

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION  
BHOPAL**

**Subject:** In the matter of petition filed by MPPMCL for clarification on the order dated 07.12.2021 in Petition No. 25 of 2021 issued by the Commission for adjudication of various disputes between MP SLDC and MPPMCL pertaining to interpretation of provisions of MPERC Grid Code, 2019, DOP approved by MPERC on 29.01.2020, Balancing & Settlement Code, MPERC (Cogeneration and Generation of Electricity from Renewable Source of Energy) Regulations, 2010.

**Petition No. 50 of 2022**

**ORDER**

(Date of Order: 1<sup>st</sup> January,2024)

**M.P. Power Management Co. Ltd.**

Block No-15, Shakti Bhawan,  
Rampur, Jabalpur (M.P.) – 482008

- **Petitioner**

**V/s**

**M.P. State Load Despatch Centre,**

M.P. Power Transmission Company Ltd.  
Nayagaon, Jabalpur (M.P.) – 482008

- **Respondent**

**(1) M/s Arya Energy Ltd.**

MES 28, Sector 1, Shankar Nagar,  
Raipur, (CG) Pin- 492007

**(2) M/s Biobijalee Co. Ltd,**

Bascom Future, SV, 4<sup>th</sup> Floor  
No. 10/1, Venkatnarayan Road,  
T Nagar, Chennai - 400017

- **Interveners**

Shri Manoj Dubey, Advocate and Shri Rajnish Reja, appeared on behalf of Petitioner.

Shri Rajesh Choudhary, Advocate and Shri Anurag Mishra appeared on behalf of Respondent.

Shri Aditya K. Singh, Advocate and Ms. Anukriti Jain, Advocate appeared on behalf of Intervener No. 1 & 2.

This order is on remand proceeding in compliance to direction issued by Hon'ble Appellate Tribunal for Electricity (hereinafter referred to as "the APTEL") vide order dated 3<sup>rd</sup> August, 2023 in Appeal No. 597 of 2023 (DFR No. 180 of 2023) which was jointly filed by M/s Arya Energy Limited and M/s Biobijalee Co. Limited against Commission's Order dated 24<sup>th</sup> November, 2022 in Petition No. 50/2022. Hon'ble

APTEL vide order dated 3<sup>rd</sup> August, 2023 has remanded the matter to the Commission with the direction that both biomass generators in the state of MP, shall be put on notice and given an opportunity of being heard. Therefore, both biomass generators have made interveners in this matter. The relevant extract of the APTEL judgment dated 3.08.2023 is as under:

*“Both the Appellants, who are said to be the only biomass generators in the state of Madhya Pradesh, shall be put on notice; given an opportunity of being heard; and an order shall be passed afresh thereafter in accordance with law. Suffice it to make it clear that the impugned order is being set aside only for non-compliance with the rules of natural justice, and we have not expressed any opinion on merits.”*

2. MP Power Management Company Ltd., (here in after called ‘petitioner’ or ‘MPPMCL’) is the Holding Company of three distribution licensees in the State of Madhya Pradesh, is entitled to undertake transaction of bulk sale and purchase of electricity on behalf of Discoms. State Load Despatch Centre (here in after called ‘Respondent’ or SLDC), being a statutory body under Section 31 of the Electricity Act, 2003 and engaged in the business of trading in electricity with a view to optimize scheduling and despatch of electricity, and grid control, in accordance with grid standards and grid code. Intervener No. 1&2 are biomass based generating plant in Madhya Pradesh.
3. Intervener No. 1, (M/s Arya Energy Limited) has set up a 12 MW Biomass based power plant at Village Gondara Tola, Kotma, District Anuppur in Madhya Pradesh. Plant was commissioned on 30.05.2013. MPPMCL on 11.10.2013, issued Letter of Intent to Arya Energy for purchase of power from its Biomass based power plant. Intervener No. 2, M/s Biobijalee Co. Limited has set up a 10 MW Biomass based power plant at Tehsil Gadawara, District Narsingpur in Madhya Pradesh. The plant was commissioned on 22.01.2014. MPPMCL on 18.01.2016 entered into a power purchase agreement with Biobijalee Co. Limited for purchase of power from its plant.

**Background:**

4. The brief facts of the matter are as follows:
  - (i) Earlier, the petitioner (MPPMCL) had filed a Petition No 25/2021 before the Commission for adjudication / clarifications on applicability of provisions of Detailed Operating Procedure (DOP) issued under Madhya Pradesh Electricity Grid Code, 2019 (MPEGC, 2019), on Biomass based plants. Vide order dated 07.12.2021, the Commission clarified that the operational cycle of a coal-based power plant and the Biomass based power plant is almost similar. Therefore, the DOP issued by the Commission under the provisions of MP Electricity Grid Code shall also be applicable to biomass based generating plants. The

Commission had also clarified that the SLDC's directions allowing 65% of technical minimum for biomass plants and allowing requisition for scheduling for continuous 72 hours, were not in accordance with the provisions of MP Electricity Grid Code, 2019 and DOP approved thereunder.

- (ii) Further, the petitioner MPPMCL had filed petition No. 50 of 2022 before the Commission seeking clarification on implementation of aforesaid Order dated 07.12.2021 passed by the Commission in Petition No. 25 of 2021. The only issue before the Commission in petition No. 50 of 2022 was date of effectiveness of clarifications given on DOP issued by the Commission in respect of biomass based power plants. It was specifically requested to clarify whether the clarifications issued vide order dated 07.12.2023 are applicable retrospectively or prospectively.
- (iii) Vide Order dated 24.11.2022, the Commission had disposed of the petition No. 50 of 2023 with the following clarifications:

*“As mentioned earlier, in its order dated 07.12.2021 in Petition no. 25/2021, the Commission clarified that directions given by the SLDC allowing 65% of technical minimum for biomass plant and allowing requisition for scheduling for continuous 72 hours were not in accordance with the provisions of MP Electricity Grid Code, 2019 and DOP. Section 32 of the Electricity Act, 2003 provides for functions of State Load Despatch Centre. As per Section 32(2)(e), the SLDC shall be responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid in accordance with the Grid Standards and the State Grid Code. However, in the instant matter, it has been observed that MP SLDC did not follow regulatory provisions and acted beyond its jurisdiction. Even though the Commission clarified all the relevant issues raised in petition no. 25/2021 vide order dated 07.12.2021, raising dispute on the same matter again is not appreciated. There is no cause to clarify the same issues again. However, for sake of avoiding any further dispute on this matter, the Commission hereby reiterates that since the clarifications vide order dated 07.12.2021 were issued in light of the provisions of DOP approved under the provisions of MP electricity Grid Code, 2019, therefore, **those clarifications/directions shall be applicable from the date of applicability of Detailed Operating Procedure.**”*

- (iv) In the aforesaid Order, the Commission had clarified that the clarification issued by the Commission vide Order dated 07.12.2021 shall be applicable retrospectively, i.e. from date of approval of the DOP. Aggrieved with the aforesaid order passed by the Commission on 24.11.2022, both the biomass generators have filed an Appeal before Hon'ble APTEL. The main ground of Appeal was violation of the principles of natural justice ought to have heard

both biomass generators since as a result of the impugned order, they have burdened with penalizations due to retrospective application of DOP.

- (v) Hon'ble Appellate Tribunal for Electricity vide order dated 03.08.2023 set aside the Commission's Order dated 24.11.2022 only for non-compliance with the rules of natural justice and remanded the matter with the observation and direction that both the biomass generators shall be put on notice; given an opportunity of being heard.
5. In compliance to the aforesaid judgment, the petition No. 50 of 2022 was re-opined and notices were issued to both biomass generators. Case was listed for hearing on 20.09.2023 wherein Ld. Counsel appeared on behalf of interveners sought time for filing their written submissions. They were allowed to file their respective written submissions within three weeks. The petitioner and respondent were also allowed to file their responses within a week, thereafter.
6. At the next hearing in this matter held on 07.11.2023, the Commission noted that the interveners have filed their written submissions with the Commission, however hard copy of the same is yet to made available to the petitioner and the respondent. Therefore, both the interveners were directed to made available hard copy immediately to petitioner and respondent and ten (10) days' time was granted to petitioner and respondent for submission of their comments on written submissions filed by interveners, thereafter.
7. The matter was last listed on 29.11.2023 wherein the arguments have completed. Having heard the parties, the case was reserved for order.
8. By affidavit dated 25.10.2023, interveners No. 1 and 2 have filed their respective written submissions. On perusal of the aforesaid written submissions filed by the interveners, the Commission has observed that the contents of both the written submissions are same. The interveners in its respective written submissions have broadly submitted the following:
- i. *MPPMCL filed Petition No.50 of 2022 before the Commission for seeking clarification on implementation of Order dated 07.12.2021 passed by the Commission considering letter dated 22.10.2021 of MP SLDC. The Commission vide Order dated 24.11.2022 decided Petition No.50 of 2022 filed by MPPMCL,*
  - ii. *On 31.03.2023, Arya Energy and Biobijalee had jointly filed Appeal No.597 of 2023 before the Hon'ble Appellate Tribunal against the Order dated 24.11.2022. The Hon'ble Tribunal vide Order dated 03.08.2023 decided Appeal No.597 of 2023, stating as under:*

.....  
The consequence, of the second order dated 24.11.2022, is that the first Appellant is mulcted with a liability of Rs.7.73 crores, and the second Appellant with a liability of Rs. 7.45 Crores. It is evident, therefore, that the order of the Commission dated 24.11.2022 has had civil consequences on the Appellant herein. Any order which results in civil consequences can only be passed in compliance with the rules of natural justice.

The impugned order dated 24.11.2022 is set aside. Both the Appellants, who are said to be the only biomass generators in the state of Madhya Pradesh, shall be put on notice; given an opportunity of being heard; and an order shall be passed afresh thereafter in accordance with law. Suffice it to make it clear that the impugned order is being set aside only for non-compliance with the rules of natural justice, and we have not expressed any opinion on merits.

- iii. The primary issue in the present Petition is the date of effectiveness of the following directives given in the Order dated 07.12.2021 passed in Petition No.25 of 2021 on the Detailed Operating Procedure dated 29.01.2020 in respect of biomass based power projects. Whether the directives issued by the Commission are applicable prospectively i.e. from 07.12.2021 or retrospectively i.e. from 29.01.2020 (date prior to 07.12.2021).
- iv. Secondary issue for adjudication is, can a generating unit be punished for compliance of direction issued by State Load Dispatch Centre which it is mandatorily required to comply under Electricity Act 2003?
- v. As per clause 8.8 (6) of the Madhya Pradesh Electricity Grid Code (Revision-II), 2019, MP SLDC shall prepare a Detailed Operating Procedure in consultation with the generators and MPPMCL/Distribution Companies.
- vi. SLDC had prepared "Detailed Operating Procedure for Backing Down of Coal unit(s) of the State Generating Stations having 100% installed capacity tied up with MP Power Management Company/DISCOMs of MP and for IPPs as per provision in PPA with MPPMCL for taking such units under Reserve Shut Down on scheduling below Technical Minimum Schedule and part load operation" in consultation with generators and MPPMCL/Distribution Companies at Operating and Coordinating Committee (OCC) forum.
- vii. The Commission vide Order dated 29.01.2020 approved the Detailed Operating Procedure for backing down of Coal Based Thermal Units of the State Sector Generating Stations and Independent Power Producers (IPPs). DOP was initially applicable only in case of Coal Based Thermal Units.

- viii. *Subsequently, MPPMCL had filed Petition No. 25 of 2021, seeking consideration by the Commission on aspects namely {a} Whether all the provisions of Detailed Operating Procedure approved by Hon'ble Commission vide order dated 29.01.2020 specifically for coal fired Generating Stations, shall also be applicable to biomass based Generating Plants; and {b} Whether, MPPMCL shall be required to give requisition for scheduling biomass based Generating Plants for continuous 72 hours technical minimum as directed by SLDC without any regulatory provisions and while such provisions have also not been made in the Detailed Operating Procedure approved by this Commission*
- ix. *The Commission in the Order dated 07.12.2021 has used the expression "DOP issued by the Commission under the provisions of MP Electricity Grid Code **shall also be applicable** to biomass based generating plant". Accordingly, Detailed Operating Procedure notified by the Commission on 29.01.2020 was applied prospectively from the date of Order i.e. 07.12.2021.*
- x. *However, the MPPMCL vide its letter dated 01.02.2022 to MP SLDC stated that that in light of the order dated 07.12.2021 of the Commission, Declared Capacity accepted by MP SLDC on all the instances when biomass generators namely Arya Energy, Orient Green requested for providing 72 hours' schedule and/or providing 65% technical minimum for coming on bar ought to have been revised and the Declared Capacity be made Zero and accordingly the respective State Energy Accounts also to be revised.*
- xi. *SLDC vide its letter dated 22.02.2022 had also informed MPPMCL that the Order dated 07.12.2021 passed by the Commission does not direct SLDC to apply discontinuation of the practice of ensuring 72 hours' schedule from retrospective date and that according to SLDC, the directives of the Commission in Order dated 07.12.2021 shall be implemented prospectively. SLDC clarified that retrospective revision of real time schedule would not be possible under the existing provisions of Grid Code and Balancing and Settlement Code.*
- xii. *The retrospective application of the directives issued by the Commission in the Order dated 07.12.2021 as claimed by MPPMCL by revision of the Declared Capacity to zero in respect of all the instances, during the period from the date of submission of Declared Capacity to November 2021, when biomass generators including Arya Energy requested for providing 72 hours schedule and/or providing 65% technical minimum for coming on bar will cause grave financial prejudice to the biomass generators.*  
*In regard to the above, it is submitted that as a consequence earlier Order dated 24.11.2022 passed by the Commission (which has been set aside by Hon'ble Appellate Tribunal vide Order dated 03.08.2023), a demand for a sum of*

*Rs.7,73,61,868.80 was raised on Arya Energy. A copy of the statement providing brief financial data reflecting impact of Rs. Rs.7,73,61,868.80 on Arya Energy in case of retrospective application of the directives issued by the Hon'ble Commission in Order dated 07.12.2021 by revision of the Declared Capacity to zero in respect of all the instances, during the period from the date of submission of Declared Capacity to November 2021, when Arya Energy requested for providing 72 hours' schedule and/or providing 65% technical minimum is attached.*

- xiii. *On Bare reading of order dated 07.12.2021, it is submitted that MPPMCL has admitted in its pleading that there is no regulation framed by either Central Commission or this Commission governing schedule and dispatch of biomass plants as on the date of filing of the Petition No.25 of 2021. It is a settled principle that one cannot be punished for doing something that is not prohibited by law.*
- xiv. *If a person has been allowed a benefit previously under the then prevailing law, that benefit cannot be taken away by applying amendment to law with retrospective effect and thereby saddling the person with financial burden in respect of the past period. In this regard, the interveners have referred some relevant extract of the decisions of the Hon'ble Courts in this regard.*

**Biomass based power plants cannot be penalized for complying with the directions of the statutory authority- mp sldc**

- xv. *On conjoint reading of sub-section (1), (2), (4) and (5) of Section 33 of the Electricity Act 2003, it emerges that MP SLDC can give such directions and exercise such supervision and control as may be required for ensuring integrated grid operations and achieving maximum economy and efficiency in the operation of power system in the State of Madhya Pradesh; every licensee, generating company, any other person connected with operation of the power system has to comply with direction issued by MP SLDC; if any dispute arises in relation to any direction given under sub-section (1) by MP SLDC, it shall be referred to this Commission. However, pending the decision of the Commission, the directions of MP SLDC shall be complied with by the licensee, generating company; in the event the licensee or generating company or any other person fails to comply with the direction of SLDC, he shall be liable to a penalty not exceeding Rupees five lacs. In this regard, the interveners have referred some decisions of the Hon'ble Courts.*
- xvi. *Sub-clause (a) of Clause 5 of the Letter of Intent dated 11.10.2013 issued by MPPMCL to Arya Energy dealing with compliance of directions/instructions of SLDC, inter-alia, provided as under:*

5. The other terms and conditions of this office Lol no.05-01/Biomass/LOI/927 dated 19.9.13 is as under:-

**(a) System Operation and Scheduling-**

..... MP SLDC Jabalpur is nodal agency and Generator shall ensure the compliance of their instructions in this regard:

- xvii. The Clause 3.8 of the MP Grid Code dealing with compliance of directions issued by MP SLDC, inter-alia, provides as under:

**3.8 Non-Compliance & Derogation**

.....

3.8.5 State Load Despatch Centre may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of power system in the State.

3.8.6 Every Transmission Licensee and User connected with the operation of the power system shall comply with the direction issued by the State Load Despatch Centre.

3.8.7 If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State grid or in relation to any direction given under the provisions of Madhya Pradesh Electricity Grid Code it shall be referred to the Commission for decision.

Provided that pending the decision of the Commission, the direction of the State Load Despatch Centre shall be complied with by the transmission licensee or User.

3.8.8 If any Transmission Licensee or any User fails to comply with the directions issued under Section 3.8.6, he shall be liable to penalty not exceeding rupees five lacs.

- xviii. In view of the above, Arya Energy was bound by the directions issued by MP SLDC with regard to allowing 65% of technical minimum limit and requisition of minimum schedule for at least continuous 72 hours to be given to biomass based generating plant. Arya Energy cannot be penalized for compliance with directions of MP SLDC.

- xix. In view of the above facts, circumstances, legal provisions and decision of the Hon'ble Courts, the directions issued by the Hon'ble Commission in its Order dated 07.12.2021, in pursuance of extending application of Detailed Operation Procedure (notified on 29.01.2020) to Biomass based Power Plants including 12 MW Plant of the Arya Energy, are applicable prospectively i.e. from 07.12.2021 and cannot be applied retrospectively from 29.01.2020.



9. Interveners have referred some judgments in support of their contentions as follows:

*If a person has been allowed a benefit previously under the then prevailing law, that benefit cannot be taken away by applying amendment to law with retrospective effect and thereby saddling the person with financial burden in respect of the past period. In this regard, the relevant extract of the decisions of the Hon'ble Courts are as under:*

- a) Decision passed by Hon'ble Supreme Court in Sree Sankaracharya University of Sanskrit and Others -v- Dr. Manu and Another 2023 SCC OnLine SC 640

**51.** *This position of the law has also been subscribed to in Union of India v. Martin Lottery Agencies Ltd., (2009) 12 SCC 209 wherein it was stated that when a new concept of tax is introduced so as to widen the net, the same cannot be said to be only clarificatory or declaratory and therefore be made applicable retrospectively, even though such a tax was introduced by way of an explanation to an existing provision. It was further held that even though an explanation begins with the expression "for removal of doubts," so long as there was no vagueness or ambiguity in the law prior to introduction of the explanation, the explanation could not be applied retrospectively by stating that it was only clarificatory.*

**52.** *From the aforesaid authorities, the following principles could be culled out:*

*i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.*

*ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.*

*iii) An explanation/clarification may not expand or alter the scope of the original provision.*

*iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by*

the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.

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**56. Further, merely because the subsequent Government Order has been described as a clarification/explanation or is said to have been issued following a clarification that was sought in that regard, the Court is not bound to accept that the said order is only clarificatory in nature. On an analysis of the true nature and purport of the subsequent Government Order dated 29<sup>th</sup> March, 2001, we are of the view that it is not merely clarificatory, but is a substantial amendment which seeks to withdraw the benefit of two advance increments in favour of a certain category of lecturers. The benefit withdrawn was not anticipated under the previously existing scheme. Therefore, such an amendment cannot be given retrospective effect.**

- b) *CIT -v- Vatika Township (P) Ltd., (2015) 1 SCC 1: 2014 SCC OnLine SC 712 {5 judges constitution bench}*

**General principles concerning retrospectivity**

**28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in *Phillips v. Eyre* [(1870) LR 6 QB 1], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.**

written submission filed by interveners. SLDC has broadly submitted the following:

- (i) *Section-32 & 33 of Electricity Act-2003 defines the functions and responsibilities of State Load Despatch Centres. The SLDC has to act strictly as per the provisions of Electricity Act, 2003 Grid Code, regulations of CEA State Commission and directives of the State Commission. SLDC has to perform its functions impartially and judiciously.*
- (ii) *In compliance to the order of the Commission in Petition No. 50/2022, SLDC had issued corrigendum of the monthly State Energy Account for the month of Nov 2020 to Nov 2021 by revising the Declared Capacity (DC)/ Entitlement and Plant Availability Factor (PAF) of Biomass Generators vide letter no. 908 dated 07.07.2023 annexed herewith as Annexure-1. The Declared Capacity (DC) of Biomass Generators has been revised to Zero for all such instances where MPPMCL has provided the requisition as per DOP of MPEGC 2019 with start-up time and the Biomass Generators has not brought the Unit on bar and have requested for continuous schedule of 72 Hrs.*
- (iii) *All the Generating Stations eligible for scheduling under day ahead have to comply the provisions of Scheduling & Despatch procedures of MPEGC and BSC irrespective of type of Generator whether Thermal, Hydel or Biomass. SLDC also performs scheduling activities as per provisions of MPEGC and BSC without differentiating the Generators else it would be violation of MPEGC and BSC.*
- (iv) *The Commission has notified 2 (two) Deviation Settlement Mechanisms, one for Wind & Solar Generator and another for computation of DSM Charges for all other types of Generating Stations. It is to submit that operation of Biomass Generator is same as conventional Thermal Generator except type of fuel. The Biomass Generator uses biomass as a fuel not fossil fuel, thus considered as Renewable Energy Generator though they are Thermal Generators.*
- (v) *MPPMCL was generally giving the Generation Schedule to the Biomass Generators in zig-zag manner during the day of operation which is neither possible nor technically feasible for the Thermal Generator. MPPMCL had been submitting the revision in requisition very frequently during the day of operation without giving the startup time to the Biomass Generators. Further, huge cost is involved in light up of the Thermal Generator and there was dispute between the Buyer and Seller for recovery of Start-up cost.*
- (vi) *There was no consensus between the Buyer and Seller for bearing the Start-up cost, compensation for Technical Minimum and real time revision during the*

day of operation. On request of Biomass Generators, SLDC requested MPPMCL to adopted the practice of revival of Unit under RSD like NTPC stations and ensure technical minimum schedule for 72 Hrs to Biomass Generators. Hon'ble Commission had given decision against the practice to ensure technical minimum schedule for 72 Hrs for revival of Unit after RSD which is not as per the provisions of Grid Code. Thus, SLDC had issued corrigendum to monthly State Energy Account as per decision of Hon'ble Commission in the petition no. 50/2022.

(vii) *The Commission's decision given in Petition No. 50/2022 is as follows-*

*"The Commission hereby reiterates that since the clarifications vide order dated 07.12.2021 were issued in light of the provisions of DOP approved under the provisions of MP Electricity Grid Code, 2019, therefore, those clarifications/directions shall be applicable from the date of applicability of Detailed Operating Procedure."*

*Thus, the matter is suitably addressed by the Commission and there is no necessity to discuss this matter again & again.*

(viii) *SLDC has faithfully and truly complied the Sub-section- (1), (2), (4) and (5) of Section- 33 of the Electricity Act 2003. The sub-section-4 of Section-33 is reproduced below-*

*"(4) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the State Grid or in relation to any direction given under sub-section (1), it shall be referred to the State Commission for decision.*

*Provided that pending the decision of the Station Commission, the directions of the State Load Despatch Centre shall be complied with by the licensee or generating company."*

(ix) *Dispute between the Buyer and Seller was brought into the notice of Commission by filing Petition No. 25/2021 and Petition No. 50/2022 by the Petitioner. The Commission has given suitable decision in above petitions by addressing all the issues raised by the Petitioner. In compliance to Section-33 of the Electricity Act 2003, SLDC has dealt the disputed Issues as per directives given by the Commission in the above petitions.*

(x) *SLDC is a Nodal Agency for carrying out Scheduling & Despatch of electricity and has to perform its functions and responsibilities as per Electricity Act 2003, Grid Code and other regulations / directives of the Commission. SLDC has to strictly adhere to regulatory provisions while performing its duties.*

- (xi) *M/s Arya Energy had submitted letter dated 15.07.2023 to the SLDC for allowing them to maintain 65% generation of the rated capacity as a Technical Minimum generation and to provide start time of 11Hrs. The request of M/s Arya Energy had been forwarded to the Buyer i.e. MPPMCL vide this office letter dated 27.08.2020 annexed herewith as Annexure-II. Thus, it is to submit that SLDC has not issued any directions to MPPMCL for providing technical minimum schedule of 65% to Biomass Generators.*
- (xii) *It is to submit that SLDC had only requested MPPMCL for giving generation schedule as per practice was being adopted for NTPC stations and also to avoid frequent start / stop of Biomass Generators which could be threat to the safety of the Biomass Generator. As per Grid Code, technical suitability of the schedule is also the responsibility of the SLDC. **The matter of ensuring technical minimum schedule of 72 Hrs was under discussion between SLDC and MPPMCL and no directives had been issued to the Biomass Generators.***
11. Vide letter dated 24.11.2023, The petitioner (MPPMCL) has filed its reply to the written submission filed by interveners. MPPMCL has broadly submitted the following:
- i. *The admitted fact in the case is that M/s. Arya Energy Ltd. did not provide its Declared Capacity for the months of April, 2020 and May, 2020 and M/s. Biobijlee Company Ltd. did not provide the same for the period from May, 2020 to July, 2020. Both these generators have 100% tide-up capacity with MPPMCL / DISCOMs of the State.*
  - ii. *The detailed operating procedure (DoP) approved by Commission has prescribed a period of only 8 hours for reviving a Thermal Generating Station from reserved shut down. In none of the DoP(s) approved by either Central Commission or by this Commission, any requirement of giving continuous 72 hours schedule for technical minimum is stipulated nor any technical minimum has been prescribed for biomass Generating Plants.*
  - iii. *It was reported that the Generators - Arya Energy Ltd and M/s. Biobijlee Company Ltd. requested for 72 hours of Technical minimum schedule at a stretch as scheduling less than this period is not commercially viable for their biomass based Generating Plants. The same was a deliberate attempt to prevent detection of wrongly declared availability. The Generator cannot be allowed to take advantage of such a request which tends to subvert the regulatory framework in force at the relevant point of time.*

- iv. *The Biomass Power Plant of Arya Energy Ltd and M/s. Biobijlee Company Ltd. are though RE Generators, but their scheduling, payment settlement and DSM computation mentioned in various regulations are same as Conventional Generators. Therefore, the said plants would be governed by the “Schedule & Despatch” Section of M P Electricity Grid Code and Balancing & Settlement Code-2015.*
- v. *The “Schedule & Despatch” procedure provided in MPEGC, 2019 and BSC-2015 is same for the Generator eligible for scheduling under day ahead in the Intra-state ABT regime. The Generators having two-part tariff i.e. Fixed and Variable Charges, subjected to MOD, run as per requisition of beneficiary, computation of Plant Availability Factor (PAF), payment of Fixed Charges on PAF, payment of Variable Charges as per energy scheduled to the beneficiary, having LTOA / MTOA, revision in DC / requisition during the real time of operation can participate in the day ahead scheduling as per provisions of MPEGC and BSC-2015.*
- vi. *That, Arya and Biobijlee are required to comply with all the mandatory regulatory requirements as for conventional fossil fuel based Generators as they treated with the same regulatory provisions of fossil fuel based Generators. Further, neither the Central Commission, nor the State Commission have provided for a separate Scheduling and Despatch procedure for Biomass Generators. Therefore, as per prevailing provisions of Grid Code and BSC, Biomass Generators need to be given same treatment as fossil fuel Generators. The regulatory requirement to be fulfilled by the Biomass Generators are exactly same as that of fossil fuel Generators. Thus, as per Section-9 of MPEGC, 2015, scheduling of Biomass Generators should be done in accordance with Scheduling Procedure of IEGC / MPEGC. The Scheduling Process does not differentiate between fossil fuel generator and Biomass fuel generator.*
- vii. *According to the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-1) Regulations, 2020 generation of energy from Biomass based plants was under must-run. In view of the 7<sup>th</sup> amendment to the said Regulations notified on 17.11.2017, the biomass-based generating plants upto 2 MW capacity only fell under the category of ‘must-run’, while those beyond 2 MW capacity were subjected to Merit Order Despatch. Thereafter, in view of the aforesaid Regulations, 2021, the biomass plants with capacity of above 15 MW were subjected to MoD. Thus, for the period under consideration – 17-11-2017 till 11-11-2021, the biomass plants of Arya and Biobijlee, being above 2 MW capacities, enjoyed the status of ‘must-run’ and were also subjected to MoD.*
- viii. *It is not that (a) since MPPMCL has not amended the PPA with biomass generators, DOP of MPEGC is not applicable on MPPMCL, and (b) the*

*retrospective revision of real time schedule would not be possible under existing provisions of Grid Code and BSC.*

- ix. *That, for the simple reasons that the biomass generators – Arya Energy Ltd. and Biobijlee Company Ltd. have 100% tide-up capacity with MPPMCL / DISCOMs of the State, it would not be necessary to amend the respective PPAs. An amendment to the PPA would only be necessary in case of stranded capacities tied-up with MPPMCL. The Scope of DOP, vide its Article 3, very clearly provides that in case of IPPs wherein 100% installed capacity is not tied up with MPPMCL / DISCOMs of M. P. through a long term power purchase agreement and whose tariff for only partial / contracted capacity is determined / adopted by the Commission, such generating station / company shall have to appropriately factor in the provisions in the PPAs entered into by it with MPPMCL / DISCOMs for sale of power, in order to claim compensations for operating at part load or for taking unit under RSD.*
- x. *Retrospective revision of real time schedule under existing provisions of Grid Code and BSC was possible and has successfully been done by SLDC in compliance of the earlier order dated 24.11.2022 passed by the Commission in instant case.*
- xi. *Arya Energy Ltd. and Biobijlee Company Ltd. were well aware of the earlier order dated 07.12.2021 passed in Petition No. 25/2021 much prior to filing of Appeal No. 597/2023 by them. But the same was neither appealed nor has been challenged by them in any other manner. Hence the same has attained finality and cannot be disturbed in instant case. It is only to be seen in instant petition that whether the earlier clarificatory order dated 24.11.2022, having been set aside on technical reasons of Arya Energy Ltd. and Biobijlee Company Ltd. having not been heard, still holds good on merits in view of order dated 07.12.2021 passed earlier to it in Petition No. 25/2021. It is pertinent to mention that the Appellate Tribunal for Electricity had not expressed anything on the merits of the case. Therefore, there are no reasons to believe that the earlier clarificatory order dated 24-11-2022 is erroneous on its merits.*
- xii. *M/s. Arya, in its Written Submissions dated 25-10-2023, has alleged that on bare reading of the aforesaid paras, it is submitted that MPPMCL has admitted in its pleadings that there are no regulations framed by either Central Commission or this Commission governing schedule and dispatch of biomass plants as on the date of the filing of the Petition No. 25 of 2021 and that it is a settled principle that one cannot be punished for doing something that is not prohibited by law. In counter to such allegations of Arya, it is submitted that in Petition No. 25/2021, all the pleadings made by the parties need to be considered as mere submissions and not admissions. Admissions and denials are only of facts which may be admitted or rejected in adjudication. It is only from the appreciations and findings*

*arrived at by the Commission in Petition No. 25/2021 it can be deduced whether such pleadings were correct or not. Even otherwise, since the order passed in Petition No. 25/2021 has attained finality, it is not open for Arya to challenge the same in the garb of its submissions in instant petition.*

- xiii. *In counter to submissions made by Arya in paras 32 and 35 of its Written Submissions dated 25-10-2023, it is submitted that in the event of difference of opinion and directions of MP SLDC, the matter was referred by MPPMCL to Hon'ble Commission by way of Petition No. 25/2021 and the same was decided by the Hon'ble Commission in view of the position of law existing on the date of cause of action therein. Therefore, the order dated 07-12-2021 passed therein was rightly given effect with retrospective effect based on the cause of action. The said order setting right the position of the parties to it with retrospective effect from the cause of action and having attained finality cannot be challenged in this petition by Arya or Biobijlee at this stage. It is submitted that Arya has utterly failed to establish that the earlier order dated 07-12-2021 passed in present petition runs in material derogation final order passed in Petition No. 25/2021.*
- xiv. *The alleged demand for a sum of Rs. 7,73,61,868.80 on Arya is on account of retrospective effect of a difference that existed between MPPMCL and MP SLDC and rightly adjudicated upon a reference vide order dated 07-12-2021 in Petition No. 25/. The said demand has not been challenged / impugned by Arya Energy Ltd.*
- xv. *It is a settled principle of law that a judgment decides the disputes / differences between the parties on the basis of law existing at the time of dispute, as has rightly been done by the Hon'ble Commission vide order dated 07-12-2021 passed in Petition No. 25/2021.*
- xvi. *It is also a settled principle of law that no one can be allowed to benefit from a mistake made by them. The application made by the biomass generators was wrong in its place and therefore they cannot be allowed to any benefit from the same. The law in the field is that when there is a mistake to pass any decision, if it is recalled, estoppel principle has no applicability and administration is permitted to withdraw it*
- xvii. *The instant written submissions have been articulated casually and contrary to the very basic principles of pleadings by Arya as Biobijlee Company Ltd. has been arrayed as a joint-petitioner/Intervenor with Arya. Still the written submissions do not find any submissions on the part of Biobijlee. The strength and authority on which Biobijlee has crept in instant written submissions would need to be ascertained. Therefore, in fitness of things, it would require for the arena of parties to be corrected and if found necessary, the mention of Biobijlee Company Ltd. be struck of from the same.*



- xviii. *For the reasons mentioned in above para, the Petitioner and its counsel were required to re-visit the Written Submissions dated 25-10-2023 of Arya several times to ascertain the spirit of the same. For this reason, there has occurred a short delay in filing instant Additional Written Submissions under all bonafides, however, the same does not tend to cause any prejudice to the opponents in any manner. It is prayed that the same may be condoned, in the interest of justice.*
- xix. *That the Petitioner – MPPMCL craves leave that the pleadings made by it in its Petition No. 50/2022 and other submissions made by it in the same be read along with as forming part of instant written submissions also.*
- xx. *In the facts and circumstances of the case, it is submitted that the Commission be pleased to appreciate the submissions of the Petitioner as mentioned above and be pleased to maintain the earlier order dated 07.12.2021 passed in Petition No. 25/2021 as clarified vide order dated 24.11.2022 passed earlier in this petition, to meet the ends of justice.*

**Commission's Observations:**

12. This is the order on remand proceedings initiated in compliance to direction of Hon'ble Appellate Tribunal for Electricity vide judgment dated 03.08.2023 in Appeal No. 597 of 2023 (DFR No. 180 of 2023). Through aforesaid judgment, Hon'ble APTEL has set aside the order dated 24.11.2022 in Petition No.50/2022 and remanded the matter to the Commission for passing a fresh order after hearing both the biomass generators in pursuant to the directions in the said judgement. Hon'ble APTEL has not expressed any opinion on merits of the impugned order.
13. Earlier, the same petitioner (MPPMCL) had filed a petition before the Commission for clarification on applicability of DOP on biomass based plants. Vide order of 07.12.2021 in petition No. 25 of 2021, the Commission clarified that the DOP approved by the Commission under the Grid Code was applicable to biomass based generating plants also. The Commission also clarified that the SLDC's directions allowing 65% of technical minimum for biomass based plants and scheduling for continuous 72 hours, were not in accordance with the provisions of MP Electricity Grid Code, 2019 and DOP approved thereunder.
14. Subsequently, the petitioner MPPMCL had filed petition No. 50 of 2022 before the Commission seeking clarification on implementation of the aforesaid Order dated 07.12.2021 passed by the Commission in Petition No. 25 of 2021. In aforesaid petition No. 50 of 2022, the applicability of DOP on Biomass based generating plants was not disputed. The only issue before the Commission in this petition was date of effectiveness of clarifications on applicability of DOP issued by the Commission in respect of biomass based generating plants. It was specifically asked whether the

clarifications are applicable retrospectively or prospectively.

15. Vide Order 24.11.2022, the Commission clarified that its directions/clarifications issued vide order dated 07.12.2021, would be applicable from the date of approval of the DOP by the Commission i.e. 29.01.2023.
16. In both the aforementioned petitions (P-25/2021 & P-50/2022), MPPMCL was the petitioner and SLDC was respondent. Both the biomass generators were not made parties by the petitioner, therefore, they were not heard by the Commission. Even though, aforesaid biomass generators had neither filed any representation nor approached the Commission during the proceedings of both the petitions.
17. The petitioner (MPPMCL) in its response to the reply submitted by interveners has submitted that both the biomass generators were well aware of the Commission's earlier order dated 07.12.2021 passed in Petition No. 25/2021, much prior to filing of Appeal No. 597/2023 (DFR No. 180 of 2023) before Hon'ble APTEL. But the same was neither appealed nor had been challenged by them, hence, the same has attained finality. The petitioner has further submitted that the order dated 24.11.2022 set aside by APTEL on technical reasons of 'biomass generators having not been heard', still holds on merits in view of order dated 07.12.2021 passed in Petition No. 25/2021. Even the Hon'ble APTEL had not expressed anything on the merits of the case.
18. With regard to status of Biomass based power projects, the Commission has observed that in accordance to MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I), Regulations, 2010, the generation of energy from Biomass based generating plants was under must run status. Subsequently, the Commission notified seventh amendment to Cogeneration and Generation of Electricity from Renewable Sources of Energy (Revision-I), 2010, Regulations on 17.11.2017. As per this amendment, the biomass-based generating plants up to 2 MW capacity were covered under must run status, while generating plant above 2 MW capacity were subjected to Merit Order Dispatch (MOD). Further, MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-II), Regulations, 2021 (Cogeneration Regulations, 2021) was notified on 12.11.2021. Regulation 7(b) of the aforesaid Regulations, 2021 provides that generation of energy from Biomass based generating plants with capacity up to 15 MW shall not be subjected to Merit Order Dispatch Principles. Since, both the biomass generators are below 15 MW capacity, therefore, attained must run status from 12.11.2021 onwards.
19. While issuing the clarification vide order dated 07.12.2021 in petition No. 25 of 2021, the Commission had observed that the M.P. Electricity Grid Code, 2019 is in force

and applicable on all types of generators as well as all other users connected with STU network in the State of Madhya Pradesh. The M.P. Electricity Grid Code contains provisions related to forecasting and scheduling of the generators. However, forecasting, scheduling and deviation settlement of wind and solar generators are governed by a separate Regulation namely Madhya Pradesh Electricity Regulatory Commission (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 and its amendments notified by this Commission time to time. Therefore, except for the wind and solar generators, forecasting and scheduling of all other generators including Biomass based generators are governed by the M.P. Electricity Grid Code 2019.

20. The Commission has observed the following from the submissions made by the parties:-

- (i) Intervener No. 1 M/s Arya Energy Ltd. and No. 2 M/s Biobijalee have submitted that the retrospective application of the directives issued by the Commission in the Order dated 07.12.2021 has caused grave financial prejudice to the biomass generators. As a consequence, demand of Rs.7.74 Crore and Rs. 7.45 Crore was raised on Arya Energy and Biobijalee respectively, due to revision of Declared Capacity to zero in respect of all the instances, when Arya Energy and Biobijalee requested for providing 72 hours schedule and/or providing 65% technical minimum. It is further submitted that there is no regulation framed by either Central Commission or this Commission, governing schedule and dispatch of biomass plants, therefore, one cannot be punished for doing something that is not prohibited by law.
- (ii) Interveners have referred Section 33 of the Electricity Act 2003, which states that SLDC can give such directions as may be required for ensuring integrated grid operations and achieving maximum economy and efficiency in the operation of power system in the State. Every licensee, generating company and any other person connected with operation of the power system has to comply with direction issued by MP SLDC. It is further contended that if any dispute arises in relation to any direction given under sub-section (1) by MP SLDC, it shall be referred to the Commission. However, pending the decision of the Commission, the directions of MP SLDC shall be complied with by the licensee, generating company. In the event the licensee or generating company or any other person fails to comply with the direction of SLDC, he shall be liable to a penalty not exceeding Rupees five lakh. Therefore, biomass based power plants cannot be penalized for complying with the directions of the statutory authority, i.e. SLDC

- (iii) Interveners have further submitted that the biomass generators were bound with the directions issued by MP SLDC with regard to allowing 65% of technical minimum limit and requisition of minimum schedule for at least continuous 72 hours, therefore, they cannot be penalized for compliance with directions of MP SLDC. As per both interveners, the directions issued by the Commission vide Order dated 07.12.2021, regarding extending application of DOP to Biomass based Power Plants should be applicable prospectively, i.e. from 07.12.2021 and cannot be applied retrospectively from 29.01.2020 (date of approval of the Detailed Operating Procedure).
- (iv) Interveners also submitted that in the title of the Detailed Operating Procedure approved by the Commission, name of biomass generators was nowhere mentioned. The title of the DOP is reproduced as below:
- “Detailed operating for Backing Down of Coal Based Thermal Units of the State Sector Generating Stations & IPPs for backing down of Coal Based Thermal Units of the State Sector Generating Stations and Independent Power Producers (IPPs).”***
- Therefore, the Detailed Operating Procedure was initially applicable only in case of Coal Based Thermal Units.
- (v) Respondent SLDC has also submitted that, before getting must run status, generating schedule to biomass generators was given by the procurer (MPPMCL) in zig-zag manner, during the day of operation, which was neither possible nor technically feasible for the Biomass Generators. SLDC has further submitted that the petitioner had been submitting, the revision in requisition very frequently during the day of operation without giving startup time to the Biomass Generators. Further, huge cost is involved in light up of the Thermal/ Biomass Generator and there was dispute between the Buyer and Seller for recovery of Start-up cost.
- (vi) SLDC has contended that there was no consensus between the Buyer and Seller for bearing the Start-up cost, compensation for Technical Minimum and real time revision during the day of operation. On request of Biomass Generators, SLDC requested MPPMCL to adopt the practice of revival of Unit under RSD like NTPC stations and ensure technical minimum schedule for 72 Hrs to Biomass Generators. SLDC had issued corrigendum to monthly State Energy Account as per order of the Commission in petition no. 50/2022.
- (vii) Respondent SLDC has submitted that it had only forwarded M/s Arya Energy letter dated 15.07.2023 to the petitioner for allowing them to maintain 65% generation of the rated capacity as a Technical Minimum generation and to provide start time of 11Hrs. SLDC had only requested MPPMCL for giving

generation schedule as per practice, being adopted for NTPC stations and also to avoid frequent start / stop of Biomass Generators, which could be threat to the safety of the Biomass Generator. As per Grid Code, technical suitability of the schedule is also the responsibility of the SLDC. It is also mentioned by SLDC that the matter of ensuring technical minimum schedule of 72 Hrs was under discussion between SLDC and MPPMCL and no directives had been issued to the Biomass Generators in this regard.

- (viii) The petitioner MPPMCL has submitted that M/s Arya Energy Ltd. did not provide its Declared Capacity for the months of April, 2020 and May, 2020 and M/s Biobijlee Company Ltd. did not provide the same for the period from May, 2020 to July, 2020. Both these generators have 100% tied-up capacity with MPPMCL / DISCOMs of the State.
- (ix) MPPMCL has further submitted that though the Biomass Power Plant of M/s Arya Energy Ltd and M/s Biobijlee Company Ltd. are RE Generators, but their scheduling, payment settlement and DSM computation mentioned in various regulations are same as Conventional Generators (i.e., thermal power plants). Therefore, the said plants would be governed by the "Schedule & Despatch" Section of M P Electricity Grid Code and Balancing & Settlement Code-2015. It is also submitted by the petitioner that a retrospective revision of real time schedule under existing provisions of Grid Code and BSC was possible and has successfully been done by SLDC in compliance of the Commission's order dated 24.11.2022.

21. In order dated 07.12.2021 (in Petition no. 25/2021), the Commission had clarified that the directions given by the SLDC allowing 65% of technical minimum for biomass plant and allowing requisition for scheduling for continuous 72 hours were not in accordance with the provisions of MP Electricity Grid Code, 2019 and DOP. It is further observed that while allowing such deviations from DOP, SLDC had not taken any approval from the Commission. In this matter, SLDC did not follow regulatory provisions and acted beyond its jurisdiction.
22. In consequence, of the order dated 24.11.2022, Respondent SLDC revised Declared Capacity of intervener No. 1&2 (M/s Arya Energy and M/s Biobijalee) for past period which, resulted with a liability of Rs.7.73 crore and Rs. 7.45 crore upon them, respectively.
23. On perusal of the DOP issued vide order dated 29.01.2020, the Commission has observed the following:
- i. Order dated 29.01.2020 while approving the DOP has mentioned that 'the

DOP for backing down of coal based SSGS and mechanism for compensation due to part load operation and multiple start/stop of units.

- ii. Appendix-I of the DOP prescribed that “Detailed Operating Procedure for Backing Down of Coal based unit(s) of the State Sector Generating Stations having 100% installed capacity tied up with MP Power Management/DISCOMs of MP and for IPPs as per provision in PPA with MPPMCL for taking such units under Reserve Shut Down for scheduling below Technical Minimum Schedule and part load operation (i.e. operation of the unit/(s) below normative PAF upto the technical minimum)”.
  - iii. Appendix-II of the DOP prescribed that “Mechanism for Compensation for Degradation of Heat Rate, Aux Consumption and Secondary Fuel Oil Consumption, due to Part Load Operation and Multiple Start/Stop of SSGS/IPP’s Units. Clause 2 of the aforesaid Appendix-II specified that this Compensation Mechanism is applicable to Coal based State Generating Stations.
24. The Commission is of the opinion that aforementioned DOP was primarily prepared for coal based thermal power stations. Thereafter, MPPMCL had approached the Commission for clarification that “whether all the provisions of Detailed Operating Procedure approved by the Commission vide order dated 29.01.2020 specifically for coal fired Generating Stations, shall also be applicable to biomass based Generating Plants”. Vide Order dated 07.12.2021 in Petition no. 25/2021, it was observed by the Commission that the operational cycle of a coal-based power plant and the Biomass based power plant is almost similar. Therefore, DOP issued by the Commission under the provisions of MP Electricity Grid Code was also made applicable to biomass based generating plant, by way of order dated 07.12.2021.
25. Prior to aforesaid order dated 07.12.2021, there was lack of clarity regarding applicability of DOP on biomass based generators. It was only by way of aforesaid Order dated 07.12.2021, the Commission clarified that the DOP issued under provisions of Grid Code shall also be applicable on biomass based generating plants. As such, the retrospective application of the DOP, would also require revision of the Declared Capacity to zero in respect of all the prior instances, when biomass generators requested for providing 72 hours’ schedule and/or providing 65% technical minimum for coming on bar during the period on or after 29.01.2020 (i.e. date of approval of DOP) and before 12.11.2021 (i.e. date of notification of Cogeneration, Regulations, 2021). After hearing the interveners, the Commission is of the opinion that such retrospective revision cannot be applied to past instances.
26. In this regard, judgment passed by Hon’ble Supreme Court in Sree Sankaracharya

University of Sanskrit and Others -v- Dr. Manu and Another 2023 (SCC OnLine SC 640) may be considered as one of the landmark decision in respect of date of applicability of any amendment in existing law. In this judgement the Hon'ble Supreme Court held that if a person has been allowed a benefit previously under the prevailing law, that benefit cannot be taken away by applying amendment to law with retrospective effect and thereby saddling the person with financial burden in respect of the past period. In the aforesaid judgment, it was also clarified that 'an explanation/clarification may not expand or alter the scope of the original provision'. It was further held that even though an explanation begins with the expression "for removal of doubts," so long as there was no vagueness or ambiguity in the law prior to introduction of the explanation, the explanation could not be applied retrospectively by stating that it was only clarificatory.

27. In another case, Hon'ble Supreme Court [CIT -v- Vatika Township (P) Ltd., {(2015) 1 SCC 1: 2014 SCC OnLine SC 712}] ruled out that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. As per the aforesaid judgment, the idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. It is further held that the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. As per the aforesaid judgment this principle of law is known as *lex prospicit non respicit*: law looks forward not backward.
28. The Commission is of the considered view that operation cycle of coal-based power plant and the Biomass based power plant is almost similar and the clarification issued vide order dated 07.12.2021 shall be applicable to biomass generators. However, in view of the judgments of the Hon'ble Supreme Court cited above, the Commission decides that the same shall be applicable on biomass based generators, prospectively, i.e. from the date of order dated 07.12.2021.
29. In view of the above, the directions of the Hon'ble APTEL in its judgment dated 3<sup>rd</sup> August, 2023 in Appeal No. 597 of 2023 (DFR No. 180 of 2023) stands implemented and Petition No. 50 of 2022 stands disposed of accordingly.

**(Prashant Chaturvedi)**  
Member

**(Gopal Srivastava)**  
Member (Law)

**(S.P.S. Parihar)**  
Chairman