adjudicate the present Petition?

Issue No. 2: Whether the claims raised by the Petitioner in the present Petition are barred by limitation?

Issue No.3: Whether the Petitioner is entitled to LPS on delayed payment of Energy Bills for supply of power for the period September 2018 to November 2018 from the Respondents?

Issue No.4: Whether the Petitioner is entitled to interest on the outstanding LPS amounts till actual date of payment?

The above issues have been dealt with in the subsequent paragraphs.

Issue No. 1: Whether this Commission has the jurisdiction to adjudicate the present Petition?

11. The Respondents have submitted that the power supplied to the Respondents was supplied from SEIL's Project 2 (SEIL P2) which is located in the State of Andhra Pradesh. Therefore, the generation and sale of electricity have taken place within the State of Andhra Pradesh. Accordingly, under Section 86 (1) (f) of the Act, the Andhra Pradesh Electricity Regulatory Commission (APERC) is the Appropriate forum to adjudicate on the present dispute. Further, none of the agreements cited by the Petitioners pertains to the period in question, i.e., from September 2018 to November 2018.

12. *Per contra*, the Petitioner has submitted that SEIL has a composite scheme for generation and sale of electricity in more than one State as it is engaged in cross-border supply of power as well as inter-State and intra-State supply of power from its P1 Project and P2 Project. The Petitioner has also submitted that the various arrangements entered into in respect of P2 Project itself make it evident that it supplies power to more than one State, and even during the relevant period of supply to AP Discoms involved in the present Petition, it was supplying power to Telangana Discoms, UP Discoms, GUVNL, and Nepal, and thus, P2 Project also fulfils the criteria of 'composite scheme' under Section 79(1)(b) of the Act as elucidated by the Hon'ble Supreme Court in the case of *Energy Watchdog v. CERC & Ors.* [(2017) 14 SCC 80]. The Petitioner has submitted that the terminology used in Section 79(1) of the Act is generating company as opposed to generating station, and this Commission, in its previous orders, has already held that it will have jurisdiction over disputes involving SEIL (P1 Project). Since

the Petitioner’s P1 Project and P2 Project are both under the same generating company, the Commission has the necessary jurisdiction to entertain the present petition.

13. We have gone through the submissions made by the Petitioner and the Respondents. The jurisdiction of this Commission is to regulate the tariff of the generating companies are derived from Section 79(1)(a) and (b) of the Act, and to adjudicate the dispute under Section 79(1)(f) of the Act. The said provisions are extracted as under:

“Section 79. (Functions of Central Commission): --- (1) The Central Commission shall discharge the following functions, namely:

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

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

xx

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;”

14. In terms of the scheme of the Act, Section 79(1)(a) of the Act empowers this Commission to regulate the tariff of the generating companies owned or controlled by the Central Government. Section 79(1)(b) of the Act provides that this Commission shall have the jurisdiction to regulate the tariff of a generating company if it has a composite scheme of generation and sale in more than one State. Under Section 79(1)(c), the Commission has the jurisdiction to regulate inter-State supply of electricity; under Section 79(1)(d), the Commission has the power to determine the tariff for inter-

State transmission of electricity; and under Section 79(1)(f) of the Act, the Commission has the power to adjudicate a dispute involving a generating company or transmission licensee in respect of Section 79(1)(a) to (d) of the Act. The word used is “involving” a generating company or a transmission licensee in r a case to be brought before the Commission for adjudication of a dispute under Section 79(1)(f) of the Act. In other words, if one of the parties to the dispute is a generating company or transmission licensee and the dispute can be related to any of the functions under Section 79(1)(a) to (d) of the Act, the case for adjudication of such a dispute shall lie before this Commission.

15. The expression “composite scheme” and the jurisdiction of the Central Commission have been explained by the Hon'ble Supreme Court in the case of Energy Watchdog Judgment as under:

*“22. The scheme that emerges from these sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in clauses (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in clauses (a), (b) and (d), and “intra-State” in clause (c). **This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission's jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. **This being the case, we are*****

constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.

.....

24. Even otherwise, the expression used in Section 79(1)(b) is that generating companies must enter into or otherwise have a “composite scheme”. This makes it clear that the expression “composite scheme” does not have some special meaning — it is enough that generating companies have, in any manner, a scheme for generation and sale of electricity which must be in more than one State.”

16. As per the above findings of the Hon’ble Supreme Court, the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State, and it is enough that generating companies have in any manner a scheme for generation and sale of electricity in more than one State. From the above, it is observed that if under a scheme there is generation or sale of electricity in more than one State, it is covered under the expression “composite scheme” and is consequently under the jurisdiction of the Central Commission.

17. While the Respondents AP Discoms have contested the jurisdiction of this Commission over the Petitioner’s P2 Project on the ground that the Petitioner has failed to establish the existence of a ‘composite scheme’ in respect of the said Project, the *rebuttal* of the Petitioner to the above contention appears to be on two folds. Firstly, the Petitioner has submitted that the various arrangements of supply qua P2 Project itself demonstrate that P2 Project has a composite scheme of generation and supply of electricity in more than one State as envisaged under Section 79(1)(b) of the Act, thereby attracting the jurisdiction of this Commission. Secondly, the Petitioner has also submitted that the terminology used in Section 79(1) of the Act is ‘generating company’ as opposed to ‘generating station’ and in respect of the Petitioner, the Commission has

already held that it will have jurisdiction over the disputed involving the Petitioner (involving P1 Project) in order dated 21.8.2020 in Petition No. 217/MP/2016, order dated 9.1.2023 in Petition No. 16/MP/2021 and order dated 31.3.2022 in Petition No. 212/MP/2019 and since P1 Project and P2 Project are both under the same generating company i.e. SEIL, this Commission will have jurisdiction to entertain the dispute involving P2 Project as well.

18. While it is beyond dispute that in respect of the P1 Project, the Petitioner has a composite scheme of generation and supply of electricity in more than one State as envisaged in Section 79(1)(b) of the Act as the power generated therefrom is being supplied to, amongst others, AP Disocoms and Telangana Discoms under the various agreements and the Commission has already upheld its jurisdiction involving the said Project in its previous orders as already cited by the Petitioner and referred to in the above paragraph. On this ground, the Petitioner has contended that once the Commission has held jurisdiction over the dispute involving the Petitioner in these orders, it will also have the jurisdiction over the dispute involving the P2 Project of the Petitioner as the terminology issued in Section 79(1)(b) of the Act is 'generating company' as opposed to 'generating station' and both the P1 Project and P2 Project are under the same generating company, i.e. SEIL. While we do find some force in the aforesaid submission of the Petitioner inasmuch as the terminology used in Section 79(1)(b) of the Act is 'generating company' and not 'generating station', both of these terms being expressly defined in the Act. However, entertaining the aforesaid contention of the Petitioner would also require us to examine certain additional aspects as to when the P2 Project came to be vested in the Petitioner and its implication thereof. As per the

Petitioner's own submission, the P2 Project, which was originally owned & operated by Sembcorp Gayatri Power Limited, came to be amalgamated into the Petitioner, SEIL only, vide order of Regional Director, Southeast Region, Ministry of Corporate Affairs dated 31.10.2018, which also appears to be the completion date of the supply period under PO 1. Hence, at this juncture, we find it appropriate to first examine as to whether the P2 Project itself, in terms of the various arrangements of supply as indicated by the Petitioner, qualifies to be a composite scheme or not. If the answer to this is positive, we may not require examination of the alternate line of submission as advanced by the Petitioner as noted above.

19. Besides the arrangement of supply with AP Discoms under POs 1 & 2, the Petitioner has indicated the following arrangements of supply of power in terms of agreements and/or LoAs/Lols/POs as entered into with the distribution licensees/trading licensees in respect of its P2 Project:

S. No.	Agreements/ LoAs /POs etc.	Target State/ Distribution licensee	Period of Supply	Quantum
1	PPA dated 19.5.2018 with NTPC Vidyut Vypar Nigam Limited and Manikaran Power Ltd.	Nepal	1.4.2018 to 30.6.2019	120 MW
2	LoA dated 5.1.2018 with Manikaran Power Limited	UP Discoms/Uttar Pradesh	1.5.2018 to 30.9.2018	250 MW – 500 MW
3	POs dated 6.7.2018 & 20.7.2018 issued by TSPCC	TS Discoms/ Telangana	16.7.2018 to 30.9.2018	300 MW 50 MW
4	LoA dated 24.8.2018 issued by GUVNL	GUVNL/Gujarat	1.10.2018 to 31.10.2018 & 15.10.2018 to 31.12.2018	250 MW – 500 MW
5	PPA with Bangladesh Power Development Board dated 21.1.2019	Bangladesh/ Bangladesh Power Development Board	7.2.2020 to 31.12.2020	250 MW
6	PPA with GUVNL dated 9.9.2021	Gujarat/GUVNL	9.9.2021 to 31.7.2023	100 MW
7	PPA dated 3.2.2022 with	Bangladesh/	3.2.2022 to	200 MW

S. No.	Agreements/ LoAs /POs etc.	Target State/ Distribution licensee	Period of Supply	Quantum
	PTC India Limited	Bangladesh Power Development Board	31.5.2033	
8	PPA with Bangladesh Power Development Board dated 21.1.2019	Bangladesh/ Bangladesh Power Development Board	7.2.2020 to 31.12.2020	250 MW
9	LoI dated 22.2.2022 with GMR Energy Trading Ltd.	BSES Rajdhani Power Ltd. Delhi	1.5.2022 to 15.9.2022	25 MW
10	LoA dated 16.3.2022 issued by HPPC for supply of power through PTC India Ltd.	Haryana Discoms	1.5.2022 to 15.10.2022	100 MW
11	LoA dated 22.12.2021 issued by Torrent Power Limited for supply of power through PTC India Ltd.	Torrent Power Ltd./Gujarat	1.4.2022 to 30.9.2022	50 MW

20. The perusal of the above arrangements of supply of power in respect of the Petitioner's P2 Project clearly indicate that not only did the said Project have a composite scheme of generation and supply in more than one State for the period concerned with the supply to AP Discoms under the POs 1 & 2 i.e. from 17.9.2018 to 30.11.2018 but it was also supplying power to Telangana Discoms, UP Discoms, GUNVL and Nepal. Even presently the arrangement of generation and supply of power outside the State of Andhra Pradesh continues in respect of the P2 Project as it is supplying power to GUVNL and Bangladesh Power Board. As already noted above, in terms of the judgment of the Hon'ble Supreme Court in the case of Energy Watchdog, the moment generation and sale of electricity take place in more than one State, this Commission is the Appropriate Commission under the Act, and as for the period in question, the P2 Project of the Petitioner was evidently generating and supplying the power to more than one State and therefore, it qualifies to be a 'composite scheme' as envisaged under Section 79(1)(b) of the Act, thereby, falling within the jurisdiction of this Commission. Consequently, the dispute involving the Petitioner and the AP Discoms in

terms of the supply of power under POs 1 & 2 is amenable to the adjudicatory jurisdiction of this Commission under Section 79(1)(f) of the Act. In view of the above, the contentions of the AP Discoms that the Petitioner has failed to demonstrate that the P2 Project does not have a 'composite scheme' and that this Commission does not have jurisdiction to entertain the present Petition deserve to be rejected. Having held that the P2 Project of the Petitioner itself has a composite scheme of generation and supply of electricity in more than one State and that this Commission has jurisdiction to deal with the dispute involved between the parties, we do not find any need to deal with the alternate line of submission as advanced by the Petitioner as discussed above.

21. The Respondents have also contended that the present dispute ought to be referred for arbitration. The Respondents have submitted that since the claims in the present Petition pertain to non-tariff related matters and are monetary in nature, the present dispute ought to be referred for arbitration in exercise of this Commission's powers under Section 79 (1)(f) read with Section 158 of the Act. *Per contra*, the Petitioner has submitted that this Commission has the jurisdiction to adjudicate on the present dispute, and the indirect reliance of the Respondents on the Judgment dated 14.11.2022 passed by the APTEL in Appeal Nos. 397 of 2022 and 147 of 2021 titled Southern Power Distribution Co. of Andhra Pradesh Limited v. JSW Power Trading Company Limited, (JSW Judgment) is misplaced since the same has been stayed by the Hon'ble Supreme Court vide Order dated 16.01.2023 in Civil Appeal Nos. 86-87 of 2023 titled JSW Power Trading Company Ltd. v. Southern Power Distribution Company of Andhra Pradesh Limited & Anr.

22. We have considered the submissions of the Petitioner and the Respondents. It is pertinent to note that the Hon'ble Supreme Court in the case of Gujarat Urja Vikas Nigam Limited vs. Essar Power Limited [(2008)4 SCC 755] has laid down that after the coming into force of the Electricity Act, 2003, whenever there is a dispute between the licensee and the generating company, only the State Commission or the Central Commission (as the case may be) or arbitrator (arbitrators) nominated by it can resolve such a dispute. We have already noted that the dispute between the Petitioner and AP Discoms is amenable to the jurisdiction of this Commission under Section 79(1)(b) read with Section 79(1)(f) of the Act. Section 79(1)(f) clearly provides that the Commission shall discharge the function "to adjudicate upon the disputes involving generating companies or transmission licensees in regard to matters connected with clause (a) to (d) above and to refer any dispute to arbitration". Thus, the Commission has the discretion under Section 79(1)(f) of the Act to either adjudicate the dispute itself or refer the matter to arbitration. Moreover, with the parties having already completed the pleadings on merit after the admission of the matter, referring the matter to arbitration at this stage would only prolong the litigation and not serve any useful purpose. We also observe that the Respondents appear to be relying on the JSW Judgment wherein the APTEL held that the existence of an arbitration agreement prior to or post the dispute is not *sin qua non* under Section 79 (1)(f) of the Act and that a non-tariff related dispute or a money claim can be referred for arbitration. We find that the operation of the findings and guidelines framed by the APTEL in the JSW Judgment has been stayed by the Hon'ble Supreme Court vide Order dated 16.01.2023 in Civil Appeal Nos. 86-87 of 2023 titled *JSW Power Trading Company Ltd. vs. Southern Power Distribution Company of*

Andhra Pradesh Limited & Anr. The stay on the JSW Judgment was further extended vide Order dated 23.1.2023 in Civil Appeal Nos. 309-310 of 2023 filed by the AP Discoms. In the alternative, we are of the view that in order to refer a dispute for arbitration, 'the existence of elements for a settlement that may be acceptable to the parties' is a *sine qua non*. During the course of the hearing, we did not find even an iota of probability for settlement. Hence, reference to Arbitration would have been a futile exercise.

23. In view of the above, we now proceed to examine the Petitioner's LPS claims against the delayed payment of energy bills for the power supplied to the Respondents in terms of POs 1 & 2.

Issue No.: 2: Whether the claims raised by the Petitioner in the present Petition fall within the period of limitation?

24. As noted above, the Respondents have primarily bifurcated the invoices of the Petitioner into two categories, namely, Batch 1 Invoices – in respect of which the Petitioner has claimed to be within the period of limitation, and Batch 2 Invoices – in respect of which the Petitioner has claimed to be covered by the order of the Hon'ble Supreme Court dated 10.10.2022. In respect of the LPS claim of around Rs. 25,38,00,597/- under Batch 1 Invoices, the Respondents have submitted that the Petitioner, in respect of the said invoices, has erroneously calculated the period from the date of repayment of the principal amount by the Respondents. As per Article 137 of the Limitation Act, the limitation period shall start running from the date "the right to apply accrues," i.e., when the cause of action first arises, which in the present case, starts running immediately after a lapse of 30 days from the date of receipt of the

invoice. The Respondents have submitted that the period of 30 days for payment of Batch 1 Invoices is 24.10.2018, 15.11.2018, 23.11.2018, 2.12.2018, 9.2.2018, 16.12.2018, and 2.1.2019 and the limitation period to claim the LPS in respect of these invoices lapsed after expiry of 3 years from the said dates, i.e., on 25.10.2021, 16.11.2021, 24.11.2021, 3.12.2021, 10.12.2021, 17.12.2021, and 3.1.2022, respectively. The Respondents have further submitted that in respect of the Petitioner's LPS claims to the tune of Rs. 93,83,960/- under Batch 2, the Petitioner has failed to plead or establish any reason for the delay in approaching the Appropriate Commission to claim the arrear amount. The Respondents have placed their reliance on the judgment of the Hon'ble Supreme Court in the case of Sagufa Ahmed & Ors. v. Upper Assam Plywood Products [(2021) 2 SCC 317] ['Sagufa Judgment'] to contend that in the said judgment it has clearly been held that the refuge of the orders of the Hon'ble Supreme Court in SMW(c) No. 3 of 2020 is only for the benefit of vigilant citizens who were prevented from initiating the proceedings within the limitation period and the Petitioner has failed to disclose any reason which prevented it from approaching the Commission or filing the Petition within the statutory period of limitation.

25. *Per contra*, the Petitioner has submitted that insofar as the contentions of the Respondents pertaining to Batch 1 Invoices are concerned, Article 137 of the Limitation Act does not apply to the present dispute, but as categorically held by the APTEL in the Udupi Judgment, the period of limitation for LPS claims will be governed by Article 113 of the Limitation Act under which the limitation period shall be calculated as three years from the date on which the "right to sue accrues" or the "cause of action" arises. The Petitioner has submitted that the limitation period for claiming LPS commences from the

date of receipt of complete payment of monthly tariff invoices by the Respondents, i.e. the date on which the Respondents' liability to pay LPS crystalizes, and accordingly, the Petitioner has calculated the period of limitation from such a date, and as such, the Petitioner's claim towards LPS is within the limitation period. Without prejudice, the Petitioner has also submitted that even if the contention of AP Discoms that the period of limitation for Batch 1 Invoices would expire on 3 years from the end of 30th day for payment as indicated, the Petitioner's claims would still be within the period of limitation in view of the Hon'ble Supreme Court's Covid-19 Orders as the period from October, 2021 to January, 2021 (b/w which the period limitation expired for Batch 1 Invoices as per AP Discoms) falls within the period of 15.3.2020 to 28.2.2022 which has been excluded by the Hon'ble Supreme Court and further grant of period of 90 days from 1.3.2022 in cases where the limitation would have expired during the period 15.3.2020 till 28.2.2022. Based on this, the period of limitation for the Petitioner would have expired on 30.5.2022 (i.e., 90 days from 1.3.2022), and the Petitioner has filed the present Petition on 29.5.2022. Insofar as the Batch 2 Invoices are concerned, the Petitioner has submitted that the dispensation provided by the Hon'ble Supreme Court in Covid-19 Orders is unfettered and unqualified, and the reliance placed by the Respondents on the Sagufa Judgment is misplaced. In the said judgment, the issue before the Hon'ble Supreme Court was whether the Petitioners there could rely on the Covid-19 Orders to extend the period up to which the delay could be condoned by NCLAT in exercise of discretionary powers granted by the statute, and thus, the said judgment does not apply to the facts of the present case.

26. We have considered the submissions of the Petitioner and the Respondents on this aspect of the limitation. As the parties have made their submissions in respect of the invoices for which there has been delayed payment by segregating them into Batch 1 Invoices and Batch 2 Invoices, as noted above, we also proceed to deal with the aspect of limitation in such a manner.

27. Insofar as the claim of LPS by the Petitioner pertaining to Batch 1 Invoices and the specific limitation period for such claim is concerned, it is noticed that the APTEL in the Udupi Judgment while dealing with LPS claims therein, has held that the period of limitation for LPS claims will be governed by Article 113 of the Limitation Act, which relates to suits for which there is no prescribed period. Accordingly, APTEL held that the limitation period shall be calculated as three years from the date on which the “*right to sue accrues*” or the “*cause of action*” arises. Relevant extracts of the Udupi Judgment are as under:

*“175. The argument that Article 25 occurring in Part-I of the Schedule to Limitation Act, 1963 applies to the present dispute involving specific issue of LPSC itself is wrong. **There is no specific limitation period specified for claiming LPSC in Schedule to the Limitation Act, 1963. Accordingly, even in cases where there is no running account, the period of limitation for LPSC claims will have to be governed by Article 113 of Limitation Act, 1963 (Part X- Suits for which there is no prescribed period), which provides the limitation period as three years computed from the date on which the “right to sue accrues” which is same as the date on which the “cause of action” arises.**”*

28. Although the findings in the Udupi Judgment were challenged before the Hon'ble Supreme Court in Civil Appeal No. 838 of 2021 titled Power Company of Karnataka Ltd. v. Udupi Power Corporation Ltd. However, vide Order dated 8.2.2022, the Civil Appeal

was dismissed on the ground that there was no substantial question of law that merited consideration.

29. In the present case, the Respondents have neither disputed the amount under the weekly invoices raised by the Petitioner towards the supply of power nor denied that there had been a delay on their part in making payments thereof. The record also indicates that even the LPS invoices raised by the Petitioner do not appear to have been disputed by the Respondents in any of their communications at the relevant time until their stand taken in the reply filed to the present Petition. In the present circumstances, the “right to sue accrues” for the Petitioner in respect of its LPS claims can begin to run only when there is a default on the part of the Respondents in making the payment of LPS as per the terms of POs, which can only be subsequent to the crystallization of the LPS liability of the Respondents, i.e. date on which the payment towards weekly invoices was made by the Respondents. It is observed that the Petitioner has calculated the period of limitation from the date on which the liability to pay LPS was crystalized itself, i.e., the date on which the complete payment towards weekly invoices was made by the Respondents. Even reckoning the commencement of the limitation period from such a date, the LPS claim of the Petitioner in respect of Batch 1 Invoices falls within the period of limitation, as can be seen from the following table:

Sl.	Invoice No.	Due Date	Date of Receipt of amount / commencement of Limitation Period	Expiry of Limitation Period from date of receipt of payment
1.	SGPL/2018-19/097/ST/AP dated 24.09.2018	24.10.2018	2.01.2020	2.01.2023
2.	SGPL/2018-19/114/ST/AP dated 16.10.2018	15.11.2018	31.12.2019	31.12.2022
3.	SGPL/2018-19/117/ST/AP dated 24.10.2018	23.11.2018	31.12.2019	31.12.2022
4.	SGPL/2018-19/122/ST/AP dated 02.11.2018	2.12.2018	31.12.2019	31.12.2022
5.	SGPL/2018-19/124/S/AP dated 09.11.2018	9.12.2018	2.01.2020	2.01.2023

6.	SGPL/2018-19/130/ST/AP dated 16.11.2018	16.12.2018	2.01.2020	2.01.2023
7.	SGPL/2018-19/135/ST/AP dated 24.11.2018	24.12.2018	2.01.2020	2.01.2023
8.	SEIL PRJ2/2018-19/140/ST/AP dated 3.12.2018	2.01.2019	2.01.2020	2.01.2023

30. Notwithstanding the above, even if we proceed to accept the contention of the Respondents that the limitation period for Batch 1 Invoices would have lapsed at the end of 3 years from the 30th day of the particular invoice, i.e., on 25.10.2021, 16.11.2021, 24.11.2021, 3.12.2021, 10.12.2021, 17.12.2021, and 3.1.2022, etc., we observe that the Petitioner's claims would still be within the period of limitation in view of the SC Covid-19 Orders. These dates for expiry of the period of limitation as contended by the Respondents are squarely covered under the orders passed by the Hon'ble Supreme Court in Suo-Motu Writ Petition (Civil) No. 3 of 2020 and related Miscellaneous Applications, including Order dated 10.01.2022. In terms of the SC Covid-19 Orders, the period from October 2021 to January 2022 falls within the period from 15.3.2020 to 28.2.2022, which has been excluded by the Hon'ble Supreme Court. Additionally, the Hon'ble Supreme Court in terms of its directions had granted a period of 90 days from 1.3.2022 notwithstanding the actual period of limitation, for claims wherein limitation expired between 15.3.2020 to 28.2.2022. Relevant portions of the order of the Hon'ble Supreme Court dated 10.1.2022 is extracted as under:

"I. The order dated 23.3.2020 is restored and in continuation of the subsequent orders dated 8.3.2021, 27.4.2021 and 23.9.2021, it is directed that the period from 15.3.2020 till 28.2.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special law in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 3.10.2021, if any, shall become available with effect from 1.3.2022.

III. In cases where the limitation would have expired during the period between 15.3.2020 till 28.2.2022, notwithstanding the actual balance period of limitation remaining, all persons shall be a limitation period of 90 days from 1.3.2022. In

the event the actual balance period of limitation remaining, with effect from 1.3.2022 is greater than 90 days, that longer period shall apply...”

31. Evidently, the Petitioner’s claim under Batch 1 Invoices would have expired on 30.5.2023, and since the Petition was filed on 29.5.2022, which is within the extended period granted by the Hon’ble Supreme Court, the LPS invoices raised by the Petitioner, which form a part of Batch 1 Invoices, are within the limitation period.

32. As regards Batch 2 Invoices, the Respondents have contended that since the Petitioner has failed to establish any reason for delay in approaching the Commission within the statutory period of limitation, SEIL is not entitled to the benefit of SC Covid-19 Orders. In this regard, the Respondents have placed reliance on the Sagufa Judgment of the Hon’ble Supreme Court. *Per contra*, the Petitioner has contended that the SC Covid-19 Orders granted unqualified and unfettered dispensation to the parties, in terms of which, the period from 15.3.2020 to 28.2.2022 was to be excluded for the purposes of computing limitation. In cases where the limitation would expire between 15.3.2020 till 28.2.2022, notwithstanding the actual balance period of limitation remaining, all parties would have 90 days from 1.3.2022 as the period of limitation. Accordingly, the contention of the Respondents is contrary to the objective of the SC Covid-19 Orders. In this regard, the Petitioner has submitted the following:

S. No.	Invoice No.	Date of Receipt of amount	Due Date	Limitation Period
1.	SGPL/2018-19/099/ST/AP dated 3.10.2018	8.11.2018	2.11.2018	In terms Order dated 10.1.2022: (i) SEIL’s limitation period would have expired on 9.11.2021 and 19.1.2022, respectively which is within the exclusion period specified by Hon’ble Supreme Court. (ii) SEIL’s period of limitation of 90 days was to be calculated from 1.3.2022, in terms of which limitation would have expired on 30.5.2022.

S. No.	Invoice No.	Date of Receipt of amount	Due Date	Limitation Period
2.	SGPL/2018-19/110/ST/AP dated 9.10.2018	19.1.2019	8.11.2018	(iii) Since SEIL filed the present Petition on 29.5.2022, SEIL's claim is within the limitation period.

33. We are in agreement with the submissions made by the Petitioner. From a perusal of the Hon'ble Supreme Court's Covid-19 Orders, it is evident that the extension in the period of limitation was applicable to all claims that fell within the exclusion period specified under the Hon'ble Supreme Court's Covid-19 Orders. The Hon'ble Supreme Court has not included any condition for claiming benefit under the SC Covid-19 Orders. Thus, the submission of the Respondents that the Petitioner has failed to provide any reason for not being able to approach the Commission within the original limitation period deserves to be rejected. Further, the intent of extending the limitation period was to mitigate the difficulties on account of the Covid-19 pandemic. Denying such a benefit at this stage would be contrary to the objective and intent of the SC Covid-19 Orders. Further, a perusal of the Sagufa Judgment would reveal that the same does not advance the position of the Respondents. The issue before the Hon'ble Supreme Court in the Sagufa Judgment was whether the SC Covid-19 Orders could form the basis for extending the period up to which the delay could be condoned by NCLAT in exercise of discretionary powers granted by the statute. The Hon'ble Supreme Court observed that the Petitioners therein could not take refuge under the SC Covid-19 Orders since the SC Covid-19 Orders were passed in the limited context of extending the period of limitation and not the period up to which the delay could be condoned in the exercise of discretion conferred by the statute. Relevant extracts from the Sagufa Judgment are as under:

“16. To get over their failure to file an appeal on or before 18-3-2020, the appellants rely upon the order of this Court dated 23-3-2020 in Cognizance for Extension of Limitation, In re [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343] . It reads as follows : (SCC paras 1-5)

“1. This Court has taken suo motu cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State).

2. To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective courts/tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended w.e.f. 15-3-2020 till further order(s) to be passed by this Court in present proceedings.

3. We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all courts/tribunals and authorities.

4. This order may be brought to the notice of all High Courts for being communicated to all subordinate courts/tribunals within their respective jurisdiction.

5. Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

17. But we do not think that the appellants can take refuge under the above order in Cognizance for Extension of Limitation, In re [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343] . What was extended by the above order [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343] of this Court was only “the period of limitation” and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The above order [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343] passed by this Court was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is *vigilantibus et non dormientibus jura subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.

23. Therefore, the appellants cannot claim the benefit of the order passed by this Court on 23 3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : 2020 SCC OnLine SC 343], for enlarging, even the period up to which delay can be condoned. The second contention is thus untenable. Hence the appeals are liable to be dismissed. Accordingly, they are dismissed.”

34. Thus, the Safuga Judgment relied upon by the Respondents cannot be applied to the facts of the present case. In view of the foregoing observations, we hold that the LPS claims of the Petitioner in respect of Batch 1 Invoice as well as Batch 2 Invoice are within the limitation period, and the contention of the Respondents to the contrary deserves to be rejected.

35. It is noted that the Petitioner has additionally pleaded that (i) the liability of LPS for the delay in payment is a continuing cause of action and, as such, bar of limitation will not apply, and (ii) the LPS claim falls within the ‘regulatory function’ of the Commission and, therefore, the limitation would not apply. However, since in the aforesaid paragraphs, we have already held that the LPS claim of the Petitioner is within the limitation, we do not find any need to separately deal with the above submissions in present case.

Issue No. 3: Whether the Petitioner is entitled to LPS on delayed payment of Energy Bills for supply of power for the period from September 2018 to November 2018 from the Respondents?

36. The Respondents have contended that payment of LPS is compensatory in nature, and consequently, in terms of Sections 73 and 74 of the Contract Act, the Petitioner is required to prove damages or loss caused due to delayed payment by the Respondents in order to substantiate its LPS claim.

37. *Per contra*, the Petitioner has submitted that the payment of LPS for delayed payment of bills is mandatory in terms of the judgment of the Hon'ble Supreme Court in the cases of (i) *Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission & Ors.*, [(2022) 4 SCC 657]. (Paras 176, 180, 190, 193, 195), (ii) Udipi Judgment (Paras 108, 113); (iii) Order dated 8.1.2020 passed by this Commission in Petition No. 22/MP/2019 in the case of *DB Power Ltd. vs. TANGEDCO Ltd.* (Para 10). The Petitioner has further submitted that LPS is a genuine pre-estimate of damages and is a statutory liability. Once the 'compensation' stipulated in the agreement is a genuine pre-estimate of damages, there is no requirement to prove loss. In this regard, the Petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *BSNL v. Reliance Communication Ltd.*: [(2011) 1 SCC 394] (Paras 47 & 53) and Judgment of the APTEL dated 12.02.2015 passed in Appeal No. 154 of 2013 titled *Lanco Kondapalli Power Limited v. Andhra Pradesh Electricity Regulatory Commission & Ors.* (Paras 48, 50-53)].

38. We have considered the submissions of the Petitioner and the Respondents and perused the case law relied on by the parties. In our view, LPS is a contractual right that arises upon default in payment of Invoices within the due date. The intent behind incorporating the LPS clause in an agreement is to enforce/encourage timely payment of bills within the stipulated time. The rate of LPS is also provided in the agreement to avoid the time-consuming exercise of assessing the losses of individual power generating companies by reason of late payment of bills. We are also of the view that accepting the Respondent's contentions would lead to placing an additional obligation/burden on the Petitioner to prove damages, which is not contemplated under

the current statutory framework or the legal regime. Accordingly, we are of the opinion that the Petitioner is not required to prove damages on account of non-payment/delayed payment of invoices by the Respondents.

39. We have perused the relevant provisions of the Purchase Orders which are as under: -

“2. Weekly bills may be raised provisionally by seller on the basis of RLDC schedules in case of APCTU / interstate generators. For the purpose of raising of weekly bills the month shall be divided into four parts i.e., from 00:00 hrs of 1st of the month to 24:00 hrs of 8th, from 00:00 hrs of 9th to 24:00 hrs of 15th, from 00:00 hrs of 16th to 24:00 hrs of 23rd and 00:00 hrs of 24th to 24:00 hrs of last day of the month. The final bill may be raised on the basis of Regional Energy Account issued by SRPC for the energy supplied by generator to APPCC/APDISCOMS at the delivery point during the month, after adjustment of the energy billed provisionally for the month.”

[...]

9. “Surcharge for Late Payment

A delayed payment surcharge of 1.25% (one and quarter percent) per month shall be leviable on all dues remaining unpaid for more than 30 days from the date of receipt of the bill. If the due date for payment is a Bank holiday in AP, the immediate next working day will be treated as due date of payment. Surcharge will be liable for payment for the period beyond 30 days till date of payment.”

40. From the above provisions, we observe that in terms of Paragraph 2 read with Paragraph 9 of the Purchase Orders, the Petitioner is required to raise weekly bills, and on all dues that remain unpaid for more than 30 days, the Petitioner shall be entitled to LPS at the rate of 1.25% per month till the date of actual payment.

41. We note that the Petitioner has supplied power to the Respondents in terms of the Purchase Orders during the period from September 2018 to November 2018 and has raised weekly bills in accordance with the Purchase Orders. It is not disputed that

there was a delay by the Respondents in making payment towards the said invoices and that they have not paid the LPS claimed by the Petitioner for this period of delay. Further, the Respondents have not submitted any document/correspondence on record to show that either the weekly bills or the LPS invoices have been disputed by the Respondents. In the absence of any such dispute, the liability to pay LPS stands admitted by the Respondents.

42. The Respondents have also contended that the Petitioner is taking advantage of the LPS provision without taking mitigating measures. The Petitioner could have terminated the Purchase Orders due to non-payment of Invoices or curtailed the power supply and sold the excess power to third parties on account of non-payment by the Respondents. We find that the foregoing contention is devoid of merit. The availability of additional rights, including termination, does not preclude the exercise of other available rights by the Petitioner.

43. Since we have already held that the Petitioner's LPS claims in respect of Batch 1 and Batch 2 Invoices are within the period of limitation, the Petitioner is entitled to outstanding LPS for the delay on the part of the Respondents in making payments towards Energy Charges under these Invoices. The Petitioner has indicated the outstanding LPS amount at Rs. 26,31,84,557/- for the supply of power during the period from 17.9.2018 to 30.11.2018 under POs 1 & 2. Even though the Respondents have not disputed the said computation in their reply, the Petitioner and the Respondents shall reconcile the amount within 15 days of this Order and thereafter make the payment of the aforesaid outstanding LPS amount within a month.

Issue No. 4: Whether the Petitioner is entitled to interest on the outstanding LPS amounts till actual date of payment?

44. The Respondents have contended that the Petitioner is claiming interest on outstanding LPS which constitutes a claim of interest on interest that is impermissible in law. In this regard, the Respondents have placed reliance on the Judgment of the Hon`ble Supreme Court in the case of *Central Bank of India v. Ravindra & Ors.* [(2002) 1 SCC 367] (Central Bank Judgment).

45. *Per contra*, the Petitioner has contended that the Purchase Orders entitle the Petitioner to claim 1.25% interest on all dues that remain unpaid beyond a period of 30 days. As the LPS invoices have also remained unpaid for a period beyond 30 days, the interest will apply for the period of delay till the date of actual payment. The Petitioner has placed reliance on the judgment of the Hon`ble Supreme Court in the case of *Hyder Consultancy (UK) Ltd. v. Governor, State of Orissa* reported as [(2015) 2 SCC 189] (Hyder Consultancy Judgment) in support of this position. Additionally, the Petitioner has also claimed that interest is permissible given the time value of money.

46. We have considered the submissions made by the parties. Admittedly, the LPS claims of the Petitioner pertaining to the period from 21.1.2019 till 10.1.2020 under POs 1 & 2 are yet to be paid by the Respondents, and in the foregoing paragraphs, we have issued directions to the Respondents to make the payments within a month from the date of this order. Accordingly, the question arises as to whether there can be any direction for awarding interest on the LPS till the date of its actual payment. We notice that a similar issue had come up for consideration before the APTEL in Appeal No. 386 of 2019, titled *Maharashtra State Electricity Distribution Company Limited v.*

Maharashtra Electricity Regulatory Commission and Anr. The said appeal was filed by the appellant, Maharashtra State Electricity Distribution Company Limited (MSEDCL), on being aggrieved by the direction of MERC to pay the penal interest on the outstanding Delayed Payment Surcharge to the wind power generator. The said direction was contested by MSEDCL on various grounds, including that it amounts to interest on interest (double penalty), that the penal levy is against the provisions of the agreement, etc. However, by rejecting such ground, the APTEL, vide judgment dated 20.9.2021, upheld the direction of MERC to levy interest on the Delayed Payment Surcharge. The aforesaid judgment of APTEL was challenged before the Hon'ble Supreme Court by Civil Appeal No.6440 of 2021, wherein the Hon'ble Supreme Court, while vacating the directions given by APTEL (by Para 45) for the financial affairs of MSEDCL to be examined and for appropriate measures to be taken in such regard by the State Commission, disposed of the appeal, declining to interfere with the above-mentioned decision on its merits, by order dated 2.3.2022.

47. In view of the aforesaid judgment of the APTEL, which has been upheld by the Hon'ble Supreme Court, the contention of AP Discoms that there cannot be any interest on the outstanding LPS cannot survive. Moreover, as observed by the APTEL in the said judgment, if such contention of AP Discoms is accepted, it would lead to a patently unfair and absurd situation wherein defaulting parties, i.e. AP Discoms in the present case, could simply avoid meeting their undisputed payment commitment towards LPS for the delayed payment of energy charges under the POs and thereafter, not paying the interest thereon despite such dues having remained outstanding for a considerable period (as noted, LPS liability pertains to the period from 21.1.2019 to 10.1.2020), which

ultimately compelled the Petitioner to initiate the present legal proceedings for recovery of its legitimate dues. Accordingly, in the facts and circumstances of the present case and balancing the interests of the consumers and the generators, we find it proper to award the interest on the outstanding LPS dues under POs 1 & 2 at the actual rate of interest paid by the Petitioner for arranging working capital funds (supported by Auditor's Certificate) or the rate of interest on working capital as per the 2019 tariff Regulations or the late payment surcharge rate as per the PPA, whichever is the lowest. Thus, the Respondents shall also be liable for interest (at the rate specified above) on the outstanding LPS from the 30th day from the date of the respective LPS invoices till the date of the Order. The Petitioner and the Respondents shall reconcile the amount of interest on LPS within 15 days of this Order and thereafter make the payment of the interest within 30 days.

48. In view of our findings, the Respondents, AP Discoms, shall make the payment towards the outstanding LPS along with interest thereon calculated in terms of the above, Further, in case the payments are not made within the timeline specified (15 days for reconciliation and 30 days thereafter) the provision of Late Payment Surcharge in the PPA would kick in.

49. This issue is addressed accordingly.

50. The Petition No. 173/MP/2022 is disposed of in terms of the above discussions and findings.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

sd/-
(Jishnu Barua)
Chairperson