

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 55/MP/2021

Coram:

**Shri Jishnu Barua, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order: 13th June, 2023

In the matter of

Petition under Section 79 of the Electricity Act, 2003 for execution of the order dated 15.1.2020 passed by the Commission in Petition No. 63/MP/2019; and initiation of proceedings/appropriate action under Section 142 read with Section 149 of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against the Respondents for noncompliance of the order dated 15.1.2020 passed by the Commission in Petition No. 63/MP/2019.

And

In the matter of:

**DB Power Limited,
3rd Floor, Naman Corporate Link,
Opp. Dena Bank, C-31, G-Block,
Bandra- Kurla Complex, Bandra (E),
Mumbai- 400051**

..... Petitioner

VERSUS

- 1. Rajasthan Urja Vikas Nigam Limited,
Vidyut Bhawan, Janpat,
Jyothi Nagar,
Jaipur – 302005**
- 2. The Managing Director,
Rajasthan Urja Vikas Nigam Limited,
Vidyut Bhawan, Janpat,
Jyothi Nagar,
Jaipur – 302005**



3. **Jaipur Vidyut Vitran Nigam Limited,**
Vidyut Bhawan, Jyothi Nagar,
Near New Vidhan Sabha Bhawan,
Jaipur – 302005
4. **The Managing Director,**
Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Jyothi Nagar,
Near New Vidhan Sabha Bhawan,
Jaipur – 302005
5. **Ajmer Vidyut Vitran Nigam Limited,**
Vidyut Bhawan, Makarwali Road,
Panchsheel nagar, Ajmer
Rajasthan – 305004
6. **The Managing Director,**
Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Makarwali Road,
Panchsheel nagar, Ajmer
Rajasthan – 305004
7. **Jodhpur Vidyut Vitran Nigam Limited,**
New Power House,
Industrial Area, Jodhpur- 342003
8. **The Managing Director,**
Jodhpur Vidyut Vitran Nigam Limited,
New Power House,
Industrial Area, Jodhpur- 342003
9. **PTC India Limited,**
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi-110066.
10. **The Chairman and Managing Director**
PTC India Limited
2nd Floor, NBCC Tower,
15 Bhikaji Cama Place, New Delhi – 110 066
11. **The Vice President (Commercial),**
PTC India Limited,
2nd Floor, NBCC Tower,
15 Bhikaji Cama Place, New Delhi 110 066

...Respondents



Parties present:

Shri Deepak Khurana, Advocate, DBPL
Shri Anand Ganeshan, Advocate, RUVNL
Ms Kritika Khanna, Advocate, RUVNL
Ms Prerna Singh, Advocate, PTCIL
Shri Keshav Singh, Advocate, PTCIL

ORDER

The Petitioner, DB Power Limited (in short 'DBPL'), has filed the present Petition for execution of the order dated 15.1.2020 passed by the Commission in Petition No. 63/MP/2019 and initiation of proceedings/appropriate action under Section 142 read with Section 149 of the Electricity Act, 2003 (hereinafter referred to as 'the Act'), and Regulation 111 of the Central Electricity Regulation Commission (Conduct of Business) Regulations, 1999 against the Respondents for non-compliance of the said order and further to direct the Respondents to forthwith comply with the said order. The Petitioner has made the following prayers:

“(a) Direct the Respondents to comply with the Order dated 15.1.2020 passed in Petition No. 63/MP/2019 and to forthwith pay the outstanding aggregate principal amount of Rs 230,58,89,377.20/- to the Petitioner along with Late Payment Surcharge thereon as provided in the PPAs;

(b) Issue appropriate directions for execution of the Order dated 15.1.2020 passed in Petition No. 63/MP/2019 and direct the Respondents to disclose all its bank accounts for the purpose of realization of the said amount of Rs. 230,58,89,377.20/- payable to the Petitioner along with Late Payment Surcharge thereon as provided in the PPAs;

(c) Initiate appropriate action against the Respondent under Sections 142 and 149 of the Electricity Act, 2003 and/or any other appropriate provision/s of the Electricity Act, 2003 for contravention and disobedience of the directions issued by the Hon'ble Commission in Order dated 15.1.2020 passed in Petition No. 63/MP/2019;

(d) Pass an ex-parte interim order directing the Respondents to forthwith pay the said principal amount of Rs. 230,58,89,377.20/- to the Petitioner;



(e) *Pass such other and further order or orders as this Hon'ble Commission may deem fit and proper under the facts and circumstances of the present case and in the interest of justice."*

Background:

2. The Petitioner has set up a 1200 MW coal based Thermal Power Plant (2 units x 600 MW each) at village Badadarha, Janjgir Champa, in the State of Chhattisgarh. The Petitioner had filed the Petition No. 63/MP/2019, *inter-alia*, seeking recovery of capacity charges/damages for 160 MW of power not procured by the Respondents for the period from 30.11.2016 to 31.7.2018 under back-to-back Power Purchase Agreement (PPA) dated 1.11.2013 entered into between the Petitioner and the Respondent No.5 ('PTC'), pursuant to the Power Purchase Agreement dated 1.11.2013 entered into between PTC and Respondent Nos. 2, 3 and 4 ('Rajasthan Utilities'). The said Petition was decided by the Commission vide its order dated 15.1.2020 whereby the Commission, *inter-alia*, held as follows :

"30. We have considered the submissions of the Petitioner and the Respondents. In our view, absence of any provision for 'deemed capacity charges' in the PPA cannot be a ground for denial of relief to the Petitioner flowing from the judgment of the Hon'ble Supreme Court. It has been held by the Hon'ble Supreme Court that bidders L-1 to L-5 including the Petitioner shall be entitled to supply of power in terms of the originally offered amount in terms of para 3.5 of the RfP and accordingly, the LOI's were modified. In other words, the quantum of power to be supplied under the PPA stood modified from 250 MW to 311 MW as per the directions of the Hon'ble Supreme Court. The Petitioner shall be entitled to the consequential relief of modification of the contracted capacity from 250 MW to 311 MW for the period from 30.11.2016 till 31.7.2018.

31. Accordingly, we direct the Petitioner to calculate and claim the compensation in the terms of capacity charges for 61 MW (311 MW–250 MW) for the period from 30.11.2016 to 31.7.2018 after offsetting the capacity charges, if any, earned on the said capacity during the relevant period. The Petitioner is directed to share all relevant documents including calculation with the Respondents while claiming compensation."



3. Accordingly, in the above order, the Commission held that the Petitioner is entitled to compensation in terms of the capacity charges for 61 MW (instead of 160 MW as prayed for by the Petitioner) for the period from 30.11.2016 to 31.7.2018 after offsetting the capacity charges, if any, earned on the said capacity during the relevant period and consequently asked the Petitioner to calculate its claims accordingly and to share all the relevant documents with the Respondents while claiming the compensation.

Submissions of the Petitioner:

4. The Petitioner has mainly submitted as under:

(a) In terms of the Commission's order dated 15.1.2020 in Petition No. 63/MP/2019, the Petitioner had raised its invoice No. 58/DBPL/PSR/PTC-Raj/LTS/CC dated 16.1.2020 for the differential amount for the capacity charges of Rs.230,58,89,377.20/- (Rs. 230 crore) for the period from 30.11.2016 till 31.7.2018. The Petitioner vide its letter dated 17.11.2020, submitted all the relevant details and reiterated its claim of the above-mentioned amount of Rs.230,58,89,377.20/- towards the capacity charges in terms of the Commission's order dated 15.1.2020. However, even after a period of one year, no amount was paid by the Respondents, thereby compelling the Petitioner to file the present Petition.

(b) The Petitioner preferred an appeal before the Hon'ble Appellate Tribunal for Electricity ('APTEL') and challenged the order dated 15.1.2020 passed by the Commission, only to the extent that the Commission rejected the Petitioner's claim for capacity charges for the remaining 99 MW (410 MW -311 MW), by filing an Appeal No. 90/2020. The Respondents also preferred an appeal bearing Appeal No. 68/2020 before the APTEL challenging the said order dated 15.1.2020 and sought stay on the same by filing an application. Finally, both appeals were dismissed by the APTEL vide judgment dated 20.9.2022. The Respondents have challenged the said judgment of the APTEL dated 20.9.2022 by filing a Civil Appeal

before the Hon'ble Supreme Court under Section 125 of the Act. However, no stay has been granted in the said Appeal.

(c) The Petitioner has been constrained to borrow working capital from Banks/Financial institutions in order to operate the plant. Upon exhausting working capital limits due to accumulated past dues from the Rajasthan Utilities (Respondents) and in the absence of working capital facilities to fund such a shortfall, the Petitioner would default on its various obligations, including debt service obligations which would trigger irreparable consequences. Despite the adjudication of the claims in favour of the Petitioner, the Respondents have failed to make the payment, thereby frustrating the order passed by the Commission.

(d) The very inaction on the part of the Respondents in not paying the amounts due and payable to the Petitioner in terms of the order passed by the Commission establishes the disregard being shown by the Respondents to the order passed by the Commission. Thus, the Respondents are guilty of disobedience to the order dated 15.1.2020.

(e) The Commission may pass appropriate directions for execution and enforcement of the order dated 15.1.2020 passed by the Commission in Petition No. 63/MP/2019.

Hearing Dated 21.5.2021

5. The Petition was heard on 21.5.2021. Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking direction to the Respondents to comply with the Commission's order dated 15.1.2020 in Petition No. 63/MP/2019 and to forthwith pay the outstanding aggregate principal amount of Rs.230.58 crore to the Petitioner along with the Late Payment Surcharge (LPS) thereon as provided in the Power Purchase Agreements. The learned counsel for the Petitioner reiterated the submissions made in the Petition.



6. Learned counsel for the Respondent No. 1, RUVNL accepted the notice and sought time to file a reply to the Petition.

7. After hearing the learned counsels for the Petitioner and the Respondent, RUVNL, the Commission directed the parties to file their respective replies and rejoinders.

Reply of the Respondent No.1-8, Rajasthan Utilities:

8. Pursuant to liberty granted by the Commission, the Respondent Nos. 1-8, Rajasthan Utilities, vide their joint reply dated 29.7.2021 have mainly submitted as under:

(a) Aggrieved by the Commission's order dated 15.1.2020, the Respondents Nos. 1 to 8 have preferred an Appeal bearing Appeal No. 68 of 2020 along with IA No. 241 of 2020 for challenging the Commission's order and have also filed an Application for stay of the order dated 15.01.2020, I.A. No. 241 of 2020, before the APTEL, which is pending for consideration. The Respondents have also sought urgent listing of the application and the APTEL vide its order dated 21.5.2021 has listed the matter on 30.7.2021. Further, the APTEL has even directed the parties to try and reach a consensus for the interim period if possible. Thus, it would not be correct for the Petitioner to seek directions from the Commission at this stage, and the Commission ought not to interfere while the matter (appeals) has been seized up by the APTEL. The said order, dated 15.1.2020, has also been challenged by DB Power in Appeal No. 90 of 2020.

(b) There are certain discrepancies, clearly evident in the claim of the Petitioner, viz., (i) for the period from 30.11.2016 to 26.3.2017, the Petitioner did not declare availability even up to 250 MW. In fact, the Petitioner has restricted its claim for capacity charges to only 175 MW for the capacity declared. Thus, the question of the Petitioner being in a position to supply up to 311 MW does not arise; (ii) for the period after the Hon`ble Supreme Court Order dated 25.4.2018 up to 1.8.2018-the Petitioner declared availability only up to 250 MW, despite the



Hon`ble Supreme Court order dated 25.4.2018 granting the right to the Petitioner to supply 311MW. Therefore, the question of claiming deemed capacity charges for 311 MW after 25.4.2018 by the Petitioner would not arise.

(c) In terms of the Hon`ble Supreme Court's order dated 25.4.2018, the *inter-se* quantum of powers of the generators varies, i.e. an increase in the quantum of the Petitioner's power by 61 MW and a reduction in the quantum of Maruti Clean Coal Power Limited (L-2 bidder) by 55 MW. Further, the said order applies only prospectively and does not entitle the generators to make claims for the past period. However, even if one is to assume the Petitioner's case that the said order applies retrospectively, then also the Respondent Nos. 1 to 8, Rajasthan Utilities, have already paid the capacity charges to corresponding 55 MW to Maruti Clean Coal Power Limited for the past period, and the same has to be adjusted and paid to the Petitioner. Thus, it is an adjustment between the generators to be carried out, and the same is subject to the decision of the APTEL as to whether the decision of the Commission on the retrospective operation of the Hon`ble Supreme Court order dated 25.4.2018 is justified or not.

(d) Moreover, in terms of the order dated 15.1.2020, the Petitioner has not yet provided the details of the availability declared and power generation and supply for the relevant period up to 25.4.2018, but has sought to evade the same by simply stating that it has not declared availability to any third party. Thus, a mere statement by the Petitioner cannot be taken as conclusive, and documentary evidence for the same ought to be placed on record by the Petitioner.

(e) The Petition of the Petitioner under Section 142 read with Section 149 of the Act is an abuse of law and process, meritless, and hence liable to be dismissed.

Rejoinder by the Petitioner:

9. The Petitioner, vide its rejoinder dated 9.8.2021, has mainly submitted as under:



(a) There are no discrepancies in the claims of the Petitioner and the Petitioner is entitled to claim capacity charges commencing from 30.11.2016. On the contrary, the entire defence of Rajasthan Utilities is based upon false averments, surmises, conjectures, and presumptions, that are baseless and unsubstantiated.

(b) Rajasthan Utilities, by way of such frivolous contention, is only seeking to re-agitate the issues that have already been decided and further seeking to go behind the order dated 15.1.2020, passed by the Commission in Petition No. 63/MP/2019, wherein, the Commission, after considering the contentions of the Respondents had duly rejected the same. Such contention of Rajasthan Utilities to re-agitate and go behind the said order is not allowed in law and hence is wholly untenable.

(c) No stay has been granted on the order dated 15.1.2020 passed by the Commission, and thus, the contention of Rajasthan Utilities that the Commission ought not to interfere by way of the present proceeding while the matter is pending in Appeal is erroneous.

(d) Further, in pursuance of the APTEL's order dated 23.3.2021, directing the parties to attempt to reach a consensus as to the interim arrangement that could be put in place pending the hearing of the main appeal, the Petitioner had approached Rajasthan Utilities vide letter dated 2.6.2021. However, Rajasthan Utilities, vide its letter dated 14.7.2021 had outrightly rejected the Petitioner's offer to reach an interim arrangement.

(e) The contention of Rajasthan Utilities that the Hon`ble Supreme Court order dated 25.4.2018 applies only prospectively and does not entitle the generators to claim for the past period has already been dealt with by the Commission vide its order dated 15.1.2020 and the same ought not to be reviewed as it is impermissible under law to do so.



(f) Further, the contention of Rajasthan Utilities, having already paid Maruti Clean Coal Power Limited, which is to be adjusted *inter-se* and thereafter to be paid to the Petitioner, is erroneous and self-contradictory, concerning its own internal mechanism and does not come in the way of the execution of the order dated 15.1.2020.

(g) The present Petition is in no manner devoid of merits, and hence, the same ought to be allowed to seek execution of the Commission's order dated 15.1.2020, in letter and spirit.

Hearing Dated 11.11.2021

10. During the course of the hearing on 11.11.2021, the learned counsel for the Respondents, Rajasthan Discoms submitted that the APTEL vide judgment dated 20.9.2021, has dismissed both the appeals, namely, Appeal No. 68/2020 filed by the Respondents and Appeal No. 90/2020 filed by the Petitioner herein. However, the Respondents have filed a Civil Appeal bearing No. 6668/2021 before the Hon'ble Supreme Court against the said judgment and have sought a stay on the judgement of the APTEL. Learned counsel further submitted that the Respondents have also moved a mentioning memo in the Hon'ble Supreme Court for urgent listing of the said appeal. Accordingly, learned counsel requested to defer the hearing of the present matter by four weeks, otherwise, the application for stay on the judgement of APTEL would become infructuous. Considering the submissions made by the learned counsel for the Petitioner and the Respondents, the Commission decided to adjourn the matter. The Respondents were directed to bring on record the stay order, if any.

Hearing dated 15.2.2022

11. During the course of the hearing, the Commission observed that the Respondents are yet to pay any amount against the claim of Rs.230.59 crore raised by the Petitioner in terms of the Commission's order dated 15.1.2020. The Commission observed that earlier the aforesaid amount was not paid by the Respondents on the ground of pendency of appeal and IA seeking stay of the order before the APTEL, which ultimately came to be dismissed by the APTEL vide judgment dated 20.9.2021. Thereafter, as recorded vide Record of Proceedings for the hearing dated 11.11.2021, the Respondents sought to defer the present proceedings by four weeks in view of the Civil Appeal No. 6668/2021 filed before the Hon'ble Supreme Court along with the application for stay on the judgment dated 20.9.2021 and the said request was also acceded to by the Commission with direction to bring on record any stay order. However, admittedly, the said appeal/application for stay has yet to be taken up before the Hon'ble Supreme Court and there is no stay on the judgment of the APTEL, the Commission observed that it is a well settled principle of law that the mere pendency of an appeal does not operate as a stay or suspension of the order appealed against. It was observed that in an Appeal under Section 125 of the Electricity Act, 2003, any one or more of the grounds specified in Section 100 of the Code of Civil Procedure Code ('CPC') are only to be raised and that there is a consistent finding of both forums (i.e. this Commission and APTEL) on the facts of the case regarding the entitlement of the Petitioner as stated, and probably only a substantial question of law is to be heard in the Second Appeal. It was also observed that, admittedly the case being a money decree, a stay is to be granted after invoking provisions under Order XXI Rule 29 of CPC and ordinarily only after taking security.



Considering the financial stress of the Petitioner and the absence of any stay, the Commission directed the Respondents to pay Rs. 115.30 crore (i.e. 50% of the invoice amount raised by the Petitioner in terms of the order dated 15.1.2020) within 15 days from this order, failing which proceedings under Section 142 of the Act would be initiated against the officials of the Respondents for non-compliance of the directions of the Commission.

Hearing dated 14.6.2022

12. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondents, the Commission, vide Record of Proceedings dated 14.6.2022, directed the Respondents to pay Rs.57.65 crore (i.e. 50% of the balance amount against the invoice raised by the Petitioner in terms of order dated 15.1.2020) within 15 days from this order.

Hearing dated 23.3.2023

13. The matter was finally heard on 23.3.2023 and based on the request, parties were permitted to file their written submissions.

Written Submissions of the Petitioner

14. Pursuant to the liberty granted by the Commission vide Record of Proceedings for the hearing dated 23.3.2023, the Petitioner has filed its written submissions dated 6.4.2023 and reiterated the submissions made in the Petition and/or rejoinder. On the aspect of its entitlement to the LPS, the Petitioner has made the following additional submissions:



(a) The contention of the Respondents that the Petitioner's claim for LPS is not covered by the Commission's order dated 15.1.2020 is erroneous and misconceived. The Commission, by way of its order dated 15.1.2020 has held the Petitioner to be entitled to claim capacity charges for 61 MW for the period from 30.11.2016 to 31.7.2018. The said claim was with reference to the Petitioner's entitlement under the PPA and not *de hors* the same as sought to be contended by the Respondents.

(b) The awarded claim thereafter came to be raised by the Petitioner vide its invoice dated 16.1.2020 and in support of which the Petitioner also submitted documents vide its letter dated 17.11.2020. The said invoice was due for payment on 15.2.2020, which aspect is also otherwise not in dispute. Upon the failure of the Respondents to pay the said invoice by the said due date, the Respondents, in terms of the provisions of the PPA, became liable to pay LPS. The said LPS, therefore, being in relation to the very claim of capacity charges that has been allowed by the Commission, cannot be disputed by the Respondents. The claim of LPS is not *de hors* and distinct from the claim that has been allowed by the Commission but is rather a sequitur to the said claim not being paid – within the requisite period and in terms of the provisions of the PPA.

(c) As per the dicta laid down by the Hon'ble Supreme Court in the cases of (i) Bhavan Vaja & Ors. v. Solanki Hanuji Khodaji Mansang & Anr. [(1973) 2 SCC 40], and (ii) Deep Chand & Ors. v. Mohan Lal [(2000) 6 SCC 259], the Petitioner is entitled to the fruits and benefits of order dated 15.1.2020 as passed by the Commission, which includes its claim for LPS on its principal claim of capacity charges. The aspect of Respondents' liability to pay capacity charges as awarded, being not in dispute, and further, the provisions of the PPA governing such payment also not being in dispute, it would only and wholly be rational & logical for the Petitioner to be entitled to payment of LPS on its principal claim of capacity charges.

(d) The Respondents' reliance upon the judgments of MB Power (Madhya Pradesh) Ltd. v. CTUIL and Ors. (EP No. 17 of 2022) and Spring Soura Kiran Vidyut Private Ltd. v. Southern Power Distribution Co. of Andhra Pradesh Ltd. & Ors. (EP No. 7 of 2021) is erroneous and misplaced as they are not applicable to the present case. A reading of the said judgments would show that the claim of the LPS, which was being raised in the execution proceedings were not the subject matter of the original proceedings, and was not covered by the final order/judgments of which execution was being sought. In the said judgments, APTEL came to categorically observe that the relief for late payment surcharge that was being claimed in the execution proceedings, in the said cases, was independent of the reliefs that had been sought in the original proceedings. In the present case, the Petitioner's claim for the LPS is admittedly in terms of the provisions of the PPA governing payment of capacity charges, which charges, have been specifically granted by this Commission.

Written Submission of Respondents Nos.1-8, Rajasthan Discoms.

15. The Respondent Nos.1 to 8 vide their written submissions dated 6.4.2023 have reiterated the submissions made in their reply and additionally have submitted as under:

(a) The Respondents have already paid 75% of the amount claimed by the Petitioner. The Petitioner has now claimed that the Respondents shall pay the remaining 25% along with the LPS.

(b) Even the principal claim of the Petitioner of Rs. 230 crore is incorrect and has not been established. This Commission had directed the Petitioner to produce the details of the plant's availability and schedules to establish that it was in a position to generate and supply electricity. Availability requires the Petitioner to show the capacity contracted, the coal supply, and the coal stock position to be able to declare availability and the schedules being given. None of these have been produced by the Petitioner. Therefore, the Petitioner is only seeking that the

Commission presume the claim of the Petitioner to be correct without the same being established, which is erroneous.

(c) The claim of the Petitioner in the present Petition for LPS is wrong and contrary to the order dated 15.1.2020. This Commission vide order dated 15.1.2020 had held that the Petitioner is entitled to deemed capacity charges, and the said order nowhere mentions the payment of LPS by the Respondents.

(d) The present Petition has been filed by the Petitioner for alleged non-compliance with the order dated 15.1.2020 in Petition No. 63/MP/2019. The Petitioner cannot go outside the order dated 15.1.2020 by claiming LPS in the present Petition which has been filed for execution of the order dated 15.1.2020. Such a claim cannot be entertained even in execution proceedings, which are much wider in scope than the proceedings under Section 142 of the Act.

(e) It is a settled principle that in an execution proceeding, the court cannot go beyond the decree. In this regard, the Respondents have placed reliance on the order dated 24.2.2023 in the case of Spring Soura Kiran Vidyut Private Limited v. Southern Power Distribution Company of Andhra Pradesh Limited and Ors., passed by the APTEL in EP No. 7 of 2021 and Batch and order dated 13.1.2023 in MB Power (Madhya Pradesh) Ltd. v. Central Transmission Utility of India Limited & Ors.

(f) The perversity of the claim of the Petitioner is evident by the fact that the Petitioner has in fact claimed LPS as per the PPA. On the contrary, the principal claim of the Petitioner was *de hors* the provisions of the PPA and in fact purportedly flowing from the decision of the Hon'ble Supreme Court. The claim for deemed capacity charges being contrary to the PPA was specifically rejected by the Commission on the above grounds in the order dated 15.1.2020.

(g) There can be no question of the Petitioner claiming interest or LPS in the present Petition when it was not permitted by this Commission vide order dated 15.1.2020 in Petition No. 63/MP/2019. The contention of the Petitioner that it



should not be forced to file a separate Petition for interest and therefore, the interest can be claimed in the present proceedings for compliance of the order is misconceived, as the scope of the present petition cannot be expanded by speculating on any other rights that the Petitioner may have. In any event, the Petitioner may not even have a right to file a separate Petition as the claim may be hit by the principles of res judicata or principles of like nature.

Analysis and Decision

16. We have considered the submissions of the Petitioner and the Respondents and perused the documents available on record. Based on the above, the following issues arise for our consideration:

Issue No. 1: Whether the objections raised by the Respondents with regard to the computation of the claim of 61 MW capacity charges raised by the Petitioner pursuant to the order dated 15.1.2020 are tenable?

Issue No. 2: Whether there can be any direction to the Respondents to make payment towards the Late Payment Surcharge on account of delay in making the payment of the Petitioner's claim of capacity charges allowed vide order dated 15.1.2020?

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

Issue No. 1: Whether the objections raised by the Respondents with regard to the computation of the claim of 61 MW capacity charges raised by the Petitioner pursuant to the order dated 15.1.2020 are tenable?

17. The Commission vide order dated 15.1.2020 had disposed of Petition No. 63/MP/2019 directing the Petitioner to calculate and claim the compensation in terms of capacity charges for 61 MW (311 MW-250 MW) for the period from 30.11.2016 to 31.7.2018 after offsetting the capacity charges, if any, earned on the said capacity during the relevant period.

18. In the above context, the Respondents have contended that since the Petitioner has not provided the details and the documents with regard to the calculation of the compensation amount claimed by it in its invoice dated 16.1.2020 raised pursuant to the said order of the Commission, the amount claimed under the said invoice is not payable.

19. On the other hand, the Petitioner, while referring to the said invoice and the ensuing correspondences between the parties placed on record in the present Petition, contended that all details and documents with regard to the claim were duly shared with the Respondents. The Respondents, however, did not raise any objection to the same.

20. From a reading of the order dated 15.1.2020 it is observed that the Petitioner was directed to calculate and claim the compensation for 61 MW for the period from 30.1.2016 to 31.07.2018 after offsetting the capacity charges, if any, earned on the said capacity during the relevant period. Pursuant thereto, the Petitioner raised its Invoice No.58/DBPL/PSR/PTC-Raj/LTS/CC dated 16.1.2020 for an amount of Rs 230,58,89,377.20/- along with said invoice, computation of the said amount towards capacity charge for 61 MW for the period from 30.11.2016 to 31.07.2018 was appended.

21. Upon receipt of the said invoice, the Respondents vide their letter dated 3.2.2020 agreed to process the claim of the Petitioner while requesting the Petitioner submit its invoice along with all relevant documents in terms of capacity of 61 MW for the period from 30.11.2016 to 31.7.2018 (discom-wise), after offsetting the capacity charges, if any, earned on the said capacity during the relevant period.

22. Thereafter, the Petitioner vide its letter dated 17.11.2020 submitted the relevant details, computations and documents as sought by the Respondents and requested the Respondents to pay the said amount of Rs. 230,58,89,377.20/- towards capacity charges for the period from 30.11.2016 to 31.7.2018 in terms of the aforesaid order dated 15.1.2020 passed by the Commission. In the said letter, the Petitioner also categorically stated that it had not earned any capacity charges during the said period from 30.11.2016 to 31.7.2018.

23. We find from the record that the Respondents neither replied to the Petitioner's above-mentioned letter dated 17.11.2020 nor paid the outstanding amount. By perusal of the letter dated 17.11.2020 sent by the Petitioner to the Respondents, it transpires that the Petitioner provided therein the entire scheduling of its 1200 MW Plant (2 X 600 MW) to all the beneficiaries during the relevant period, i.e. from 30.11.2016 to 31.7.2018 along with the monthly REA available in the public domain for the said period to match the entire power scheduled by the Petitioner during the said period.

24. After considering the entire scheduling of the Petitioner's Plant during the said period for all the beneficiaries including the Respondents herein, it can be seen that the capacity much more than 61 MW was available with the Petitioner across the said period from 30.11.2016 to 31.7.2018. Thus, the Petitioner has been able to show that it had not earned any capacity charges on the said capacity of 61 MW. Even APTEL in its judgement dated 20.9.2021 observed in Para 41 that the Petitioner had reserved and was always ready to supply the said capacity from its Plant to the Respondents. It is not in dispute that the computation of 61 MW capacity for the period from 30.11.2016 to 31.7.2018 as

per the tariff stipulated in the PPA, works out to Rs 230,58,89,377.20/-. Thus, we find that the Respondents' contention that the Petitioner did not provide the details and documents for the compensation amount claimed pursuant to the order dated 15.1.2020 is devoid of any merit. The Respondents have neither been able to refute the details and documents already furnished by the Petitioner as above nor been able to point out what additional details they required during contemporaneous time or even in the present proceedings.

25. The Respondents have further contended that the Petitioner did not have open access of even 250 MW till 26.3.2017 and it had open access of only 175 MW available to it, and from 25.4.2018 i.e. the date of the order of the Hon'ble Supreme Court, till 1.8.2018, the Petitioner had declared availability of only 250 MW and not the claimed capacity of 311 MW. The Respondents thus have contended that the Petitioner cannot claim deemed capacity charges over and above 175 MW prior to 27.3.2017 and over and above 250 MW from 25.4.2018 till 1.8.2018. *Per Contra*, the Petitioner has submitted that since the said issue raised by the Respondents has already been adjudicated upon by the Commission and upheld by the APTEL vide judgement dated 20.9.2022, it cannot be agitated again.

26. We have considered the rival submissions. We are of the view that the Respondents are reagitating the issues that have already been decided by our order dated 15.1.2020. This approach of the Respondents cannot be appreciated. We further observe that the APTEL, while rejecting the Appeal filed by the Respondents against the order dated 15.1.2020 dealt with the said issue of open access for the claimed capacity

raised by the Respondents and rejected the same, as is clearly evident from the following relevant extract of the APTEL's judgement dated 20.9.2022:

“41. We are of the view that in the given fact-situation, there was no requirement in the PPA for DBPL to have open access for the Aggregate Contracted Capacity. It is not in dispute that DBPL had reserved and was always ready to supply the said capacity from its 1200 MW Plant, Unit-I of which was in commercial operation since 03.11.2014 and Unit-II of which was in commercial operation since 26.03.2016. It was on account of the application filed by the procurer that the quantum of power was reduced.

42. As borne out from the record, DBPL had applied for long term access (“LTA”) for the quantum of 410 MW on 13.05.2014. The said application was closed by the PGCIL on 12.01.2016, in the wake of application for reduction of quantum of power filed on behalf of RUVNL on 24.11.2015 and the consequent Order dated 22.07.2015 passed thereon. The Long-Term Open Access Capacity was dependent on the quantum of power to be supplied to RUVNL. Since, on an Application of RUVNL, the quantum of power was reduced, there was no reason for DBPL to have an open access over and above the quantum approved by RERC.

43. The argument in the appeals at hand against the claim of DBPL to deemed capacity charges over and above 175MW prior to 27.03.2017, and over and above 250 MW from 25.04.2018 till 01.08.2018 on the ground that DBPL did not have the claimed capacity of 311 MW is not appropriate in as much as no such contention (particularly for the period prior to 27.03.2017) was raised by RUVNL before the CERC in the original proceedings or in the captioned appeal of Discoms. It cannot be ignored that DBPL had applied to PGCIL for grant of LTA of 410 MW of power from the project to the Discoms, in 2014, right after having been assured of purchase of such quantum of power by the latter. It is thereafter that RUVNL moved RERC for approval of procurement of a reduced quantity of 500 MW, which was allowed by order dated 22.07.2015. It is against this backdrop that PGCIL closed the request of DBPL for LTA on 12.01.2016. Even though DBPL had achieved commercial operation to supply the original contracted quantity of 410 MW, it commenced supply on basis of the then limited LTA (175 MW) as made available by PGCIL and upon further LTA in terms of supplementary agreement dated 23.03.2017 for 250 MW from 27.03.2017. DBPL had the commercial capacity to commence supply of the originally contracted capacity of 410 MW from 30.11.2016 onwards. However, it could not do so on account of the illegal reduction of quantum of power to be procured at the instance of procurers. We agree with the submission of DBPL that being responsible for non-grant of LTA of the contracted capacity, the Discoms cannot be allowed to take advantage of their own wrongs by denying to DBPL its legitimate entitlement towards deemed capacity charges for the available contracted capacity on account of non-availability of LTA.

44. We do not find substance in the argument of Discoms that DBPL, having declared availability of only 250 MW even after passing of order dated 25.04.2018 by the Supreme Court up till 31.07.2018 is not entitled to claim deemed capacity charges for anything over and above the said quantum for the said period. It is soon after passing of the said order dated 25.04.2018 that DBPL, by its letter dated 27.04.2018, requested PGCIL for the additional LTA of 61 MW LTA, over and above 250 MW, to make it up to 311 MW. It is pursuant to the said order dated 25.04.2018 that the procurer (RUVNL) issued the modified Letter of Intent on 02.05.2018 and amended the PPA for contracted capacity of 311 MW on 15.05.2018. The enhancement of LTA from 250 MW to 311MW was intimated by PGCIL on 19.07.2018, consequent to which the supplementary LTA for the said additional quantum was entered into between DBPL and PGCIL on 25.07.2018. Therefore, having itself modified the Lol and amended the PPA almost a month after passage of order dated 25.04.2018 by the Supreme Court, this resulting in modifications and amendments of LTA for addition of 61 MW, the contention that DBPL cannot claim deemed capacity charges for quantum above 250MW from the date of the order of the Supreme Court (i.e. 25.04.2018) till 31.07.2018 is unfair and unacceptable.

45. The claim of DBPL is for capacity charges on account of breach committed by RUVNL. The PPA was entered into pursuant to the representations and warranties given by RUVNL. However, after signing the PPA for supply of 410 MW of power with DBPL, it was RUVNL which filed the application before the RERC for reduction of quantum of power agreed to be procured. This was in breach of the representation made by RUVNL, amounting to infraction of fundamental terms of the PPA. If RUVNL had not committed such infringement, DBPL would have supplied power for requisite quantum from the date of commencement of supply under the PPA, i.e., from 30.11.2016 onwards, which it had reserved and was throughout ready to supply. On account of non-supply of the said power due to the above violation by RUVNL, DBPL was not able to do so from 30.11.2016 to 31.07.2018 and, consequently, it is entitled to recover the capacity charges for the period commencing from 30.11.2016 to 31.07.2018, by way of damages and compensation for breach on part of RUVNL to DBPL. Reliance is placed, and rightly so, on provisions of PPA for payment of such deemed capacity charges – particularly Article 4.9 and 4.12, quoted earlier - and on judgment dated 19.07.2021 of this tribunal in matter of Talwandi Sabo Power Limited v. Punjab State Electricity Regulatory Commission & Ors. (appeal no. 220 of 2019 decided on 19.07.2021). We do not agree with the plea of Discoms that the failure to declare availability is not on account of any failure of the Discoms to fulfil their obligation. On the contrary, the illegal reduction of capacity (as already held) is what created the situation wherein DBPL having reserved capacity under the original offer has suffered loss which is bound to be compensated.”

27. It is thus clear that the contentions being raised by the Respondents in the present proceedings have already been rejected by the Commission, and such rejection has been upheld by the APTEL in its judgement dated 20.9.2021. Thus, the objection of the Respondents with regard to open access capacity and deemed capacity charges is wholly devoid of any merit and is liable to be rejected.

28. The Respondents have further contended that the order dated 25.4.2018 passed by the Hon'ble Supreme Court applies only prospectively and does not entitle the Petitioner to claim capacity charges for the past period. We find that the Respondents raised this issue in Petition No. 63/MP/2019, which was rejected by the Commission vide its order dated 15.1.2020. We also observe that before the APTEL also, the Respondents had raised the very same issue, which was dealt with and rejected by the APTEL in its judgement dated 20.9.2021. The relevant extract of the judgment of the APTEL is as under:

“32. We do not accept the objections of the Discoms. The reduction of quantum of power to be procured has been held in the previous round to be without jurisdiction and, thus, non est. A bare reading of the order of Supreme Court shows that it has been directed that the Discoms (successful bidders) shall be entitled to supply power in terms of the originally offered amount, though the total quantum was reduced to 906 MW. The expression “now be reduced to 906 MW” obviously means with effect from the date of the Order (25.04.2018). The quantum of power under the PPAs stood revised to 311 MW, pursuant to which, LOI was “modified” on 02.05.2018 and amended PPA between RUVNL and DBPL was executed on 15.05.2018 based on the amended PPA dated 15.05.2018 signed between the Discoms and DBPL. The modification would relate back to the date of effect of PPA.

33. A bare perusal of the chronology of events makes it clear that only two issues were the subject matter of earlier round of litigation before the RERC, this tribunal and Supreme Court, viz. (i) the legality of reduction of quantum of power for adoption of tariff to 500 MW from 1010 MW and, (ii) the legality of increase in quantum to individual bidders (including DBPL) by means of negotiations. Having regard to the limited issues being adjudicated, DBPL neither had any opportunity

nor any occasion to make any claim for capacity charges or damages in the said earlier proceedings.

34. The Order of RERC for reduction of quantum of power to be procured by RUVNL was under challenge before this tribunal. The scrutiny in appeal before this tribunal, and subsequently before Supreme Court, was also consequently restricted to the legality & validity of the said Order. In this view, the claim of capacity charges could not have been raised in earlier round before this tribunal or before the Supreme Court. For this reason, the contentions of Discoms based on the principle of constructive res judicata vis-à-vis the claim of DBPL for deemed capacity charge is untenable. Further, the subject matter of amendment to the PPA was only to record the arrangement as regards quantum of power to be supplied, in terms of the Order dated 25.04.2018 passed by the Supreme Court. Therefore, there was no need or occasion for DBPL to reserve any right to claim capacity charges.

35. We reject the contentions of the Discoms and endorse the view taken by the Central Commission. The claim for additional capacity charges is a consequence directly flowing from the order of the Supreme Court and this conclusion has been rightly reached by the impugned decision, the challenge thereto being unfounded.”

29. The Respondents have further contended that the capacity charges to the extent of 55 MW out of the total claim made by the Petitioner have already been paid by the Respondents to another generator, namely Maruti Clean Coal Power Limited. It is the Respondents' contention that payment of the said capacity charges to the Petitioner would lead to the consumers having to pay the capacity charges for the said quantum twice over. We observe that the very same contentions were raised by the Respondents before the APTEL, and vide judgment dated 20.9.2021, APTEL has rejected the same. Relevant extract of the judgement of the APTEL dated 20.9.2021 is as under:

“54. The Discoms also argue that the impugned decision has the effect of double jeopardy. It is submitted that they (Discoms) and their consumers have already paid the capacity charges to the other bidder. In this regard, reference is made to the fact that the Supreme Court had varied the capacity of the L-1 Bidder– Maruti Clean Coal and Power Ltd from 250 MW to 195 MW, reducing it by 55 MW while increasing the capacity of L-2 Bidder – DBPL by 61 MW from 250 MW to 311 MW, the “net increase” of the capacity for the Discoms being only 6 MW. It is stated that the Discoms having already paid the capacity charges on 55 MW to the L-1 bidder,

they cannot be burdened with the liability to that extent all over again. The plea is that if the contention of DBPL and the decision of the Central Commission is to be implemented, the capacity charges are to be recovered from the L-1 bidder to the extent of 55 MW and paid to DBPL to the extent of 61 MW. The Discoms urge that they and their consumers cannot be asked to pay 55 MW plus 61 MW, since that would lead to a capacity over and above what has been approved by the Supreme Court.

55. It bears repetition to note here that RUVNL had filed the Petition before the RERC on 28.11.2013 for adoption of tariff for 410 MW power on the basis of the Power Purchase Agreement. While the said matter was pending, in contravention of the representations given, the terms & conditions of the PPA as well as its own petition for adoption of tariff for the said quantum, the procurer filed the application for reduction which was allowed by the RERC. But for the said move, the quantum of power would have not been reduced and DBPL would have supplied the requisite power under the PPA. In this scenario, the stand of RUVNL that DBPL had no vested right before adoption of tariff is fallacious and misconceived, it amounting to the party in default taking advantage of its own wrong which cannot be permitted.

.....
57. If in the midst and as a result of the events that occurred the Discoms have ended up paying towards capacity charges to another seller more than what was due, that is no reason why DBPL should suffer the corresponding loss. It (DBPL) must get what is due in terms of the contracted capacity as determined post final decision in the first round of proceedings. It is for the Discoms to recover from the other supplier the excess payment, if any, in terms of the contract and in accordance with law. We must add that we have not examined or determined that any excess payment has actually been made to another entity. It would be unfair to do so in the present proceedings because such entity is not a party before us.”

30. In view of the above, none of the objections raised by the Respondents to the present Petition have any merit. As per the invoice dated 16.1.2020 raised by the Petitioner, the total amount payable to the Petitioner, as per the Commission's order dated 15.1.2020, is Rs. 230,58,89,377.20/-. Further, as already noted above, in terms of the directions issued vide Record of Proceedings for the hearing dated 15.2.2022 and 14.6.2022, the Respondents have already paid Rs. 115,17,91,743/- on 4.3.2022 and Rs. 57,58,95,872/- on 29.6.2022. Thus, the balance outstanding principal amount, which is yet to be paid by the Respondents, works out to Rs. 57,58,95,872/-. As we have rejected



all the objections raised by the Respondents to the present Petition, we direct the Respondents to pay the said balance principal amount of Rs. 57,58,95,872/- to the Petitioner within four weeks, failing which, action against the Respondents would be treated as non-compliance of the specific direction of the Commission, and the proceedings under Section 142 and Section 149 of the Act shall be initiated against the Respondents. Needless to mention, the above payment is subject to the final outcome of the appeal filed by the Respondents before the Hon'ble Supreme Court.

Issue No. 2: Whether there can be any direction to the Respondents to make payment towards the Late Payment Surcharge on account of delay in making the payment of the Petitioner's claim of capacity charges allowed vide order dated 15.1.2020?

31. The Petitioner has submitted that despite the Petitioner having raised the invoice as far back as on 16.1.2020 in terms of the order dated 15.1.2020, the Respondents failed to discharge their liability on or before the due date of the invoice. Thus, the Respondents are liable to pay the LPS as per the provisions of the PPA. It was further submitted that the Petitioner has made a prayer for the grant of LPS in the present Petition, and the same was claimed in Petition No. 63/MP/2019 as well. On the other hand, the Respondents have contended that the Petitioner's claim for the LPS is not covered by this Commission's order dated 15.1.2020.

32. We have considered the submissions made by the parties. Indisputably, the order dated 15.1.2020, for which the present execution proceedings have been initiated, as such does not provide for the grant of interest or LPS in the operative part, namely, paragraph 31 of the order. At the cost of repetition, the relevant extract of the said order dated 15.1.2020 is again reproduced hereunder:



31. Accordingly, we direct the Petitioner to calculate and claim the compensation in the terms of capacity charges for 61 MW (311 MW–250 MW) for the period from 30.11.2016 to 31.7.2018 after offsetting the capacity charges, if any, earned on the said capacity during the relevant period. The Petitioner is directed to share all relevant documents including calculation with the Respondents while claiming compensation.”

33. The Petitioner has submitted that by the aforesaid order, the Commission held that the Petitioner is entitled to claim capacity charges for 61 MW for the period from 30.11.2016 to 31.7.2018 and that its said claim was with reference to the Petitioner's entitlement under the PPA and not *de hors* the same. The Petitioner has further submitted that upon the failure of the Respondents to pay the said invoice for the above by the due date, the Respondents, in terms of the provisions of the PPA, became liable to pay the LPS, and the said LPS, being in relation to the very claim of capacity charges, which has been allowed by the Commission, cannot be disputed by the Respondents. It is submitted that the claim of the LPS is not *de hors* and distinct from the claim that has been allowed by the Commission but is rather a sequitur to the said claim not being paid within the requisite period and in terms of the provisions of the PPA. *Per contra*, the Respondents have submitted that the principal claim of the Petitioner was *de hors* the provisions of the PPA and in fact purportedly flowing from the decision of the Hon'ble Supreme Court. However, the Petitioner has claimed the LPS as per the PPA. In any case, there can be no question of the Petitioner claiming interest or LPS when it was not specifically ordered by the Commission vide order dated 15.1.2020.

34. We have considered the submissions made by the parties. It is pertinent to keep in mind that the scope of the present execution proceedings is limited to examining the entitlement of the Petitioner to the interest/ LPS only in terms of the findings rendered in

the order dated 15.1.2020. In the present execution proceedings, we cannot venture into an independent inquiry to examine the Petitioner's entitlement to interest/ LPS either under the PPA or *de hors* thereof. Therefore, in issuing any directions upon the Respondents to make payments towards interest or LPS in the present execution proceedings, we have to restrict ourselves to the findings rendered in the order dated 15.1.2020, which, as we already noted above, as such do not provide or specify for any interest or LPS to the Petitioner.

35. The Petitioner has placed t reliance on the judgments of the Hon'ble Supreme Court in the cases of (i) *Bhavan Vaja & Ors. v. Solanki Hanuji Khodaji Mansang & Ors.* [(1973) 2 SCC 40] ('*Bhavan Vaja*') and (ii) *Deep Chand & Ors. v. Mohan Lal* [(2000) 6 SCC 259] ('*Deep Chand*') and has submitted that as per the dicta laid down by the Hon'ble Supreme Court in the said decisions, the Petitioner is entitled to the fruits and benefits of order dated 15.1.2020 passed by the Commission, which includes its claim for LPS on its principal claim of capacity charges, and such interpretation is the only interpretation, that would give a true effect to this Commission's order holding the Petitioner entitled to claim capacity charges. *Per contra*, the Respondents have placed reliance on the APTEL's judgement dated 24.2.2023 in EP No. 7 of 2021 and batch, in the case of *Spring Soura Kiran Vidyut Pvt. Ltd. v. Southern Power Distribution Co. of Andhra Pradesh Ltd. and Ors.*, and judgement dated 13.1.2023 in EP No. 17 of 2022 in the case of *MB Power (Madhya Pradesh) Ltd. v. CTUIL & Ors.* The Respondents have submitted that in the above judgments, the APTEL rejected the specific claim of interest for belated payment in satisfaction of the decree on the ground that the main order did not grant any interest, and therefore, the question of grant of interest in execution proceedings does not arise.

36. We have considered the submissions made by the Petitioner and the Respondents. It is a well settled principle of law that in execution proceedings, the court cannot go beyond the decree. In this context, we may gainfully refer to the judgement of the Hon'ble Supreme Court in the case of Rameshwar Dass Gupta v. State of U.P. and Another [(1996) 5 SCC 728], wherein the Hon'ble Supreme Court in paragraph 4 has held as under:

“4. It is well settled legal position that an executing Court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21, CPC. In view of the fact that it is a money claim, what was to be computed is the arrears of the salary, gratuity and pension after computation of his promotional benefits in accordance with the service law. That having been done and the court having decided the entitlement of the decree-holder in a sum of Rs.1,97,000/- and odd, the question that arises is whether the executing Court could step out and grant a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution? In our view, the executing Court has exceeded its jurisdiction and the order is one without jurisdiction and is thereby a void order. It true that the High Court normally exercises its revisional jurisdiction under Section 115, CPC but once it is held that the executing Court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, we do not find any illegality in the order passed by the High Court in interfering with and setting aside the order directing payment of interest.”

In the aforesaid judgment, the Hon'ble Supreme Court has clearly held that the executing court cannot step out and grant a decree for interest that was not part of the decree for execution on the ground of delay in payment or for an unreasonable stand taken in the execution.

37. Further, the Hon'ble Supreme Court in the cases of J&K Bank Ltd. v. Jagdish C. Gupta, [(2004) 10 SCC 568]; Gurdev Singh v. Narain Singh, [(2007) 14 SCC 173)] has held that the executing court cannot travel beyond the original lis, between the parties, to

any subsequent cause of action. It is also not open to the Executing Court to add to a decree, of which execution is sought, a direction or injunction that was neither prayed for nor formed part of the original lis between the parties and the Executing Court cannot travel behind the decree to add or modify the directions contained therein.

38. In the present case also, the order under execution dated 15.1.2020, as already noted above, does not contain the grant of any interest or LPS to the Petitioner herein,; hence, it would not be appropriate to issue any direction awarding such relief at the stage of the present proceedings.

39. Insofar as the reliance placed by the Petition on the judgments of the Hon'ble Supreme Court in the cases of *Bhavan Vaja* and *Deep Chand* is concerned, we find that the said judgments are distinguishable as the said judgments pertain to / refer to the proper construction of a decree and the event where the language of the decree is capable of two interpretations. It is undeniable that an executing court can construe a decree if it is ambiguous. However, in the present case, we do not find any such ambiguity requiring the interpretation. The grant of interest or LPS is clearly not covered under the order dated 15.1.2020 and therefore, any direction for payment of the interest/ LPS, cannot be considered in the present execution proceedings. However, the Petitioner is at liberty to approach the Commission for a grant of LPS for delayed payment by the Respondents in accordance with the law.

40. On a parting note, we strongly disapprove of the conduct of the Respondents in not implementing the order of this Commission dated 15.1.2020 on one pretext or



another. Insofar as their various objections to the computation of the claim by the Petitioner are concerned, we have already noted that such objections were not only rejected by the Commission in its order dated 15.1.2020 but also by the APTEL in its judgement dated 20.9.2021. Even though the right to prefer an appeal against the Commission's order is a statutory right provided to the Respondents under the Act, it is equally well settled that the mere filing of an appeal does not automatically operate as a stay of the decree or the order appealed against. This being the position, and despite the Respondents having been afforded the opportunity to bring on record the stay order by the appellate courts, if any, which they could not, the Respondents have continued to defer the implementation of the Commission's order dated 15.1.2020. However, keeping in mind that 75% of the total amount under the order dated 15.1.2020 has already been paid by the Respondents to the Petitioner during the pendency of the present proceedings, albeit pursuant only to the directions of the Commission, we refrain from initiating any proceedings under Section 142 read with Section 149 of the Act against the Respondents as prayed for by the Petitioner. The Respondents are, however, cautioned to ensure that such conduct is not repeated in the future.

41. In light of the above discussion, the Petition No. 55/MP/2021 is disposed of.

**Sd/-
(P.K. Singh)
Member**

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

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

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

