

**MADHYA PRADESH ELECTRICITY REGULATORY
COMMISSION
BHOPAL**

Sub: Petition under Regulation 45 of MPERC (Conduct of Business) (Revision-I) Regulations, 2016 seeking appropriate directions and to set aside demand dated 23.12.2022 of Respondent No. 3, read with Regulation 40, 44, 47, & 48 of MPERC (Conduct of Business) (Revision-I) Regulations, 2016, read with Clause 19.10, 19.15, 20.1, 20.2, 22.2, 22.3, & 22.4 of MPERC (Terms and Conditions for Intra-State Open Access in MP) Regulations, (Revision-I) 2021, read with Sections 2(4), 2(47), 39(2) & 42(2), 82, 86(1)(C), 86(1)(E), 86(1)(F) & 86(1)(K) of Electricity Act, 2003.

ORDER

**(Hearing through video conferencing)
(Date of Order: 26.03.2024)**

Director,

Ashok Finespun, 406 Corporate House,
169, R.N.T. Marg, Indore (MP)

- Petitioner

Vs.

(1) M/s Trbex Impex Pvt Ltd.,
GT Road, Dhandari Kalan,
Ludhiyana, 141010

(2) Chief General Manager (Com.),
MP Power Management Co. Ltd.,
Regional Office, Near Bhojpur Club, Arera Colony,
Bhopal, (MP), 462016

(3) Managing Director,
MP Paschim Kshetra Vidyut Vitaran, Co. Ltd.,
GPH, Pologround, Indore, 452003

(4) Chief Engineer (Planning & Design),
MP Power Transmission Co. Ltd.,
Block No. 3, Shakti Bhawan,
Vidyut Nagar, Jabalpur, 482008

Respondents

Shri Dheeraj Singh Panwar, Advocate, appeared on behalf of the Petitioner
Shri Vivek Krishna Sharma, Advocate appeared on behalf of the Respondent no. 1
Shri Manoj Dubey, Advocate appeared on behalf of the Respondent no. 2 & 4
Shri Dharamveer Singh, Advocate appeared on behalf of the Respondent no. 3

The subject petition is filed by Ashok Finespun, Indore Regulation 45 of MPERC (Conduct of Business) (Revision-I) Regulations, 2016 seeking appropriate directions and to set aside demand dated 23.12.2022 of Respondent No. 3, read with Regulation 40, 44, 47, & 48 of MPERC (Conduct of Business) (Revision-I) Regulations, 2016, read with Clause 19.10, 19.15, 20.1, 20.2, 22.2, 22.3, & 22.4 of MPERC (Terms and Conditions for Intra-State Open Access in MP) Regulations, (Revision-I) 2021 read with Sections 2(4), 2(47), 39(2) & 42(2), 82, 86(1)(C), 86(1)(E), 86(1)(F) & 86(1)(K) of Electricity Act, 2003.

2. By affidavit dated 15 September 2023, the Petitioner broadly submitted the following:
- i. *Petitioner is a HT Consumer of Respondent No. 3 and also availed Solar Power Generated by Respondent No. 1 / Private Solar Generator.*
 - ii. *Petitioner is aggrieved by demand letter dated 23.12.2022 issued by Respondent No. 3 towards difference of energy accounting based on Fifteen Minutes Time Block. Petitioner is also seeking directions against arbitrary, illegal action of Respondents being taken in association and connivance with Respondent no. 1 / Generator, by granting adjustment of Solar Power of Respondent no. 1 despite termination of Power Purchase Agreement (PPA) between Petitioner and Respondent No.1. Petitioner is also aggrieved by demand dated 31.03.2023 and 31/07/2023 of Respondent No. 1 and sub-sequent notices.*
 - iii. *That, the Petitioner is a Company incorporated under Companies Act. Present petition is being filed through its Director Shri Rohit Doshi who is authorized to file present petition.*
 - iv. *Respondent no. 1 is a private Company registered under Companies Act & a Solar Power Generator who has established its Solar Energy based Power Plant located at Sitamau, District Mandsaur, (M.P.) generating Solar Power at its Plant.*
 - v. *The Respondent no. 2, 3 and 4 are a wholly owned Government of M.P. Company engaged in business of Power Management, Power Distribution and Power Transmission acting as Licensees under Section 14 of Electricity Act, 2003.*
 - vi. *The Petitioner obtained HT Connection of 3500 KVA from Respondent No. 3 for running its Fibres Industry engaged in the activities of inter-alia Ginning, Pressing, Spinning etc. as per its business object Clause in the Memorandum of Association and executed High Tension (HT) Agreement dated 24/05/2015.*
 - vii. *The Petitioner Company is a law abiding body corporate and is regularly making payment of the monthly electricity bills apart from all duties and taxes imposed by the Respondents.*
 - viii. *The Petitioner also entered into agreement dated 30/06/2017 for purchase of electricity with Respondent No. 1 who has established its Solar Energy based Power Plant of 3.0 MW located at Sitamau, District Mandsaur. (M.P) generating Solar Power at its Plant.*
 - ix. *The Respondent No. 1 have also executed Power Purchase And Wheeling Agreement (in short PPWA) for their Solar Power Project with Respondent No. 2 and Respondent No. 3 and obtained required permissions, approvals for generation, Wheeling of Power pursuant to connectivity of their Solar Power Plant with the System Network of Respondent No. 3. Petitioner is not a party to the said agreement, Respondent no. 1 and Respondent no. 2 & 3 are bound by said agreement and required to comply with the Energy Accounting procedure agreed upon by Respondents between each other. Respondents have not provided copy of said agreement to the Petitioner.*
 - x. *The accounting of energy generated and supplied by Respondent No.1 was to be made as per conditions of PPWA executed between Respondents no. 1 to 3 and all the permissions and approvals culminating into the aforesaid PPWA were subject to the*

amendment, if any, of Government Polices, the applicable laws. rules and regulations.

- x. *The agreement for supply of electricity by Respondent No.1 to Petitioner executed on 30/06/2017 provided for supply of energy for period from July 2017 to July 2022. As per Clause 7.1 and 7.2 of the ,agreement between Respondent No.1 and Petitioner, the Petitioner is liable for payment of amount of electricity consumption recognized by Respondent No. 3 / West Discom, as per agreed rate. This amount of payment was to be adjusted / reduced from the monthly electricity bill raised by Respondent No.3 (West Discom) from whom also the Petitioner has availed High Tension Electricity Supply as another source of electricity to meet out its power requirement for running the industry.*
- xii. *That, as per the terms and conditions of agreement dated 30/06/2017 the Petitioner has made payment of bills of Energy units supplied by Respondent No.1 on regular basis without any default and also to Respondent no. 3 towards supply made by them as per H. T. Agreement.*
- xiii. *Petitioner obeyed and complied with all the directions and instructions of Respondent no. 2 to 4 from time to time.*
- xiv. *Going by the aforesaid agreement dated 30/06/2017 and directions of Respondent no. 2 to 4, Petitioner has made payment of full quantity of energy units supplied by Respondent No.1 and discharged all its obligations under the agreement dated 30/06/2017.*
- xv. *The Respondent No.3 is aware of the energy accounting procedure as per PPWA between Respondent no. 1 to 3 and agreed terms and conditions executed on and after necessary permissions and approvals of Respondent No.2 and 3. Petitioner is not party to the said agreement. As per Respondent-s said inter-se agreement Respondent no. 3 has given adjustment and passed on benefit to Respondent no. 1 by way of adjustment given in the monthly electricity bills of Petitioner towards Energy Units supplied by Respondent No.1 / Generator, by ignoring conditions of Respondent's own agreement / PPWA. Based on such adjustment Petitioner made payment to Respondent no. 1 for the units adjusted / not billed by Respondent no. 3.*
- xvi. *Respondent No.3 have all of sudden raised impugned demand letter dated 23/12/2022 calling upon Petitioner to pay amount of Rs. 2,88,47,781/- towards difference of amount from January 2018 to June 2021, on the ground that the wheeled energy of Respondent No.1 / Solar Generator in each 15 minutes block shall be adjusted against the consumption recorded by HT meter in the corresponding 15 minutes block as per allocation indicated by Supplier Company / Respondent no.1. This demand has been raised relying on Clause 1 1.3 of PPWA executed between Respondent no. 1 to 3 as informed by Respondent no.3. This demand of Respondent No.3 is retrospective and it causes double jeopardy upon Petitioner who have already made payment of all the units supplied by Respondent No.1 to Petitioner.*
- xvii. *In view of this already made payment the retrospective demand of Respondent No.3 is not warranted and is illegal without authority of law, against Petitioner. The said amount of difference is to be recovered from Respondent no.1 who has been paid for all energy supplied by them as per Agreement of Respondent no. 1 to 3 only. And instead of demanding the difference amount from Petitioner, the Respondent no. 3 should have raised demand against Respondent no. 1/Solar power Generator.*
- xviii. *The retrospective demand of Respondent no. 3 against Petitioner is without authority of law and without jurisdiction as such bad in law. Petitioner has made payment of demand amount to Respondent no.3 under the protest to save itself against any*

coercive action of disconnection of supply by Respondent no. 3.

- xix. *The Petitioner is not liable to pay the demand raised by Respondent No. 3 as per their own agreement. The Respondent no. 3 has not taken steps to comply their agreement with Respondent no. 1 and to ensure proper accounting of energy units. Respondent No. 2, 3 and 4 have shown favour to Respondent No. 1 by violating their own PPWA which has resulted in passing on the benefit to the extent of adjustment given by Respondent No. 3 itself for energy supplied by Respondent no. 1 contrary to their own Clause 1 1.3 PPWA.*
- xx. *Respondent no. 3 found it convenient to recover alleged amount from Petitioner under threat of disconnection and not disclosing reason as to why no action is being taken against Respondent no. 1 with whom they entered into the agreement.*
- xxi. *The Petitioner terminated the agreement for supply of electricity of Respondent no. 1 on 18/09/2019 itself and even than Respondent no. 1 did not take any steps to search any way out for trading its generated power to other purchasers available in the open market. After termination of agreement between Petitioner and Respondent No.1, Petitioner is not liable to make any payment. However on request of Respondent No.1 the payment was being made by way of cooperation in the meanwhile as Respondent was searching another purchaser for Solar Power being generated by it. The Petitioner did not grant any extension of agreement which has been terminated by letter dated 18/09/2019, served to Respondent no. 1 by post (Docket No. R15797125731N) and vide Email served on 19/09/2019 at 2:22 PM to authorized agency of Respondent No. 1 on Email address id ea2@ujaas.com and again reminder of termination notice delivered on 15/10/2019 to Respondent No. 1.*
- xxii. *That, as per demand letter dated 23/12/2022 issued by Respondent No.3 the accounting of energy supplied by Respondent no. 1 is to be done on 15 minutes block period from effective date of PPWA (as per Clause 11.3). As per such energy accounting to be done on 15 minutes block period, the consumption of Solar Power provided by Respondent No. 1 and recognized by MPPKVV Co. Ltd. (Respondent No.3) stands reduced to 50% which is clear from monthly bills raised from 2022. As per this accounting of Solar Power Consumption. (Agreed between Respondents and not disclosed to Petitioner). the Petitioner has suffered loss of load factor incentive @ Rs.1/- per unit due to reduction of load factor resulting from less consumption of power being recognized by Respondent no.3 and attributable to Respondents only. The said loss suffered by Petitioner need to be adjusted in the process of reconciliation as per Clause 7.4 of Agreement.*
- xxiii. *The MPPKVV Co. Ltd (Respondent No. 3) raised demand of difference amount retrospectively against the adjustment given earlier which can be met out only by recovery of the amount paid by Petitioner to Respondent no. 1 as per adjustment given by Respondent no. 3. As such the accounts of Respondent no. 1 are required to be reconciled, keeping in view the demand of MPPKVV Co. Ltd. and thereafter only any amount payable to Respondent no. 3 or Respondent No. 1 can be ascertained in view of demand of Respondent no. 3. The Respondent no. 1 being party to PPWA are liable to pay the said amount to the Respondent no. 3 as per their agreement with the said Respondent no. 3 and Petitioner is not liable for the same.*
- xxiv. *Thus the Petitioner owe no liability whatsoever of any amount to Respondent no. 3 and Respondent no. 3 is required to reconcile and sort out the matter of grant of any adjustment with Respondent no. 1 as per the agreement between Respondents themselves. Petitioner has already terminated the supply agreement with Respondent no. 1 on 18/09/2019 itself. Even otherwise as per Clause 1.1.10 the Supply period*

between Respondent no. 1 and Petitioner has expired on 30/03/2022 and no extension agreement has been executed as per clause 5.2 between the parties. The Petitioner by way of notice dated 20/06/2023 addressed to all the Respondents reiterated the termination of Agreement made on 18/09/2019 and once again conveyed that Petitioner no longer require the supply of Solar Power Generated by Respondent no. 1. Petitioner duly conveyed that Petitioner is not responsible to make any payment of Solar Power to Respondent no. 1 any longer due to termination of agreement and even otherwise due to expiry of agreement. But Respondent no. 3 is arbitrarily continuously granting adjustment of Solar units and not replied to Petitioner's advocate notice dated 20/06/2023.

- xxv. *The Petitioner has been prudent, sincere and have discharged its part of obligations towards Respondent No. 1 as per agreement dated 30/06/2017 and towards Respondent No.3 as per HT Supply Agreement. But since the Respondent no. 3 has raised illegal demand against Petitioner, the matter of reconciliation of energy units accounting is to be adjudicated by technical experts in the field of electricity. As per the contract between parties any amendment in the law, rules and regulation is to be respected and complied with by the parties on whom it is applicable in letter and spirit.*
- xxvi. *Respondent No.2 and 3 being Government Licensee has been silent and did not care to call upon the generator / Respondent No.1 .to act as per the agreed terms and conditions of their own agreement/ PPWA and directly proceeded to raise the demand against Petitioner who has already made payment of impugned difference units to the Solar Power generator / Respondent No. 1 as per adjustment given by Respondent no.3 and as such Petitioner is not liable to make any payment to Respondent No.3 against impugned demand. The Respondent no. 1 has also raised demand against Petitioner on 31/03/2023, 31/07/2023 and by subsequent notice which is disputed and not payable by Petitioner.*
- xxvii. *Petitioner has already communicated to Respondent no.1 the termination of Supply Agreement on 18/09/2019 itself and therefore Petitioner's relationship of Solar Power Purchaser from Respondent No. 1 has already come to end as per above notice.*
- xxviii. *In above circumstances Petitioner finally by legal notice dated 20/06/2023 informed all Respondents No.1 to 4 that the agreement dated 30/06/2017 between Respondent No. 1 and Petitioner has been terminated on 18/09/2019. The Respondent no 2 to 4 did not give any response to said notice and did not take any action which shows their connivance with Respondent no.1. The demand of Respondent No.3 raised against Petitioner needs to be reconciled as per clause 7.4 of agreement and to be recovered from Respondent No. 1 and not from Petitioner.*
- xxix. *The Petitioner further called upon Respondent No. 2 and 3 to take note of (as informed and communicated by Petitioner earlier) the fact of termination of Petitioner's agreement with Respondent No.1 in the context of their PPWA for treating that no wheeling of electricity is required to be done for supply of Solar Power Generated by Respondent No.1 to Petitioner. Thus Petitioner also called upon Respondent No.2 and 3 to treat any permission approval etc in respect of Power Supply to Petitioner by Respondent No.1 as no longer required and Petitioner has withdrawn any communication / consent if at all given in respect of aforesaid Solar Power Purchase from Respondent No. 1 in view of termination of Agreement of Power Supply.*
- xxx. *The demand of Respondent no. 1 and Respondent no.3 needs to be reconciled as per clause 7.4 of the agreement.*
- xxxi. *The Respondent No. 1 issued counsel notice dated 09/08/2023 raising different claims*

which have been disputed and denied vide Petitioner's counsel reply dated 06/09/2023 sent through counsel. The matter can be decided by Hon'ble MPERC, being dispute between Generator, Purchaser, Licensee and consumer. The Hon'ble MPERC is expert body in the field to decide the matter.

xxxii. *In view of the above. it is submitted that the impugned demand dated 23/12/2022 issued by Respondent no. 3 and dated 31/03/2023, 31/07/2023 raised by Respondent no.1 along with sub-sequent notices is arbitrary, illegal without authority of law, unconstitutional and contrary to principles of natural justice and deserves to be set aside.*

xxxiii. *The matters involves factual dispute with regard to the accounting and adjustment of Electricity Energy units between Private Solar Generator, Purchaser and Licensee in the light of applicable Rules and Regulations which can be looked into by the body constituted to deal with disputes relating electricity. The matter also involves the interpretation of PPA and PPWA of Respondents which is in the domain of Hon'ble MPERC. Hence this petition is being filed.*

xxxiv. *Thus being aggrieved by arbitrary action of Respondents and impugned illegal demand of Respondent No. 3, the present petition is filed on following grounds:-*

GROUND S URGED:

- xxxv. *The action Respondent no. 2 to 4 is arbitrary, high handed and illegal as they have acted by joining hands with Respondent no. 1.*
- xxxvi. *The Respondent no.3 raised impugned demand dated 23/12/2022 without authority of law and demand of Respondent No. 1 is issued in connivance with other Respondents.*
- xxxvii. *The impugned demand dated 23/12/2022 is raised retrospectively from January-2018.*
- xxxviii. *The Respondent no. 2 and 3 has joined hands with Respondent no. 1 and is acting in illegal manner and not accepting Petitioner's request to raise bill for entire monthly consumption from HT Supply, despite termination of agreement.*
- xxxix. *The Respondent no. 2 and 3 are favoring the Respondent no. 1 and causing serious hardship to Petitioner.*
- xl. *The Petitioner has already terminated the Solar Power Purchase Agreement of Respondent No. 1 on 18/09/2019 and despite this Respondent No. 2 to 4 are not following fair and prudent practice in raising bills.*
- xli. *The Petitioner has not executed any extension of agreement as per Clause 5.2 of the Agreement.*
- xlii. *Due to the mala-fide conduct of Respondents who have joined hands with each other, the Petitioner is compelled to face the pressure and threatening of Respondent no. 3.*
- xliii. *The Respondent has recovered amount of impugned demand under duress otherwise the Respondent no. 3 was bent upon disconnection, the said amount deserves to be refunded to the Petitioner along with interest.*
- xliv. *The Respondents have not disclosed and not provided copy of PPWA executed between Respondents.*
- xlv. *Appropriate orders deserves to be passed against Respondent no. 3 officers who are acting dishonestly by mis-utilizing their position.*

xlvi. *Respondent's entire action is arbitrary, illegal, unconstitutional, without authority of Law, jurisdiction and contrary to principles of natural justice.*

3. With the aforesaid submissions the Petitioner prayed the following:

- i. *To set aside impugned demand dated 23.12.2022 of Respondent No-3 against Petitioner.*
- ii. *To set aside impugned demand dated 31.03.2023, 31.07.2023 and subsequent action, notices of Respondent no. 1 against Petitioner.*
- iii. *To direct Respondent No. 3 to refund the amount recovered against impugned demand to Petitioner along with interest as the said amount has been paid under duress and compelling circumstances to avoid coercive action, though Petitioner is not liable to make any such payment.*
- iv. *To direct Respondent No. 3 to recover the amount against impugned demand from Respondent no. 1 to whom, they have willfully and deliberately given adjustment, contrary to their to their own agreement.*
- v. *To direct the Respondent No. 3 to raise bill of entire monthly Electricity Consumption without providing any adjustment of Solar Power of Respondent No. 1 M/s Trbex Impex Pvt. Ltd as Petitioner has already terminated the Solar Power Purchase Agreement with Respondent No. 1.*
- vi. *To direct that Petitioner has already detached itself from Respondent No. 1 and therefore is not liable for any claim damage or liability to all Respondents in relation to solar power Agreement dated 30.06.2017 between Respondent No. 1 and Petitioner and in relation to Respondent's PPWA between Noticee No. 1 to 3.*
- vii. *To Direct that Respondent No. 1 has no claim against Petitioner, and Petitioner was liable for payment only to the extent of Solar Power Units consumed by Petitioner which has been duly paid.*
- viii. *To direct Respondent No. 3, in the meanwhile to keep the amount of Rs. 2,88,47,781/- recovered from Petitioner in a separate Bank account/ Interest bearing Fixed Deposits Receipts and to hold the same in trust for Petitioners.*
- ix. *To award the cost of petition.*
- x. *To grant any other relief as deemed fit may kindly be granted by the Hon'ble Court.*

4. At the motion hearing held on 29th November 2023, the Petitioner was heard on the issue of admissibility. Order was reserved.

5. Subsequently vide order dated 07.12.2023, petition was admitted for further proceedings and case was listed for hearing on 09.01.2024.

6. At the hearing held on 09.01.2024, Respondents requested to allow them time to file reply as the petition copy was received late by them. Ten days time allowed to Respondents for filing response and Petitioner to file rejoinder, if any within 7 days of receipt of reply from Respondents.

7. By affidavit dt. 12.01.2024, Respondent No. 4 i.e. MPPTCL, Jabalpur submitted the following in their reply:
- i. *The Hon'ble Commission vide Daily Order dt. 09.01.2024 (Petition No. 56/2023) indicated Chief Engineer (Planning & Design), MPPTCL, Jabalpur as Respondent No. 4. It is submitted that the matters pertaining to Open Access are being looked after by Executive Director (CRA), MPPTCL, Jabalpur on behalf of MPPTCL. Therefore, the reply on behalf of Respondent No. 4 is being submitted by the Executive Director (CRA), MPPTCL, Jabalpur who is competent to do so.*
 - ii. *It is submitted that as per MPERC (Terms & Conditions for Intra-State Open Access in Madhya Pradesh) Regulations 2005, Intra State Long Term Open Access was granted to M/s TRBEX Impex Pvt. Ltd., Indore for sale of power from their 3 MW Solar Power Plant installed at Village-Dharkhedi, Tehsil-Sitamau, Distt. Mandsaur for third party sale of power (100%) to M/s. Ashok Finespun, Village-Bhilgaon (Kasarwad).*
 - iii. *M/s TRBEX Impex Pvt. Ltd., Ludhiana vide their application No. 01 dt. 07.12.2022 (received in MPPTCL office on 19.12.2022) requested for change of third party beneficiary from M/s Ashok Finespun Pvt. Ltd (100%) to M/s Vikram Woolens Pvt. Ltd., Malanpur, Distt- Bhind (First Party with 67% capacity allocation) and M/s Naman Mall Management Co. Pvt. Ltd., Indore (second party with 33% capacity allocation).*
 - iv. *Upon receipt of request from M/s TRBEX Impex Pvt. Ltd. for change of beneficiaries vide their application dt. 07.12.2022, the MPMKVVCL, Bhopal and MPPKVVCL, Indore authorities were requested to ascertain the feasibility for drawl & injection of power, metering, pending dues etc. by MPPTCL.*
 - v. *The required feasibility conveyed and other observations of MPPTCL were settled by MPMKVVCL, Bhopal vide letter No. MD/MK/713 dt. 07.03.2023 & No. 188 dt. 30.06.2023 and by MPPKVVCL, Indore vide letter No. MD/WZ/05/Com-HT/2023-24/7903 dt. 01.06.2023 & e-mail dt. 04.07.2023.*
 - vi. *The LTOA permission was granted by MPPTCL to M/s TRBEX Impex Pvt. Ltd. with third party beneficiaries namely M/s Vikram Woolens Pvt. Ltd., Malanpur, Distt. Bhind & M/s Naman Mall Management Company Pvt. Ltd., RNT Marg, Indore vide letter No. 04-01/CRA/LTOA/F-247-A/2321 dated 10.07.2023. The copy of aforesaid LTOA permission letter dated 10.07.2023.*
 - vii. *M/s TRBEX Impex Pvt. Ltd. vide their letter No. TRB/SPV/Sitamau/011 dated 29.07.2023 had submitted their concurrence & acceptance on the terms & conditions for grant of LTOA permission issued as per MPERC (Terms & conditions of Intra State Open Access in Madhya Pradesh) (Revision-I) Regulations, 2021. The copy of aforesaid letter dated 29.07.2023*
 - viii. *The grant of LTOA and acceptance of its terms & conditions by M/s TRBEX Impex Pvt. Ltd. was informed by MPPTCL to the CGM(Commercial-NCE), MPPMCL, Bhopal vide letter No. 0401/CRA/LTOA/F-247-A/3076 dated 10.08.2023. The copy of aforesaid letter dated 10.08.2023*
 - ix. *The MPPTCL (Respondent No.4) is nowhere connected to the demand raised by MPPKVVCL, Indore (Respondent No.3) on the Petitioner M/s Ashok Finespun vide*

letter No.1382 dated 23.12.2022.

- x. *The averments made by the Petitioner except those which are matter of record and specifically admitted, are denied by MPPTCL (Respondent No. 4). The aforesaid submissions of MPPTCL (RespondentNo.4)may kindly be taken on record.*
8. By affidavit dated 24.01.2024, Respondent No. 3 i.e. M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd. submitted the following in its reply:
- i. *That, from perusal of averment made in the petition along with relief claimed, it is apparent that the primary grievance raised by the Petitioner in the instant petition is with respect to the billing done by Respondent no. 3 under 15 minute block as per clause no. 11.3 of Power Purchase and Wheeling Agreement (herein after PP&WA) and the adjustment of units procured from Solar Power Developer/Generator given by Respondent no. 3 even after termination of supply agreement (herein after PPA). Further, the Petitioner has also requested to the Hon'ble Commission to direct the Respondent no. 3 to recover the amount from Respondent no. 1 and that Respondent no. 3 is not accepting to raise the energy bill for entire month consumption from HT supply despite termination of agreement.*
- ii. *At the outset, the Respondent no. 3 denies and disputes each and every allegation, averment and contention made in the petition, which is contrary to or inconsistent with what is stated herein, as if the same has been traversed in seriatim, save and except what has been specifically and expressly admitted hereinafter in writing. Any omission on the part of the answering Respondent to deal with any specific contention or averment of the Petitioner should not be construed as an admission of the same by the answering Respondent. Further, all the submission made herein are without prejudice to one another and are to be treated in alternate to one another in case of conflict or contradiction.*
- iii. *The matter in issue, relates to Energy Accounting of the electricity recorded in the meters installed at the premises of the Petitioner and apportionment of the total quantum of electricity so recorded between –*
- (a)*The quantum to be allocated to supply by Solar Power Developer/Generators with whom the Petitioner had entered into a bilateral supply contract for solar generation and supply; and*
- (b)*The quantum to be taken as supply by the Distribution Licensee (MPPKVVCL) to the Petitioner under the Tariff terms and conditions decided by the State Commission from time to time.*
- iv. *It is submitted that in regard to the sale of electricity, by the Solar Power Developers/Generator to the Petitioner for which Open Access is taken, the same is governed by Section 49 of the Electricity Act, 2003 which reads as under*
- “Section 49. (Agreement with respect to supply or purchase of electricity):*
- Where the Appropriate Commission has allowed open access to certain consumers under section 42, such consumers, notwithstanding the provisions contained in clause (d) of sub-section (1) of section 62, may enter into an agreement with any person for supply or purchase of electricity on such terms and conditions (including tariff) as may be agreed upon by them.”*
- v. *In so far as supply of electricity to the Petitioner by MPPKVVCL i.e., Distribution Licensee is concerned, the same is governed by the Tariff Regulations and determined by the State Commission in terms of Section 43 to 46, 61, 62, 64 etc of*

the Electricity Act, 2003 read with applicable Tariff Regulations notified for this purpose.

- vi. *While the Petitioner sources the electricity from three sources namely. i) Directly from the two generators – Solar Power Developers i.e. from M/s Trbex Impex Pvt Ltd. And M/s Friends Salt & Allied Industries and ii) from Distribution Licensee i.e., MPPKVCL, both are conveyed and delivered at the premises of the Petitioner through a common Transmission and Distribution system and metered commonly at the premises of the Petitioner. There was, therefore, a need to apportion the total quantum of electricity metered at the Petitioner’s premises between the two sources for proper Energy Accounting and Billing of the quantum of electricity supplied by the Distribution Licensee.*
- vii. *In regard to the above, the Solar Power Developer namely – M/s Friends Salt & Allied Industries and the Madhya Pradesh Utilities (the successor of the Madhya Pradesh State Electricity Board) entered into a Power Purchase & Wheeling Agreement (hereinafter ‘PP&WA’) dated 05.07.2021 whose date of enforcement was 20.11.2017. Later, the Solar Power Developer namely – Trbex Impex Pvt. Ltd (Respondent No. 1) and the Madhya Pradesh Utilities (the successor of the Madhya Pradesh State Electricity Board) also entered into a Power Purchase & Wheeling Agreement (hereinafter ‘PP&WA’) dated 11.04.2022 whose date of enforcement was 28.09.2017 .*
- viii. *It is submitted that the following provisions of the PP&WA between the Solar Power Developer and the Madhya Pradesh Utilities are relevant and clearly establish the methodology for apportioning the quantum of electricity between two sources, in the case of the procurement of electricity by the owner of the premises from such two sources through a common meter–*

“11. ENERGY ACCOUNTING

For the purpose of energy accounting, the methodology proposed is as follows:

11.1

11.2 *The DISCOM (concerned SE (O&M) in whose area the energy drawl point is situated) shall provide the credit of the units, after deducting applicable wheeling charges/energy losses as decided by MPERC, every month for the captive use in its HT Energy Bills.*

11.3 *Energy accounting shall be done for each 15 minute block separately. The wheeled energy in each 15 minute block shall be adjusted against the consumption recorded by the HT meter(s) in the corresponding 15 minute, as per allocation indicated by the company. In case block wise energy recorded by the meter at the drawl point in a particular month is more than the corresponding block wise wheeled energy, then balance energy supplied shall be billed by the concerned Discom at applicable tariff as per terms and condition of existing HT agreement subsisting between the consumer and the concerned Discom. Further, if block wise energy recorded by the meter at the drawl point in a particular month is less than the corresponding block wise wheeled energy, then balance energy supplied shall be treated as inadvertent energy injected into the grid, which shall be settled at tariff at Rs. 00.00(zero/kwh).*

11.4

11.5.....

11.6.....

- ix. *That, the Respondent no. 3 has raised the additional demand of Rs. 2,88,47,781/- vide supplementary bill dated 23.12.2022 for the period Jan-2018 to Jun-2021 due to revision in Solar units settlement in 15 minutes time block manner for solar generation from both the solar generators i.e from M/s Trbex Impex Pvt Ltd. and M/s Friends Salt & Allied Industries, as per the terms and conditions of PP&WA as the Energy bills of the Petitioner during that period were settled for open access as per TOD (Time of Day) manner.*
- x. *That, previously the adjustment of open access units has been given to the Petitioner as per the Long Term Open Access (LTOA) permission given by Madhya Pradesh Power Transmission Co. ltd, Jabalpur dtd. 23.09.2017 to the Respondent no.1. Due to non-finalization of the PP&WA and absence of methodology of energy accounting, the adjustment has been given to the Petitioner as per the prevailing method i.e. TOD manner.*
- xi. *That, the M/s Friends Salt & Allied Industries and the Madhya Pradesh Utilities (the successor of the Madhya Pradesh State Electricity Board) entered into a Power Purchase & Wheeling Agreement on dated 05.07.2021 under which the methodology for energy accounting of open access units as per 15 minute block has been given therefore, after the execution of PP&WA the energy bills has been issued to the Petitioner incorporating the adjustment of open access units as per 15 minute block. The same clause was also mentioned in the PP&WA dtd. 11.04.2022 executed M/s Trbex Impex Pvt. Ltd (Respondent No. 1) and the Madhya Pradesh Utilities (the successor of the Madhya Pradesh State Electricity Board).*
- xii. *Further, Respondent no. 3 identified that there was also a need of bills revision which were previously issued as per TOD manner as the same has become contrary to the clause 11.3 of PP&WA. Therefore, the Respondent no. 3 has revised the energy bills of the Petitioner from Jan-18 to Jun-21 (till the date of PP&WA) in 15 minute block manner. The respective clause of PP&WA which permits to Respondent no. 3 to do so reads as under:-*

PP&WA dated 05.07.2021:-

21 (a) *This agreement shall be deemed to have come into force with effect from date of commissioning of the plant on 20.11.2017 or date of obtaining Long Term Open Access (LTOA) i.e. 26.10.2017 from MPPTCL for Third Party Sale/Captive use whichever is later, subject to compliance of the terms and conditions of the LTOA as shall remain in full force for the validity period of 25 years from the date of commissioning of the plant or on expiry of the validity period of Long Term Open Access (LTOA) permission, whichever is earlier.*

PP&WA dated 11.04.2022:-

21 (b) *This agreement shall be deemed to have come into force with effect from date of commissioning of the plant on 28.09.2017 or date of obtaining*

Long Term Open Access (LTOA) i.e. 23.09.2017 from MPPTCL for Third Party Sale whichever is later, subject to compliance of the terms and conditions of the LTOA as shall remain in full force for the validity period of 25 years from the date of commissioning of the plant or on expiry of the validity period of Long Term Open Access (LTOA) permission.

xiii. *That, the Hon'ble Commission has passed the order on dtd. 03.08.2021 under Petition no. 22 of 2018, Petition no. 29 of 2018, Petition no. 30 of 2018, Petition no. 40 of 2018 and Petition no. 41 of 2018 in the matter of billing as per 15 minute time block. The observation of Hon'ble Commission is reads as under:-*

(14). *The Commission noted that the Petitioners' contention raised in petitions primarily rest on fact whether the applicability of Balancing and Settlement Code, 2009 amended in June 2010 by excluding intra-state Open Access Customers is applicable to the Petitioners. It is also noted that Respondent West Discom has issued the supplementary bills in respect of energy consumed for respective period after segregating the total consumption of Petitioners through open access and consumption of energy obtained from Respondents under HT agreement in each 15 minutes time blocks in compliance of MPERC clarification dated 02.09.2009. The Commission vide letter dated 02.09.2009 has made following clarifications regarding drawal of power by Open Access Customer (OAC) under short term open Access in reference to queries made by SLDC vide their letter dated 11.08.2009*

- i. Any generator which is not required to provide injection schedule should not be charged the concerned scheduling charges by SLDC.*
- ii. In case of drawal of power by Open Access Customers (OAC), the adjustment may first be done against OAC drawal viz a viz injection and the balance power if any may be adjusted against contract demand with the Distribution Licensee subject to the provisions of HT agreement executed by the consumers with the Licensee.*

(15) *The Commission has perused the submission made by Respondents SLDC and Discoms including the office Circular dated 02.12.2014 issued by West Discom to their field staff for billing of open access consumers referred at para 13 above. The Commission do not find any inconsistency in procedure adopted by the Respondent Discoms and observed that the Petitioners could not be billed for actual amount as per applicable Regulations and Tariff due to absence of mechanism in place on the part of Discoms and thus Petitioner is liable to pay difference amount due to deficit billing being legitimate billing*

(Emphasis supplied)

xiv. *That, MPPKVVCL has only sought to recover such charges as determined by the State Commission and there is no illegal/excess recovery. The Invoices raised by the MPPKVVCL for the correct amount cannot be said to be invalid merely because they were raised subsequently. The MPPKVVCL is merely seeking to recover the applicable charges in terms of the PP&WA between the parties and the applicable orders and regulations. There had been an under-recovery of the Tariff for the relevant period, i.e., Jan-2018 to Jun-2021 and MPPKVVCL had sought to recover*

the said amount. MPPKVCL cannot be prevented from recovery of legitimate dues.

- xv. *The principle of recovery through revised invoices has been upheld by the Hon'ble Tribunal in Judgment and Order dated 15.03.2019 in Appeal No. 83 of 2018-Ultratech Cement Limited v. Gujarat Electricity Regulatory Commission and Another (2019) SCC Online APTEL 16, which, inter-alia, reads as under:*

“78. In the instant case, the second Respondent/SLDC has only collected the transmission charges as per the GERC Open Access Regulations and Tariff Orders passed by the first Respondent/GERC. It is significant to note that, if by inadvertence, there was under-recovery of the amounts; the differential amount can be recovered subsequently by raising corrected invoices/supplementary invoices. Therefore, the obligation of the Appellants/short term open access customer to pay the transmission charges as per the GERC Open Access Regulations and Tariff Orders. They cannot deny the liability merely because the invoice was raised subsequently. The invoices raised by SLDC are not invalid merely because they were raised subsequently. This is particularly when the claim for transmission charges had not been time barred. There had been an under-recovery of the transmission charges for the relevant period and the second Respondent/SLDC had sought to recover the said amount. The second Respondent/SLDC cannot be prevented from recovery of legitimate dues. Therefore, the contention of the Appellant claiming application of promissory estoppel is misconceived and there was no application of such concept of estoppel in the instant case on the ground that the Appellant had not raised the issue of doctrine of estoppel/promissory estoppel in the Petition before the State Commission or even in the Memorandum Appeal before this Tribunal.....

79. It is well settled principle that any amount paid/received without authority of law has to return and can be adjusted as held by the Hon'ble Supreme Court in the case of Chandi Prasad Uniyal v State of Uttarakhand and Others (2012) 8 SCC 417, which reads as under:

“14. We are Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardship but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment”

(Emphasis Supplied)

- xvi. *Thus the above citation clearly validates the distribution company to raise retrospective demand against the Petitioner which is legitimate and lawful.*
- xvii. *Being confronted with the above position, the Petitioner is taking a frivolous and vexation plea that the Petitioner is not a party to the PP&WA and is therefore, not bound by the methodology specified in clause 11 of the PP&WA read with other*

applicable provisions of the said agreement. The Supply Agreement executed between the Petitioner and the Solar Power Developer itself defines 'wheeling agreement' as "The Power Purchase cum Wheeling Agreement entered between the Supplier and MPPMCL" at page no. 24 of the petition. Therefore, the Petitioner are precluded from now saying that they were unaware of the contents of the Wheeling Agreement.

xviii. That, the stand taken by the Petitioner is clearly contrary to the provisions contained in the Supply Agreement dated 30.06.2017 entered into by the Petitioner with the Solar Power Developer at Page no. 22 to 33 of the petition. The relevant clauses of the said Supply Contracts reads as under–

"1. DEFINITIONS

1.1.5 'Grid' – Electricity distribution network of MPSEB/ M P Transco/ DISCOMS.

1.1.8 'MPSEB' – The Madhya Pradesh State Electricity Board or various distribution & transmission companies.

1.1.9 'Point of Supply' – The establishment of the Purchaser situated at Mahima Pure Spun plot no. 73-74 Sector 2, Pithampur, Dist Dhar Madhya Pradesh where the Supplier shall supply the electricity to the Purchaser

1.1.12 'Wheeling Agreement' – The Power Purchase cum Wheeling Agreement entered between the Supplier and MPPMCL.

7. BILLING & PAYMENT OF CHARGES

7.4 In case of any difference in the bill raised by MPSEB/ M.P Paschim Kshetra Vidyut Vitran Co. Ltd. and the data available to the Supplier about the supply of electricity from Supplier's Solar Farm to the Purchaser and the Supplier shall resolve the matter with MPSEB. The Purchaser will provide all the relevant data and assistance required by the Supplier to reconcile any difference.

7.6 The Parties agree that the purchaser shall directly pay to MPSEB/M.P. PACHCHIM KSHETRA VIDYUT VITRAN CO. LTD, the balance charges set out in the electricity bill after reducing the amounts payable by the purchaser to the supplier and in no event shall the supplier be liable to make any payment under such bill to MPSEB/M.P. Pachchim Kshetra Vidyut Vitran Co. Ltd.

12. REPERESNTATION AND WARRANTIES

12.1 The Supplier hereby represents and warrants that as of the date thereof:

d) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any other agreements to which the Supplier is a party."

xix. That, In view of the above, there is no basis in the claim of the Petitioner that the billing revised on the basis of 15 Minute time block methodology is illegal without

authority of law. Here, the Petitioner is himself violating the clauses of the supply agreement in he entered into with the Solar Power Developer.

- xx. That, the Petitioner is the HT consumer of the Respondent no. 3 and the adjustment of open access units firstly in TOD manner and afterword in 15 minute time block has been given to the Petitioner only. The statement of Petitioner to recover the amount from Solar Power Generator/Developer (Respondent No.1) is baseless. The Petitioner has given their consent in the clause no. 7.6 of supply agreement executed between Petitioner and the Solar Power Developer that no event shall the supplier be liable to make any payment under such bill to MPSEB/M.P. Pachchim Kshetra Vidyut Vitran Co. Ltd.
- xxi. That, the Petitioner has well enjoyed the benefits of adjustment of Solar Open Access units after the termination of the supply agreement (PPA) and did not even bother to intimate the same to the Respondent no. 3 for approximately 3 years and only after the issuance of supplementary bill dtd. 23.12.2022 the Petitioner intimated the Respondent no. 3 about the termination of supply agreement vide notice 20.06.2023 and yet expecting Respondent no. 3 to stop providing adjustment of open access units, this proves the malafide intentions of the Petitioner. Further, the Petitioner's allegation that the Respondent no. 3 has joined hands with the Respondent no. 1 and acting in illegal manner is wrong and denied.
- xxii. That, Respondent no. 3 vide letter dtd. 18.08.2023 has replied to the notice issued on dt. 20.06.2023 by the advocate of M/s Ashok Fine spun in the matter of Solar Power Developer M/s Friends Salt & Allied Industries clarifying that the Respondent no. 3 has no jurisdiction to make any change in clauses/rules of Supply Agreement executed between the Petitioner and Solar Power Developer, the LTOA permission issued by the Chief engineer (Plg. & Design), MPPTCL, Jabalpur and the PP&WA executed between Solar Power Generator and the Madhya Pradesh Utilities (the successor of the Madhya Pradesh State Electricity Board). Therefore, Respondent no. 3 cannot grant any relief in this regard.
- xxiii. It is submitted that the subject matter of both the Notices i.e. adjustment of open access units procured from M/s Friends Salt & Allied Industries and M/s Trbex Impex Pvt. Ltd., issued by the advocate of Petitioner, is same therefore the reply given in notice pertains to M/s Friends Salt & Allied Industries will be the same for the notice pertaining to adjustment of open access units M/s Trbex Impex Pvt. Ltd.
- xxiv. It is submitted that, as per the mutual consent of the Petitioner and the Solar Power Developer, the solar developer has executed the PP&WA on dtd. 11.04.2022 with the Madhya Pradesh Utilities (the successor of the Madhya Pradesh State Electricity Board). Before this PP&WA, the Solar Power Developer has taken LTOA Permission on dtd. 23.09.2017 from Chief Engineer (Plg. & Design), MPPTCL, Jabalpur. Also before obtaining this LTOA Permission, the supply agreement dtd. 30.06.2017 has been executed between the Petitioner and the Solar Power Developer. Therefore, there is a trajectory of rules/clauses under which the adjustment of open access units is governed hence proper procedure has to be followed for stoppage of adjustment of open access units.
- xxv. That, the Petitioner's contention for stoppage of adjustment of open access units on the basis of termination supply agreement only is arbitrarily and against the clause of 21(a) of PP&WA. Further, the Petitioner is forcing the Respondent no. 3 to

follow the supply agreement and its termination where Respondent no 3 is not even a party of that agreement.

- xxvi. *That, the supplementary agreement has been executed between Respondent no. 1, Respondent no. 2 and Respondent no. 3 for change in third party for adjustment of open access units with effect from 26.10.2023 in compliance of the supplementary agreement, the adjustment of open access units has been stopped for the Petitioner Nov-2023 onwards. Further, it is pertinent to mention that the Petitioner is also availing adjustment of open access units from another Solar Power Developer i.e. M/s Friends Salt & Allied Industries.*
- xxvii. *That the Petitioner has falsely accused and made defamatory statements against the Respondents of joining hands and acting in illegal manner. The above words totally demean the Respondents and are totally false.*
- xxviii. *That, as the relief sought by the Petitioner under point no. 4.5 of the petition to raise monthly electricity bill without providing any adjustment of solar power of Respondent no. 1 is well in the favour of revenue interest of MPPKVCL, and may be considered by Hon'ble commission.*
- xxix. *That, in view of the submissions made in the instant reply, parawise reply has not been submitted. The answering Respondent crave leave of this Hon'ble Commission to submit parawise reply, additional reply as and when need arises / directed by Hon'ble Commission for proper adjudication of present petition.*
- xxx. *Therefore, this Hon'ble Commission is requested to dismiss the petition and render justice.*

9. By Affidavit dt. 03.02.2024 Respondent No. 1 i.e. M/s. Trbex Impex Pvt. Ltd, Ludhiyana submitted the following in their preliminary objections:

- i. *That. the Petitioner, a HT Consumer, has filed the petition, mainly u/s. 86 (1) (f) of the Electricity Act, 2003, against a Generator, Distribution Licensee and a Transmission Licensee. The Petitioner has, mainly, claimed reliefs that, the supplementary bill dated 23-12-2022 raised on it for Rs. 28,84,7781/- by the Respondent No. 3 after revision from January, 2018 to June, 2021, effective from August, 2022, be set-aside and to set aside the letter dated 31-03-2023 whereby the answering Respondent No. 1 demanded a sum of Rs. 4,39,56,093/- towards its outstanding invoices along with interest thereon, Electricity Duty Refunded by Respondent No. 3 from December, 2017 to June, 2022, difference of invoices due to change in rate from January, 2021 to February, 2022 and unrealized Solar Units.*
- ii. *That, against the Respondent No. 1. the Petitioner alleges a singular ground that since the Petitioner has already terminated the Solar Power Purchase Agreement on 18-09-2019 with the Respondent to 1, the Respondents No. 2 to 4 are not following fair and prudent practice in raising bills. The relief against the Respondent No. 1 is based on this ground only.*
- iii. *That. against the Respondent No. 2, the Petitioner has found its petition on a singular ground that the Respondent No. 3 (Distribution Company) has raised the impugned supplementary bill dated 23- 12-2022 retrospectively from January, 2018. On that basis the Petitioner vaguely alleges by making bald statements that the action of the*

other Respondents. including the Transmission Licensee, i.e., Respondent No. 4, is arbitrary, high handed and illegal and they have joined hands with the Respondent No. 1.

- iv. *That, the Petitioner has not raised any dispute against the Respondent No. 4 (Transmission Licensee) and has not claimed any relief against the said Respondent. The Respondent No. 4 is neither a necessary party, nor a proper party to the present petition and hence, its name ought to be struck down from the array of the Respondents.*
 - v. *That, in respect of alleged dispute of the Petitioner with the answering Respondent No. 1 (Generator), is not amenable to any jurisdiction of Hon'ble Commission as under section 86 (1) (IN, of the Electricity Act, the Hon'ble Commission does not have any jurisdiction to entertain a dispute between a Consumer and a Generator.*
 - vi. *That. in so far as the alleged dispute with the Respondent no. 2 and the reliefs claimed from it. the same is also not amenable to any jurisdiction of Hon'ble Commission. The Petitioner is an HT consumer of the Respondent No. 2 and 3 (Distribution Licensee) and under section 86 (1) (I), of the Electricity Act, the Hon'ble Commission does not have any jurisdiction to entertain a dispute between a Consumer and a Distribution Licensee. The petition is liable to be on this preliminary ground also. The Petitioner may have a remedy available to raise present dispute before the respective forum for redressal constituted u/s. 42 (5) of the Electricity Act, 2003.*
 - vii. *That, the answering Respondent No. 1 has approached the Hon'ble High Court of Madhya Pradesh, bench at Indore by way of pending Arbitration Case No. 106/2023 against the Petitioner for appointment of arbitrator in terms of the respective Solar Power Purchase Agreement between the Petitioner and the Respondent No. 1. The same issue cannot be agitated simultaneously before two separate forums. The Petitioner, instead of agitating its dispute with the Respondent No. 1 in said proceedings, has willfully suppressed information regarding the pendency of appointment of arbitrator and is in most malafide motive is making all possible attempts to mislead the Hon'ble Commission and is stressing upon the issue to be dealt by way of instant petition contrary to set principles of law.*
 - viii. *That, in the event that the enabling provisions u/s. 86 (1) (f) of the Electricity Act, 2003 do not provide for adjudication of a dispute between a consumer on the one side and / or a distribution licensee or a Generator on the other side, the Hon'ble Commission does not have any jurisdiction to entertain such a dispute in the garb of any rules or regulations notified under the said Act. If the Hon'ble Commission entertains present petition to hear and adjudicate it on merits of the case. it may amount to exceeding the jurisdiction vested with the Hon'ble Commission u/s. 86 (1) (f) of the Electricity Act, 2003 and any order passed accordingly may be obiter-dictum.*
 - ix. *That, the answering Respondent reserves its right to file a detailed reply touching the merits of the case. at a later stage, if occasion so arises.*
 - x. *That, the answering Respondent has its office at a distant place in Ludhiana and it took some extra time for it to engage a counsel in the State of Madhya Pradesh and on account of this bonafides reason there has been a short delay in filing present preliminary objections. Hence, it is prayed that the delay caused in filing instant preliminary objections may be condoned in interest of justice and the present petition be dismissed as not maintainable, in the ends of justice.*
- 10.** By affidavit dated 05.02.2024, Respondent No. 2 i.e. M.P. Power Management Company Ltd, submitted the following in its reply:

- i. *That, by way of instant petition, the Petitioner being a HT Consumer on the one side, has raised a dispute, mainly u/s. 86 (1) (f) of the Electricity Act, 2003, against a Generator, Distribution Licensee and a Transmission Licensee on the other side the Petitioner has, inter-alia, claimed reliefs that, the supplementary bill dated 23-12-2022 raised on it for Rs. 28,84,7781/- by the Respondent No. 3 after revision from January, 2018 to June, 2021, effective from August, 2022 be set-aside and to set aside the letter dated 31 03-2023 whereby the Respondent No. 1 demanded a sum of Rs. 4,39,56,093/- towards its outstanding invoices along with interest thereon, Electricity Duty Refunded by Respondent No. 3 from December, 2017 to June, 2022, difference of invoices due to change in rate from January, 2021 to February, 2022 and unrealized Solar Units.*
- ii. *That, against the answering Respondent No. 2, the Petitioner has founded its petition on a singular ground that the Respondent No. 3 (Distribution Company) has raised the impugned supplementary bill dated 23-12-2022 retrospectively from January, 2018. On that basis the Petitioner vaguely alleges by making bald statements that the action of the other Respondents, including the Transmission Licensee, i.e., Respondent No. 4, is arbitrary, high handed and illegal and they have joined hands with the Respondent No. 1.*
- iii. *That, the Petition, against the Respondent No. 1, is also founded on a singular ground that since the Petitioner has already terminated the Solar Power Purchase Agreement on 18-09-2019 with the Respondent No. 1, the Respondents No. 2 to 4 are not following fair and prudent practice in raising bills. The relief against the Respondent No. 1 is based on this ground only.*
- iv. *That, the Petitioner has not raised any dispute against the Respondent No.4 (Transmission Licensee) and has not claimed any relief against the said Respondent. The Respondent No.4 is neither a necessary party, nor a proper party to the present petition and hence, its name ought to be struck down from the array of the Respondents.*
- v. *That, in so far as the alleged dispute with the answering Respondent the reliefs claimed from it, the same, for the present stage, is not amenable to any jurisdiction of Hon'ble Commission. The Petitioner is an H T consumer of the Respondent No. 2 and 3 (Distribution Licensee) and under section 86 (1) (f), of the Electricity Act, the Hon'ble Commission doesnot have any jurisdiction to entertain a dispute between a Consumer and a Distribution Licensee. The petition is liable to be and be dismissed on this preliminary ground at this stage itself. The Petitioner may have a remedy available to raise present dispute before the respective forum for redressal constituted u/s. 42 (5) of the Electricity Act, 2003.*
- vi. *That, in respect of alleged dispute of the Petitioner with the Respondent No. 1 (Generator), is also not amenable to any jurisdiction of Hon'ble Commission as under section 86 (1) (f), of the Electricity Act, the Hon'ble Commission does not have any jurisdiction to entertain a dispute between a Consumer and a Generator.*
- vii. *That, the answering Respondent believes that the Respondent No. 1 has approached the Hon'ble High Court of Madhya Pradesh, bench at Indore by way of pending Arbitration Case No. 106/2023 against the Petitioner for appointment of arbitrator in terms of the respective Solar Power Purchase Agreement between the Petitioner and the Respondent No. 1. The same issue cannot be agitated simultaneously before two separate forums. The Petitioner, instead of agitating its dispute with the Respondent*

No. 1 in said proceedings, has willfully suppressed information regarding the pendency of appointment of arbitrator and is in most mala fide motive is making all out attempts to mislead the Hon'ble Commission and is stressing upon the issue to be dealt by way of instant petition contrary to set principles of law.

- viii. *That, in the event that the enabling provisions u/s. 86 (1) (f) of the Electricity Act, 2003 do not provide for adjudication of a dispute between a consumer on the one side and / or a distribution licensee or a Generator on the other side, the Hon'ble Commission does not have any jurisdiction to entertain such a dispute in the garb of any rules or regulations notified under the said Act. If the Hon'ble Commission entertains present petition to hear and adjudicate it on merits of the case, it may amount to exceeding the jurisdiction vested with the Hon'ble Commission u/s. 86 (1) (f) of the Electricity Act, 2003 and any order passed accordingly may be obiter-dictum.*
- ix. *That, the answering Respondent reserves its right to file a detailed reply touching the merits of the case, at a later stage, if necessity so demands.*
- x. *That, owing to reasons touching the health of the counsel for the answering Respondent, there has occurred some delay in filing instant preliminary objections. The present objections are being filed on a date next fixed for hearing on the last occasion and does not tend to cause any prejudice or hardship to the Petitioner. Hence, prayed that the delay caused in filing instant preliminary objections may be condoned in interest of justice.*
- xi. *Hence, prayed that the Hon'ble Commission be pleased to dismiss the present petition as not maintainable on aforesaid preliminary objections, to meet the ends of justice.*
- 11.** At the hearing held on 06.02.2024, Petitioner informed that they had received responses from Respondents only one day ago. Petitioner sought 2 weeks' time for rejoinder. One week time was allowed for rejoinder. Case was listed for arguments on 27.02.2024.
- 12.** At the hearing held on 27.02.2024, Petitioner sought short time for filing rejoinder. One week time was granted, and case was listed for arguments on 12 March' 2024.
- 13. By affidavit dated 9th March 2024, the Petitioner filed rejoinder on the responses filed by Respondent No 1 as under: -**
1. *That, as regard Reply Para No. 1, the Respondent submitted that it is a tripartite dispute between Generator, Distribution Licensee and Transmission Licensee as well.*
2. *That, as regards reply Para no. 2 and 3 it is submitted that the present petition has been filed on several grounds mentioned in the petition and have denied the claim of Respondent No.1 and challenging the forcing action of Respondent No. 3 taken against Petitioner.*
3. *That, as regard reply Para No. 4 the Respondent is appearing to have pleaded the Respondent No.4 whereas Respondent No.4 has been served and shall filed its own independent reply. This shows that the licensee / utilities have joined hands with Respondent No.1, otherwise there is no occasion for Respondent No.1 to make prayer for deleting the name of Respondent No.4.*
4. *That, as regards reply Para No. 5, the submission is misconceived as the Respondent has not mentioned as to how a tripartite dispute is outside the*

jurisdiction of Hon'ble MPERC. The submission is contradictory to reply Para No.1.

5. *That, as regard reply Para 6, it is again misconceived and contradictory. In this para, Respondent No.1 has suggested remedy before Electricity Forum whereas this Respondent himself has filed Arbitration Case No. AC106/2023 before Hon'ble High Court for appointment of arbitrator. Thus the submission of Respondent is contradictory and the MPERC has jurisdiction to decide present petition relating to tripartite dispute.*
6. *That, as regards Para 7, the Petitioner has not agitated the same issue before to separate forums. It is Respondent No.1 who is suggesting two new forums to the Petitioner namely one before the arbitration and second before Electricity Forum. The Petitioner has raised issue only before the Hon'ble MPERC. The intention of Respondent is to mislead the Hon'ble Commission by suggesting different forums and this shows the Respondents malafide intention to avoid adjudication of Petitioners claim because the Respondent no.3 has recovered the liability of Respondent No. 1 from Petitioner, by threatening the disconnection of power supply.*
7. *That, the Para 8, need no rejoinder in view of submissions made in the forgoing paras.*
8. *That, the reply Para 9 and 10 need no rejoinder.*
9. *That, the reply Respondent No.1 only reflect the evasive approach and its association with Respondent licensee to defeat the claim of Petitioners. The present rejoinder supported by affidavit may kindly be taken on record.*

14. By affidavit dated 9th March 2024, the Petitioner filed rejoinder on the responses filed by Respondent No 3 as under: -

1. *That, the submission in Para no.1 need no rejoinder.*
2. *That, as regards reply Para no. 2 the demand of Respondent no. 3 against Petitioner is based on Clause 11.3 of Power Purchase & Wheeling Agreement (PP&WA) executed between the Respondents licensees and Solar Power Generator. Petitioner is not party to the said agreement. The impugned demand is recoverable from Respondent No. 1 by the Respondent No. 3 and not from Petitioner.*
3. *That, the submission of reply Para No. 3 is merely an evasive reply. The Respondent licensee being Government Company is required to place on record actual facts instead of denying the averments evasively.*
4. *That, as regards reply Para No. 4 it is submitted that Respondent No. 3 has acted in violation of PP&WA and was required to give adjustment of Solar Power units in the monthly bills of Petitioner as per their agreement with the Generator but Respondent no. 3 without following the terms and condition of their inter-se agreement did not grant proper adjustment and on this basis the Petitioner already made payment of adjusted unit to the Respondent no. 1 from Jan. 2018 to June 2021. This is due to fault of Respondent no. 3. Now instead of recovering the excess adjustment from Respondent no. 1 the Respondents has raised demand against Petitioner which is illegal. They can enforce PP & WA against Generator*
5. *That, as regard Para 5, 6 and 7 no rejoinder is required.*
6. *That, as regards Para 8, the Power Purchase and Wheeling Agreement dated 05/07/2021 and 11/04/2021 is concerned, the said agreement, are between the Solar*

Power Generator / Respondent No. 1 and Licensee companies. Petitioner is not party to the said PP&WAs.

7. *That, as regard Para 9 to 13 the provisions for apportioning the quantity of electricity between two Sources is as per Agreement between Solar Power Generator and Licensee only. The Licensee / Respondent No. 3 was required to follow the said provision and was required to grant adjustment of Solar units as per PP&WA but the Respondent licensee did not follow their own agreement and granted adjustment of Solar Power Units and therefore Petitioner made payment to Respondent No.1 on basis of bills of Licensee. This is due to the fault on the part of Respondent No. 3 Licensee. The Respondent no. 3 Licensee has not given any reason for not following the (PP &WA) agreement with the Generator and suddenly raised demand of Rs.2,88,47,781/- against present Petitioner. The Petitioner has not committed any default in payment of monthly bills raised by the Respondent No. 3 Licensee. The Respondent No. 3 Licensee was required to raised the demand letter dated 23/12/2022to against the Respondent No. 1and not against Petitioner. The Respondent Solar Generator and Distribution Licensee have not provided copy of above PP&WAs to the Petitioner. The said procedure of billing and adjustment was to be followed by the Respondent licensee.*
8. *That, as regard reply Para 14, it is submitted that the order dated 03/08/2021 passed in Petition No. 22 of 2018, the Hon'ble Commission has not decided or given any finding as to from whom the recovery is to be made in case of excess adjustment of Solar Units is granted by the Licensee due to its own fault, due to excess adjustment the Solar Generator / Respondent No. 1 who is benefited because the Petitioner has made payment to the Solar Generator towards adjusted Solar Units as per mandate and billing made by the Respondent no. 3Licensee. Now the licensee is required to recover from the Solar Power Generator the amount of excess adjustment given in their monthly bills. The entire discrepancy and dispute has arisen due to fault of Respondent No. 3 Licensee when they have silently provided benefit of excess units to the Solar Generator. Thus the order of Hon'ble MPERC dated 03/08/2021 do not apply to the facts of this case.*
9. *That, as regards reply Para 15, the impugned demand letter dated 23/12/2022 is illegal against the Petitioner because the demand is to be raised against Solar Power Generator to whom excess adjustment of Solar units have been granted by the Licensee in their monthly bills as per their own PP&WA and Petitioner cannot be punished for no fault.*
10. *That, as regards Para 16 and 17, it is submitted that the order of Hon'ble APTEL is not applicable to this case the moot question involved in the present case is that - as to who is liable to pay the additional demand resulted due to excess adjustment given and amounts paid to the Solar Generator as per Clause 11.3 of Agreement made between the Solar Generator and Respondent No. 3 Licensee due to fault of licensee. The demand letter against Petitioner will cause double jeopardy to the Petitioner because Petitioner has already paid amount of adjusted units to the Respondent No. 1 Generator on the basis of monthly bills of the Respondent no. 3 Licensee. The said moot question requires consideration and adjudication by the Hon'ble MPERC.*
11. *That The Respondent no. 3 can enforce the PP&WAs Clause 11.3 against the Respondent No. 1 / Solar Generator as the Agreement is between them but since Respondent No. 3 has raised demand against Petitioner and recovered under threat of disconnection, the amount which was to be recovered from Respondent No. 1, it is a tripartite dispute which require reconciliation of the Solar Units supplied and Consumed with the record of Licensee Respondent no. 3 and the*

Licensee is required to refund the amount of demand letter dated 23/12/2022 to the Petitioner.

12. *That, as regard reply Para 18 mention it is submitted that mere mention of definition of wheeling agreement in Annexure P-5 does not authorize the Respondent No.3 Licensee to enforce the wheeling agreement against Petitioner and recover the liability of Generator from Petitioner consumer. The Respondent no. 3 Licensee has not issued any demand or communication to the Solar Generator regarding excess adjustment given by them. The Respondent Licensee cannot shift the burden of their fault on the shoulder of Petitioner and cannot punish Petitioner for their own fault and lapses. The Petitioner had no option except to pay the demand under duress and coercion to save itself from disconnection.*
13. *That, as regard reply Para 19 the Respondent Licensee is required to resolve the matter with the supplier in the case of any difference in the bill of MPPKVVCL as per Clause 11.3 of PP & WA and Clause 7.4 of Annexure P-5 but in the present case the Licensee has not resolved the matter with the supplier and directly raised demand against Petitioner. Thus it is a clear case establishing the hand in gloves and connivance of Respondent Licensee with the Solar Power Generator.*
14. *That, as regard reply Para 20, 21 and 22 the submissions are misconceived and denied.*
15. *That, as regards reply Para 23 the submission is false and denied as the Respondent Licensee have acted in an arbitrary manner. The Respondent's letter dated 18/08/2023 has not been served to the Petitioner.*
16. *That, the submission of reply Para 24, has no nexus to the present petition as such misconceived and denied.*
17. *That, as regard reply Para 25 the submission is denied and the Sole question arises for consideration is what was the reason for granting excess adjustment to the Solar Generator by violating their own PP&WAs and thereafter raising demands against Petitioner on the basis of monthly bills of licensee itself, then why no action has been taken against Solar Power Generator as per Clause 11.3 of PP&WA specially when Petitioner is not party to the said PP&WAs.*
18. *That, as regard reply Para 26, the Licensee's submission is contradictory because in this Para, the Licensee has claimed that it is not party to supply agreement dated 30/06/2017 and licensee cannot be forced to take action as per termination. On the other hand licensee has forced Petitioner to pay the demand on the basis of PPWAs in which present Petitioner is not party. The Respondent licensee has crossed the height of arbitrariness. This clearly shows the dishonest and mala-fide intention of Respondent No. 3 licensee and its connivance with the Solar Power Generator.*
19. *That, as regard reply Para 27, after filing of present petition and to defend the present petition, the Respondent licensee has stopped adjustment of Solar Power Units silently without any communication and without disclosing this fact to the Petitioner. This facts has been mentioned in Para 27 of Licensee's reply.*
20. *That, as regards reply Para 28, the averments made in the petition are not defamatory but are made to place on record the acts and deeds of the parties for fair and proper adjudication of present petition. Therefore submission is denied.*
21. *That, as regard reply Para 29, if prayer Clause 4.5 was in the revenue interest then the Respondent is required to disclose why the revenue interest was not considered at the stage of monthly billing and at the stage when termination of agreement was communicated.*
21. *That, as regards reply Para 30 no rejoinder is required and reply Para 31 is denied*

as Petitioner has brought on record arbitrary, illegal action and demand of Respondent which require consideration of Hon'ble MPERC. Respondent no. 3 licensee be directed to refund the amount recovered as per demand letter dated 23/12/2022 and recover from Respondent No. 1 / Solar Generator by following provision of PPWAs and Solar Power Agreement.

15. Respondent no. 3 vide his affidavit dated 13.03.2024 submitted final arguments in the matter as under: -

- i. There was agreement of supply between petitioner and Respondent No. 1 for supply of solar energy generated at premises of respondent no.1 through grid network of respondent no. 3 and 4. Thereafter respondent no. 1 applied for LTOA permission to respondent no. 4, i.e. Transmission Company who is the nodal agency for issuing of LTOA.*
- ii. That the Long-Term Open Access permission was granted to Respondent No. 1 for wheeling of 100% Power Generated from the solar generator by Respondent No. 4 vide **letter No. 2436 date 23.09.2017**. Thereafter Respondent No. 2 vide **letter no. 1459 dated 17.10.2017** granted permission for wheeling of power from the said 3.0 MW Solar Generator to the petitioner and the calculation of energy accounting was done in ToD manner.*
- iii. That on 1st April 2022 PPWA i.e. "**The power purchase and wheeling agreement for solar power projects registered under category-III**" was signed between the respondent no.1 and respondent no. 2, 3 and 4. The PPWA clearly mentions the date of enforcement from 28/09/2017 or date of obtaining the LTOA i.e. 23/09/2017 whichever is later and has the validity of 25 years. This PPWA after signing by the parties was properly notified, informed and sent to petitioner. As per clause 11.3 of PPWA, the accounting of energy is to be done in 15 minutes block.*
- iv. That as per **clause 11.3 of PPWA** re-adjustment of energy was done and on 23.12.2022 a demand letter of supplementary bill was issued by respondent no. 3 for Rs. 2,88,47,781/- towards the petitioner, for the period of January 2018 to Jun 2021.*
- v. That the petitioner till 20.06.2023 did not bothered to acknowledged the demand letter of Respondent No 3 and for the first time served the Respondent No 1,2, 3 and 4 with a legal notice stating that the solar power supply agreement the between the petitioner and Respondent No 1 has already been terminated on 18.09.2019 and the petitioner is not liable to pay any amount against the demand letter dated 23.12.2022 raised by Respondent No 3 and the recovery of the amount must be done with Respondent No 1 stating that the petitioner is not the party of PPWA.*
- vi. That the Respondent No 3 sent a reply against the legal notice of petitioner on 18.08.2023 stating that PPWA is a policy framework and warranted by law and is not subject to any amendment and modification and the petitioner must pay the amount against the demand letter.*
- vii. That according to preamble para 9 clearly stated that-*

“AND Whereas the company has requested the M.P. Power Transmission Co. Ltd., (hereinafter called the Transco) to permit Open Access for wheeling of power generated through Intra-State Transmission/ Distribution System, for third party sale from the injection point through 33 kV Ujass (M & B) feeder-II at West Discom which is further connected to 132 kV substation Sitamau of M.P. TRANSCO to the drawl point at industrial premise i.e. M/s Ashok Fine Spun having allocation 100% (CD 3500 KVA) of total power through 33 kV Ashok Fine Spun Feeder emanating from 132 kV S/s Kasarwad, and whereas TRANSCO has given LTOA permission vide letter no. 04-02/PS/OA-Trbex/F-247/2436, dated 23.09.2017. On the terms & conditions approved by the Commission and MPPTCL has submitted acceptance of terms and conditions of the LTOA by the Company, vide letter no. 04-02/PS/OA/F-235+247/ 2499, dated 04.10.2017. Copy of the Open Access permission and intimation for acceptance of the Company shall form part of this agreement as Annex-III (A & B) respectively”.

*The above clause clearly states that the PPWA was signed and enforced for wheeling solar energy from generator to the petitioner’s premises. And petitioner was the primary beneficiary of PPWA agreement. Also, the petitioner in its **petition para 2.14** has clearly admitted that Respondent No 3 has properly well in advance informed the petitioner of the PPWA executed between Respondent No 1 and stack holders. This clearly proves that petitioner was a beneficiary of PPWA agreement and was clearly informed about the enforcement of PPWA and thus the demand letter dated 23.12.2022 raised against the petitioner cannot be set aside and the petitioner is liable to pay the said amount of **Rs 2,88,47,781/-** According to clause 11.2 & 11.3 of the PPWA.*

- viii. *That even though the petitioner has claimed that the supply agreement between the petitioner and Respondent No 1 was terminated on 18.09.2019. The petitioner in its **legal notice** dated 20.06.2023 **clause 11** and petitioners **petition clause 2.19** clearly admitted that the supply of solar power units was not stopped / terminated and by the arrangement between the petitioner and Respondent No 1 continued. And the petitioner continued to enjoy the benefits of solar units supplied by Respondent No. 1.*
- ix. *That the petitioner has argued that why the supply of solar units was not stopped even after the legal notice was served and Respondent were informed about the termination of supply agreement between the petitioner and the Respondent No 1. It is pertinent to mention that the **reply of Respondent No 3 points 27.***

“That, the supplementary agreement has been executed between respondent no. 1, respondent no. 2 and respondent no. 3 for change in third party for adjustment of open access units with effect from 26.10.2023 in compliance of the supplementary agreement, the adjustment of open access units has been stopped for the petitioner Nov-2023 onwards. Further, it is pertinent to mention that the petitioner is also availing adjustment of open access units from another Solar Power Developer i.e. M/s Friends Salt & Allied Industries”.

*It is important to mention here that the PPWA signed for the benefit of petitioner, according to its preamble the PPWA is **valid and enforceable for 25 years**. According to the PPWA Respondent No 1 i.e. developer can change the beneficially party. Presently the Respondent No 1 has changed the beneficiary party from M/s Ashok Fine Spun to M/s Naman Mall. Further Respondent No 1 and other stake holders signed a supplementary agreement on dated 26.10.2023. Therefore from date of signing the supplementary agreement benefits of petitioner has been stopped.*

- x. *The petitioner in its prayer/ relief claims 4.5.*

“To direct the respondent no. 3 to raise bill of entire monthly Electricity consumption without providing any adjustment of Solar Power of respondent no. 1 M/s Trbex Impex Pvt. Ltd, as Petitioner has already terminated the Solar Power Purchase Agreement with respondent no. 1.”

That the entire bill before raising the demand letter, duration mentioned in demand letter and bill after the duration of demand letter was raised according to the adjustments, benefits and subsidies which were passed on the petitioner, if the petitioner prays that the total bill of the supply period including the time period mention the demand letter be given to petitioner without any adjustment the amount of the bill will be calculated from the day of commencement of supply of electricity towards the petitioners company and the licensee company will treat the petitioner as the HT Consumer and petitioner will be liable for the whole amount without any adjustment.

Brief of submissions and facts of the case

16. Based on the submissions made by the parties, facts of the case are summarized as under:

- (i) Petitioner is a HT consumer of Respondent no. 3 and also availing power under open access from 2 separate solar generators viz M/s Trbex Impex Pvt Limited (Respondent no. 1 in this petition) and M/s Friends Salt & Allied Industries (not made party in the instant petition).
- (ii) Petitioner has entered into separate power supply agreements with the Respondent no. 1 and M/s Friends Salt & Allied Industries. These are private bilateral contracts between the Petitioner and solar generators, not regulated by this Commission. The parties can discharge their rights and obligations as per the terms and conditions of power supply contract mutually agreed by them and settle the disputes, if any, under the provisions of such power supply contracts.
- (iii) The power supply agreement (PSA) between Petitioner and Respondent no. 1 was executed on 30.06.2017 for a capacity of 3 MW. The PSA dated 30.06.17 commenced from July 2017. The initial supply period of PSA was 5 years from the date of commencement of PSA and the period of agreement could have been extended beyond 5 years on mutually agreed terms and conditions.

- (iv) The PSA dated 30.06.2017 under article 14.7 has a mechanism for dispute resolution. For the sake of brevity, article 14.7 of the PSA dated 30.06.2017 is reproduced as under: -

“14.7 DISPUTE RESOLUTION

If any dispute, difference or claim arises between the Parties hereto in connection with this Agreement or the validity, interpretation, implementation or breach of this Agreement or anything done or omitted to be done pursuant to this Agreement, the Parties shall make a good faith effort in the first instance to resolve the same through negotiation. If the dispute is not resolved through negotiation within (3) days after commencement of discussions or within such longer period as the Parties may mutually agree to in writing, then the Parties may refer the dispute for resolution to a panel of three Arbitrators - one each appointed by the Parties and the third appointed by the two arbitrators. The arbitration shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment for the time being in force and shall take place in Indore. The award of arbitrator shall be final and binding on the Parties, and the Parties shall comply with/carry out all directions and orders of the arbitrators.”

- (v) The Respondent no. 1 has entered into a power purchase and wheeling agreement (PP&WA) with Respondent no. 2 and 3 on 11.04.2022 with effective date as 28.09.2017. Similar PP&WA was also executed between Respondent no. 1, Respondent no. 3 and M/s Friends Salt & Allied Industries on 05.07.2021 with effective date as 20.11.2017.
- (vi) As per clause 11.3 of PP&WAs referred in sub-para (v), energy accounting of wheeled energy in the HT consumption of the Petitioner was to be made for each 15 minutes time block.
- (vii) Pending the execution of PP&WA between the parties, energy accounting was being done by Respondent no. 3 on the basis of TOD principles. However, post execution of PP&WA on 11.04.22 and 20.11.2017 with Respondent no. 1 and M/s Friends Salt & Allied Industries, energy accounting was revised in respect of both the solar generators and supplementary bill amounting to Rs 28847781/- for the period from Jan 2018 till June 2021 was sent to the Petitioner by Respondent no. 3 vide letter dated 23.12.2022.
- (viii) Petitioner has challenged the supplementary demand raised vide letter dated 23.12.2022 in this petition. Petitioner has also challenged the demand raised by Respondent no. 1 on 31.03.2023 & 31.07.2023 against power supply under PSA dated 30.06.2017.
- (ix) Main contention of the Petitioner against the demand raised by Respondent no. 3 and 1 are as under: -

- a. That the demand of Respondent no. 3 has been raised pursuant to revised energy accounting as per PP&WA executed by Respondent no. 1, 2 & 3. Since the Petitioner is not a party to the PP&WA, such demand cannot be enforced upon them and it should be recovered from Respondent no.1 only.
 - b. That the PSA dated 30.06.2017 with Respondent no. 1 was terminated on 18.09.2019 itself by the Petitioner and intimation to this effect was also given to Respondent no.3 as such, energy adjustment of solar power of Respondent no.1 should have been stopped by Respondent no. 3 from 18.09.2019 onwards.
 - c. Regarding demand raised by Respondent no. 1, Petitioner has submitted that after termination of PSA dated 30.06.2017 on 18.09.2019, they were not liable for any payment to Respondent no. 1.
- (x) Respondent no. 1 has countered the averments made in the petition mainly on following grounds: -
- a. That the alleged dispute of the Petitioner with the answering Respondent No. 1 (Generator), is not amenable to any jurisdiction of Hon'ble Commission as under section 86 (1) (f) of the Electricity Act. Hon'ble Commission does not have any jurisdiction to entertain a dispute between a Consumer and a Generator.
 - b. That the alleged dispute with Respondent no. 2 is also not amenable to any jurisdiction of Hon'ble Commission. The Petitioner is an HT consumer of the Respondent No. 3 (Distribution Licensee) and under section 86 (1) (f), of the Electricity Act, the Hon'ble Commission does not have any jurisdiction to entertain a dispute between a Consumer and a Distribution Licensee. The Petitioner may have a remedy available to raise present dispute before the respective forum for redressal constituted u/s. 42 (5) of the Electricity Act, 2003.
 - c. That, the Respondent No. 1 has approached the Hon'ble High Court of Madhya Pradesh, bench at Indore by way of pending Arbitration Case No. 106/2023 against the Petitioner for appointment of arbitrator in terms of the respective Solar Power Purchase Agreement between the Petitioner and the Respondent No. 1. The same issue cannot be agitated simultaneously before two separate forums.
 - d. That, in the event that the enabling provisions u/s. 86 (1) (f) of the Electricity Act, 2003 do not provide for adjudication of a dispute between a consumer on the one side and / or a distribution licensee or a Generator on the other side, the Hon'ble Commission does not have any jurisdiction to entertain such a dispute in the garb of any rules or regulations notified under the said Act. If the Hon'ble Commission entertains present petition to hear and adjudicate it on merits of the case. it may amount to exceeding the jurisdiction vested with the Hon'ble Commission u/s. 86 (1) (f) of the Electricity Act, 2003 and any order passed accordingly may be obiter-dictum.

- (xi) Respondent no. 3 has also countered the averments made in the petition on the same grounds as Respondent no. 1. Additionally, following submissions have also been made: -
- a. That they are bound to provide energy adjustment of solar energy plants in the consumption of Petitioner as per the subsisting PP&WAs.
 - b. That the billing of the Petitioner for the impugned period from Jan 2018 to June 2021 has been revised based on the energy accounting of 15 minutes block as provided in PP&WA agreements executed by them with Respondent no. 1 and Respondent no. 2 and PP&WA executed by them with Respondent no. 2 and Friends Salt & Allied Industries.
 - c. That the PSA dated 30.06.2017 between Petitioner and Respondent no. 1 has reference of PP&WA between the Respondent no. 1, 2 & 3, therefore Petitioner was fully aware of PP&WA provisions.
 - d. That the demand on account of revised energy accounting has to be raised against the Petitioner who is a HT consumer of the Discom, and such demand of energy consumption cannot be enforced against the generator who is not consuming electricity from Discom.
 - e. That subsequent to dispute raised by Petitioner, a supplementary agreement has been executed between Respondent no. 1, Respondent no. 2 and Respondent no. 3 for change in third party for adjustment of open access units with effect from 26.10.2023 and adjustment of open access units has been stopped for the Petitioner from Nov-2023 onwards.
 - f. That the Petitioner has continued availing adjustment of open access units from another Solar Power Developer i.e. M/s Friends Salt & Allied Industries.
- (xii) Respondent no. 4 has submitted that they have discharged the functions assigned to them as nodal agency for grant of long-term open access from solar plant of Trbex to Petitioner's connection and nowhere connected to the demand raised by Respondent no. 3 on 23.12.2022.

17. Commission has framed following issues with regard to prayers made by the Petitioner and examined the same in light of the factual status, submissions made by the parties and the extant statutory and regulatory provisions: -

Issue 1- Whether Commission has jurisdiction to adjudicate in the matter of impugned demand dated 23.12.2022 of Respondent No-3 against Petitioner and whether Commission can issue a direction to Respondent no. 3 to refund the amount deposited against demand dated 23.12.2022.

Issue 2 - Whether Commission has jurisdiction to adjudicate in the matter of impugned demand dated 31.03.2023, 31.07.2023 and subsequent action, notices of Respondent no. 1 (a generator) against Petitioner (a consumer).

Issue 3- Whether recovery of impugned demand dated 23.12.2022 can be made by Respondent no. 3 from Respondent no. 1.

Issue 4 - Whether Commission can issue a direction to Respondent No. 3 to raise bill of entire monthly Electricity Consumption without providing any of Solar of Solar

Power of Respondent No. 1 M/s Trbex Impex Pvt. Ltd as Petitioner has already terminated the Solar Power Purchase Agreement with Respondent No. 1.

18. CONCLUSION

Issue No. 1- Respondent no. 3 raised a demand of Rs 28847781/- on 23.12.2022 to the Petitioner for the period from Jan 2018 to June 2021 by revising the energy accounting based on 15 minutes block adjustment as per the clause 11.3 of PP&WA executed by Solar Generators namely Trbex Impex Pvt Limited (Respondent no.1) and M/s Friends Salt and Allied Industries (not made a party by Petitioner to this petition) with distribution licensee (Respondent no. 3) and Respondent no. 2. The PP&WAs have been executed with free will of parties and the Petitioner was also aware of such PP&WAs as referred in PSA dated 30.06.2017 executed between Respondent no. 1 and Petitioner. The Petitioner being a consumer of distribution licensee is entitled to approach Electricity Consumer Dispute Redressal Forum constituted under section 42(5) of the Electricity Act, 2003, if the billing is incorrectly done by the distribution licensee. Such disputes are not maintainable before this Commission as it has no jurisdiction on the disputes between a consumer at one side and a licensee on the other side. Commission is therefore not inclined to deal with this billing dispute between the Petitioner (a consumer) and the MPPKVCL, Indore.

The Commission is therefore of the view that this is a dispute between a generator and a consumer. Such disputes are not within the ambit of section 86(1)(f) of the Electricity Act, 2003. Hence, petition sans merit. Therefore, the petition is rejected.

Issue No. 2 to 4- In light of the aforesaid findings on issue no. 1, it is not necessary to deal with the questions raised under issues no. 2 to 4. It is well neigh settled that if Commission has no jurisdiction, it cannot decide the merits of the case (see Ashoke Kumar Jain and ors. Vs Punjab and Sindh Bank and ors. 2013 (II) MPJR 99, S. Butani Vs Smt. Punam Butani, ILR 2012 MP 2113).

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member(Law)

(S.P.S. Parihar)
Chairman