

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of petition under Section 142 of the Electricity Act 2003 for initiating appropriate proceedings against the respondent Madhya Pradesh Power Management Company Limited for non-compliance of the directions given by the Hon'ble Commission in the order dated 06.10.2021 passed in Petition No 67 of 2020.

ORDER

**Hearing through video conferencing
(Date of order: 12th July' 2022)**

M/s. Oil India Ltd,

Plot No. 19, Sector 16A, Noida – 201 301

- **Petitioner**

V/s

The Managing Director

Madhya Pradesh Power Management Company Ltd,

Shakti Bhawan, Rampur, Jabalpur(MP) - 482008

- **Respondent**

Ms. Shikha Ohri, Advocate and Ms. Surbhi Pandey, Advocate appeared on behalf of the petitioner.

Shri Manoj Dubey, Advocate appeared on behalf of the Respondent

The subject petition is filed under Section 142 of the Electricity Act 2003 for initiating appropriate proceedings against the Respondent Madhya Pradesh Power Management Company Limited for non-compliance of the directions given by the Commission in the order dated 06.10.2021 passed in Petition No.67 of 2020.

2. The petitioner broadly submitted the following in subject petition:

“(1) The Petitioner, M/s Oil India Limited is a Government of India enterprise. It is engaged in the business of exploration, development and production of crude oil and natural gas, transportation of crude oil and production of LPG. Over the last few years OIL has diversified into the Alternative (Renewable) Energy domain, specially into wind & solar segments and has so far established commercial nature renewable energy projects of 188.1 MW comprising of 174.1 MW & 14MW solar energy projects. The Petitioner owns and operates a total of 63.2 MW Wind Energy Generating Projects in Madhya Pradesh and is a generating company within the meaning of Section 2 (28) of the Electricity Act, 2003.

(2) The Respondent Madhya Pradesh Power Management Company Ltd. is a company registered under the Companies Act, 1956 (No. 1 of 1956) and is the holding company of all the three distribution utilities in the State of Madhya Pradesh. The Respondent is engaged in the business of bulk purchase of power from generating companies and supply of electricity in bulk to the three DISCOMS in the State. The Petitioner has executed multiple power purchase agreements (“PPAs”) dated 02.07.2015, 13.04.2018 and 07.01.2017 (along with the supplementary PPA dated 20.07.2017) with the Respondent for supply of power from the Petitioner's 63.2 MW power projects in the State.

- (3) *Since the commissioning of the Petitioner's wind power projects, the Petitioner in compliance with the terms of the PPAs had been supplying regular power to the Respondent. However, in violation and non-compliance of the terms of the PPAs and the various tariff orders passed by this Hon'ble Commission, which were binding on both the Parties, the Respondent failed to make payments to the Petitioner towards the power so supplied over a period of multiple months.*
- (4) *Constrained by the non-compliance of the terms of the PPAs and the tariff orders, the Petitioner approached this Hon'ble Commission vide Petition No. 67 of 2020 which petition was filed seeking directions from this Ld. Commission to the Respondent to make complete payments to the Petitioner amounting to INR 56,94,40,314 (Fifty Six Crores Ninety Four Lacs Forty Thousand Three Hundred and Fourteen) as calculated up to 15.09.2020 and for initiating proceedings under Section 142 of the EA 2003. The aforesaid payment is due upon the Petitioner from the Respondent for the power supplied from the Petitioner's 63.2 MW WEG Projects and supplied to the Respondent under the terms of PPAs and in terms of this Hon'ble Commission's Tariff Orders dated 26.03.2013 and 17.03.2013 issued for procurement of power from the WEGs in the State.*
- (5) *Hon'ble Commission heard the matter and passed its final order dated 06.10.2021 in the Original Petition. While allowing the Petitioner's petition, the Hon'ble Commission gave the following observations and findings:*
"Commission's observations and Findings:

- (xi) *In view of the foregoing observations, the Commission has noted that there is a dispute between the petitioner and the Respondent on total outstanding amount claimed by petitioner as on 15.09.2020. Notwithstanding the dispute, the Respondent has admitted that the outstanding amount is Rs. 28,31,02,582/- as on 15.09.2020. Therefore, at the outset, the Respondent is directed to make payment of aforesaid admitted outstanding amount to the petitioner in terms of the provisions of the PPAs/tariff order within 30 days. In the meantime, both parties are directed to sit together and reconcile the actual amount outstanding as on date with in a period of 45 days. Thereafter, the Respondent shall ensure to make payment of all reconciled and remaining dues/amount to the petitioner in terms of the provisions of the PPAs/tariff order within 60 days. In future bills, if Respondent doesn't ensure payment as per provisions of the PPAs executed between the Petitioner & Respondent, the Petitioner may avail an option as provided under articles 9.4.1 to 9.4.5 of the PPAs as mentioned at Para 15 (ix) (e) of this order.----"*
- (6) *Thus, vide the Order dated 06.10.2021, this Hon'ble Commission gave express and clear directions to the Respondent to pay the admitted dues amounting to INR 28,31,02,582 within 30 days of passing the order dated 06.10.2021. Thus, the Respondent was required to make the said payment by 05.11.2021.*
- (7) *The Respondent did not make any part of the aforesaid payment and also*

did not send communications in this regard to the Petitioner. Therefore, the Petitioner sent letter dated 28.10.2021 to the Respondent requesting the Respondent to release the amount of INR 28,31,02,582 within 30 days of the order dated 06.10.2021 and further to designate a competent officer from the Respondent's company for the purposes of reconciliation of the remaining outstanding amount. However, no payment was made from the Respondent despite the reminder sent from the Petitioner.

- (8) Thereafter, a reconciliation meeting dated 17.11.2021 took place between the Manager F&A (RF) of the Petitioner and the General Manager (F&A) of the Respondent.
- (9) However, the Respondent failed to make payment towards the admitted amount even after a lapse of more than 60 days from the date of the order dated 06.10.2021. Thus, the Petitioner through its counsels wrote another letter dated 16.12.2021 to the Respondent wherein the Petitioner requested the Respondent to comply with the directions given in the order dated 06.10.2021 and further informed the Respondent that in the event of delay in releasing the payments towards the sum due, the Petitioner shall take recourse to appropriate legal remedies.
- (10) It is submitted that as on date i.e., 21.01.2022, the Respondent has not paid a single penny out of the total outstanding amount. The Respondent has shown utmost disregard to not only its obligations under the PPAs and the tariff orders but has also disregarded the directions of the Hon'ble Commission.
- (11) It is pertinent to note that on account of non-payment of dues by the Respondent, the total outstanding dues including the sum due towards the principal payment and the late payment surcharge has increased manifold. As on 21.01.2022, this total is **INR 1,30,17,01,651** (One Hundred and Thirty Crores Seventeen Lacs One Thousand Six Hundred and Fifty One). The details of the outstanding are as below:

Principal Invoice:

Plant	FY 2019-20	FY 2020-21	FY 2021-22	TCS PAID	Total
38 MW Plant	5,62,90,161	35,20,08,874	31,77,75,423	39,649	72,61,14,107
18.9 MW Plant	1,70,11,059	9,52,77,549	6,74,17,202	15,900	17,97,21,710
6.3 MW Plant	1,09,58,294	6,11,43,185	6,22,53,335	10,640	13,43,65,453
GRAND TOTAL	8,42,59,514	50,84,29,607	35,73,34,895	66,189	1,04,02,01,271

Delayed Payment Surcharge:

Particulars	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	Total
38 MW Plant	8,46,751	3,46,74,314	3,21,23,601	93,96,777	4,63,76,571	5,86,95,864	1,38,36,835	19,59,50,713
18.9 MW Plant	-	-	-	49,09,627	1,46,21,029	1,88,85,918	34,00,350	4,18,16,924
6.3 MW Plant	-	-	-	33,71,326	81,06,184	92,81,906	29,73,327	2,37,32,743
GRANDTOTAL	8,46,751	3,46,74,314	3,21,23,601	1,76,77,730	6,91,03,784	8,68,63,688	2,02,10,512	26,15,00,380

- (12) The Petitioner is left with no other remedy but to approach this Hon'ble Commission and pray before this Hon'ble Commission to initiate appropriate proceedings so that the directions given in the order dated 06.10.2021 are complied with.

JURISDICTION

- (13) *In view of the facts and circumstances narrated above, the Respondent has clearly contravened the directions of this Hon'ble Commission contained in the order dated 06.10.2021 and is thus punishable under Section 142 of the Electricity Act, 2003. Section 142 of the Electricity Act, 2003 empowers the Appropriate Commission to impose penalty on any person who has willfully and deliberately failed to comply with any provision of the Electricity Act, 2003, rules/regulations enacted thereunder, and directions/orders passed by that Appropriate Commission. Punishment in terms of Section 142 may extend up to Rupees One Lakh for each contravention and in cases of a continuing failure with an additional penalty, which may extend upto six thousand for every day during which failure continues after contravention of the first such direction.*
- (14) *In the judgment dated 31.07.2008 in the matter of Bihar State Electricity Board and Anr. v. Central Electricity Regulatory Commission, in Appeal No. 53 of 2009, the Hon'ble APTEL while interpreting Section 142 of the Electricity Act, 2003 has held as under:*
- “19. *The perusal of Section 142 of the Act as well as the ratio decided by the Supreme Court with reference to the violation of the directions of contraventions of the rules would make it clear that **once it is shown that the contravention or the violation of the directions of the Commission has taken place, the imposition of penalty by the Commission on such person is a natural consequence.** In other words, the power to impose penalty gets invoked as soon as the contravention of rules and directions as contemplated under Section 142 of the Act is established.” (Emphasis Supplied)*
- (15) *In the present case, the Respondent is in contravention of the Hon'ble Commission's order dated 06.10.2021 and has not only failed to clear the total outstanding dues but has also failed to clear the admitted amount. Despite repeated requests and reminders sent from the Petitioner, the Respondent has continued to remain in non-compliance of this Hon'ble Commission's orders and therefore, the present case is an apt case to initiate proceedings under Section 142 of the Electricity Act, 2003.*

GROUND

Below are the grounds on basis of which the present petition is maintainable and may be allowed:

- (16) *Because the Respondent is bound by the order dated 06.10.2021, passed by this Hon'ble Commission in Petition No. 67 of 2020, to clear all the outstanding dues of the Petitioner along with the LPS. Since order dated 06.10.2021 has not been challenged by either parties, it has attained finality and is thus, binding on both the Petitioner and the Respondent.*
- (17) *Because the Respondent is legally obliged under the various articles of the PPAs and the provisions of the applicable Tariff Orders to make payments within 30 days from the date of submission of the bill. The same has to be strictly enforced by this Hon'ble Commission to ensure that no loss is caused to the Petitioner, particularly in view of the fact that the Respondent has not issued any payment security mechanism in favor of the*

Petitioner.

- (18) *Because if no action is taken by this Hon'ble Commission, it will set a wrong precedent acting as a deterrent for not just the Petitioner but also for the prospective investors planning to invest in the State of Madhya Pradesh. This will impede the growth of the renewable sector in the State which will ultimately affect the fulfilment of RPO Obligation by the obligated entities.*
- (19) *Because the strict timeframe enumerated under the Tariff Orders/PPAs is the only return on investment which a generator like the Petitioner is entitled to, and the Respondent without any reason has withheld the release of the admitted and outstanding bills of the Petitioner towards the supply of wind energy for months at a stretch.*
- (20) *Because the Petitioner has invested substantial amount of money in construction, operation and maintenance of the Project. Considerable part of this amount has been borrowed from banks/financial institutions. The Petitioner, under the financing documents, is bound to timely service its debts and make timely repayments to its lenders. In case of any delay, such banks/financial institutions are entitled to charge penal interest. Delay in payment of the Petitioner's bills not only affect its ability to service its debts but also negatively affects its day to day operations due to cash flow problems.*
- (21) *Because the non-payment of outstanding dues in a timely manner can result in the Petitioner becoming a non-performing asset.*
- (22) *Because the present situation is not conducive to promote co-generation and generation of electricity from renewable sources of energy and this is certainly against the principles enshrined under Section 86 (1) (e) of the Electricity Act, 2003 read with Clause 5.12.1 of the National Electricity Policy and Clause 6.4 of the Tariff Policy, 2016 which provide for encouragement of renewable energy.*
- (23) *Because this Hon'ble Commission by its multiple Retail Supply Tariff Orders, passed for each year, has made provisions for the Respondent Discoms for purchase of non-solar renewable energy. Despite this the Respondent has failed to make timely payment in accordance with this Hon'ble Commission's order dated 06.10.2021. Therefore, the Respondent is defrauding the consumers by collecting tariff which is not being correctly disbursed to the RE generators.*
- (24) *Because the Respondent has admittedly not made any payments within the requisite time period under the PPAs and therefore, to protect the financial viability of the project of the Petitioner, it is of paramount importance that this Hon'ble Commission strictly enforces its orders.*
- (25) *Thus, in light of the above, this Hon'ble Commission may be pleased to allow the present petition in the terms of the relief sought by the Petitioner as the same will be in consonance with the provisions of Section 142 and 86 (1) (e) of the Electricity Act, 2003 read with the Tariff Policy."*

3. With the aforesaid submissions, the petitioner prayed the following in the subject matter:

- (a) *Initiate proceedings against the Respondent under Section 142 of the Electricity Act 2003;*
- (b) *Direct the Respondent to comply with the directions given in the order dated 06.10.2021 passed in Petition No. 67 of 2021;*
- (c) *Direct the Respondent to pay interest to the petitioner on the total outstanding dues as well as on the LPS due at the rate of 18% p.a.*

4. At the hearing held on 29th March' 2022, the petition was admitted and petitioner was directed to serve copy of subject petition to Respondent within seven days. The Respondent was directed to file reply to the subject petition within two weeks and serve a copy of its reply to petitioner simultaneously. The petitioner was directed to file rejoinder within two weeks, thereafter. Both the parties were directed to ensure filing of reply/ rejoinder within the aforesaid timeline. Case was fixed for hearing on the 10th May' 2022.

5. At the hearing held on 10th May' 2022, the Commission observed the following:

- (i) By affidavit dated 22.04.2022, the Respondent filed reply to the petition.
- (ii) The petitioner sought one week's time to file rejoinder.

Considering the request, the petitioner was allowed to file rejoinder within a week and the case was fixed for arguments on the 31st May' 2022.

6. Both the parties concluded their arguments on 31st May' 2022. Respondent prayed for filing written submission for which time of one week was given. Respondent was also asked to submit details of payments made after October 6, 2021 till date and to provide details of subsidy disbursed by the State Government since October, 2021. Besides, updated status on reconciliation with regard to outstanding payment was also sought. The Respondent was also directed to share aforesaid written submission with the petitioner so that petitioner may file its written response, if any, within three days, thereafter. With the aforesaid directions, case was reserved for order.

7. Respondent (MPPMCL) vide letter dated 26.04.2022 submitted the following in its reply to the petition:

*"(1) That, at the outset, the Respondent tenders unconditional apology in case the Hon'ble Commission finds the Respondent has deliberately and willfully not complied the directions issued by the Hon'ble commission vide order dated 06-10-2021 passed in Petition No. 67/2020. It is only on account of financial liquidity constraints faced by the Respondent over a long period, the payments get delayed to the Petitioner. The Respondent has not denied or disputed any legitimate payment outstanding to the Petitioner. As and when liquidity permits, payments against several outstanding bills are released in favour of the Petitioner. A details of payments made to the Petitioner, as contained in **Annexure R/1** hereto, demonstrates would go to demonstrate the bonafides of the Respondent.*

(2) That, vide impugned order dated 06-10-2021 passed in Petition No. 67/2020, the Hon'ble Commission was pleased to dispose of the same

observing as under:

“(xi) In view of foregoing observations, the Commission has noted that there is dispute between the petitioner and Respondent on total outstanding amount claimed by petitioner as on 15.09.2020. Notwithstanding the dispute, the Respondent has admitted that the outstanding amount is Rs. 28,31,02,582/- as on 15.09.2020. Therefore, at the outset, the Respondent is directed to make payment of aforesaid admitted outstanding amount to the petitioner in terms of the provisions of the PPAs/tariff order within 30 days. In the meantime, both the parties are directed to sit together and reconcile the actual amount outstanding as on date with in a period of 45 days. Thereafter, the Respondent shall ensure to make payment of all reconciled and remaining dues/amount to the petitioner in terms of the provisions of the PPAs/tariff order within 60 days. In future bills, if Respondent doesn't ensure payment as per provisions of PPAs executed between the Petitioner & Respondent, the Petitioner may avail an option as provided under articles 9.4.1 to 9.4.5 of the PPAs as mentioned at Para 15 (ix) (e) of this order.

With the aforesaid observations and directions, the subject petition along with the application filed by the petitioner in this matter stands disposed of.”

[Emphasis supplied]

- (3) That, vide above referred order, the Hon'ble Commission directed the Respondent to make the payment in terms of the provisions of the PPAs/ tariff order. The Respondent was directed to make the payment of the admitted outstanding amount to the Petitioner in terms of the PPAs/ tariff order within 30 days. For the disputed amount, the Hon'ble Commission was further pleased to direct the parties to sit together and reconcile the amount outstanding as on date within a period of 45 days. Thereafter, the Respondent shall ensure to make payment of all reconciled and remaining dues/ amount to the Petitioner in terms of the provisions of the PPAs/ tariff order within 60 days. Simultaneously, the Hon'ble Commission was pleased to observe that in future bills, if Respondent doesn't ensure payment as per provisions of PPAs executed between the parties, the Petitioner may avail an option as provided under articles 9.4.1 to 9.4.5 of the PPAs. The Hon'ble Commission had made it very clear that payments have to be made in terms of the PPAs/ tariff order within the specified period of said 30 days and 60 days. The said period of 30 days and/ or 60 days was not from the date of the order, but was from the date subsequent to that which the terms of the provisions of the PPAs were complied by the parties. In a nutshell, the Hon'ble Commission, while adjudicating upon the disputes between the parties had, of the total disputed amount of **Rs. 56,94,40,314/- as on 15-09-2-20**, segregated the undisputed outstanding amount as **Rs. 28,31,02,582/- as on 15-09-2020** and the remaining amount as disputed to be reconciled by the parties and the said amounts were to be paid in terms of the provisions of the PPAs within the aforesaid periods of 30 days and 60 days respectively and failing which the Petitioner was given liberty to exercise his option as provided under articles 9.4.1 to 9.4.5 of the PPAs.

- (4) *That, Articles 9.4.1 to 9.4.5 of the PPAs provide as under:*
- “9.4. Procedure for cases of Procurer’s Event of Default:**
- 9.4.1** *In case the payment is not made within 60 days of presentation of bill as per Article 9.2.1(i) (i.e. thirty days from the prescribed limit of thirty days for normal payment), the Seller may issue fifteen day’s clear notice to the Procurer to make the payment. This, however, will not absolve the Petitioner from payment of delayed payment surcharge as provided in Article 7.6.3 of this Agreement. In case the Procurer still does not make the payment, the Seller shall have the liberty to approach MPERC for allowing sale of power to third party.*
- 9.4.2** *Upon the occurrence and continuation of any Procurer’s Event of Default specified in Article 9.2 the Seller shall have the right to deliver to the Procurer, a Seller’s Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its notice.*
- 9.4.3** *Following the issue of a Seller’s Preliminary Default Notice, the Consultation Period of sixty (60) days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.*
- 9.4.4** *During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.*
- 9.4.5** *After a period of seven (7) days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or Procurer’s Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the seller shall be free to sell the Contracted Capacity to any third party of the Seller’s choice. Provided further that at the end of three (3) months period from the period mentioned in this Article 9.4.5, this Agreement may be terminated by the Seller.”*
- (5) *That, throughout in the impugned order, the Hon’ble Commission was pleased to observe that while making payments of outstanding amounts, the parties should adhere to the terms of the provisions of article 9.4.1 to 9.4.5 of the PPAs in particular. Therefore, it is to be first ascertained that whether the parties have adhered to the said terms of the PPAs before the Petitioner has approached the Hon’ble Commission by way of instant petition u/s. 142 of the Electricity Act, 2003.*
- (6) *That, the important issue that may arise for consideration in present case is:*
- (i)** *Whether the parties have adhered to and exhausted the terms of the provisions of article 9.4.1 to 9.4.5 of the PPAs?*
- (ii)** *Whether the letters dated 28-10-2021 and 06-10-2021 on the instance of the Petitioner, as contained in Annexures P-5 and P-7 respectively to the Petition, can be construed to be notices in terms of Articles 9.2.1 and 9.4.1 of the PPAs?*
- (iii)** *Whether in absence of notices in terms of Articles 9.2.1 and 9.4.1 of the PPAs, present is a fit case for proceeding u/s. 142 of the Electricity Act, 2003 against the Respondent?*
- (iv)** *Whether the Respondents are in willful default by not complying the directions issued by the Hon’ble Commission vide order dated 06-10-*

2021 passed in Petition No. 67/2020?

- (7) *That, admittedly the provisions of the tariff orders are not in derogation to those of the PPAs.*
- (8) *That, in the event that the impugned order makes a clear mention of payments to be made in terms of the provisions of the PPAs, it is very clear that the Hon'ble Commission while passing the impugned order had not adjudicated upon the issue that the Respondent was ever a defaulter in terms of Article 9.2.1 of the PPAs. It was, perhaps for this reason, the Hon'ble Commission had directed the payments to be made in terms of the PPAs.*
- (9) *That, the letters dated 28-10-2021 and 06-10-2021 on the instance of the Petitioner do not make a mention of any of the provisions of the PPAs, in particular to Articles 9.2.1 and 9.4.1 of the PPAs. Therefore, such letters cannot be construed to be mandatory notices under the provisions of the PPAs. In absence of such mandatory notices, the Petitioner himself having not identified the Respondent to be a Defaulter in payment cannot assail the Respondent has not complied with the directions of the Hon'ble Commission.*
- (10) *That, the expression 'in terms of the provisions of the PPAs' includes provisions of Articles 9.2.1 and 9.4.1 to 9.4.5 of the PPAs. In absence of specific mandatory notices on the part of the Petitioner, the Respondent has been deprived of his rights under the PPAs and as such the present petition is pre-mature.*
- (11) *That, the Respondent has been making payments to the Petitioner and for no reasons, other than financial liquidity crunches, has ever withheld them. The Hon'ble Commission, in view of recent Petition No. 54/2021, in the matter of Madhya Pradesh Vidyut Mandal Abhiyanta Sangh versus MPPMCL, relating to huge subsidy amounts unpaid to the Respondent by Government of Madhya Pradesh, is in cognizance of the fact that the Respondent falls into financial liquidity crunches on several occasions. As and when the outstanding subsidy amounts are released, payments in bulks against several outstanding bills of the Petitioner, and other similarly placed generators, are made against their several outstanding bills under all bonafides.*
- (12) *That, without resorting to the provisions of Articles 9.4.1 to 9.4.5 of the PPAs, it is not incumbent on the part of the Petitioner to assail that the Respondents is not making payments in terms of the PPAs.*
- (13) *That, the directions issued by the Hon'ble Commission vide impugned order do not tend to overwriting the terms of the PPAs and granting relaxation to the Petitioner from adhering to provisions of Article 9.4.1 to 9.4.5 of the PPAs in particular.*
- (14) *That, in order to influence the Hon'ble Commission, the Petitioner has, in all malafides, made a bald pleading that a considerable amount has been borrowed by it from banks/ financial institutions and under financing documents it is bound to timely service its debts. The Petitioner ought not to make such casual pleadings without substantiating them with documentary*

evidences.

- (15) *That, the Electricity Act, 2003, the Regulations framed thereunder, the tariff orders and the PPAs take care of the promotion of co-generation and generation of electricity from renewable sources of energy. The Petitioner without having issued any default notice as per the provisions of the PPAs cannot assail that the present situation is not conducive to promote such co-generation and generation of electricity.*
- (16) *That, it is absolutely incorrect, mischievous and unfair on the part of the Petitioner to plead that the Respondent is defrauding the consumers by collecting tariff which is not being correctly disbursed to the RE generators. There have been no complaints so far from any of the consumers in the State. It is submitted that the DISCOMs issue bills to their consumers after deducting the required subsidy amounts. The Petitioner, being a generator, has no locus to make such pleadings. Such pleadings have been made with most ulterior motives of misleading the Hon'ble Commission.*
- (17) *That, the impugned order directs the Petitioner to avail an option as provided under Articles 9.4.1 to 9.4.5 of the PPAs in case the Respondent still does not make payment. By the expression 'option' in the impugned order it means that the Petitioner may either choose to wait for the payments of his dues or, in the alternative, he may avail the other option existing in his favour under Article 9.4.1 to 9.4.5 of the PPAs. The Petitioner, in absence of mandatory notices, has neither waited for the Respondents to make the payments nor has availed the other option available to him under Article 9.4.1 to 9.4.5 of the PPAs.*
- (18) *That, as demonstrated hereinbefore, the Respondent has not willfully disobeyed the directions of Hon'ble Commission and thus ought not to be proceeded u/s. 142 of the Electricity Act, 2003. The Respondent assures the Petitioner that, as per past practice enjoyed the Petitioner, as and when financial liquidity permits, payments of all the legitimate outstanding bills shall be released in his favour. It is humbly prayed that present proceedings be dropped."*

8. By affidavit dated 12th May' 2022, the petitioner broadly submitted the following in its rejoinder to the reply submitted by the Respondent:

- "(1) At the outset the, the Petitioner denies and disputes all the averments, contentions, allegations raised by the Respondent in its reply and except for what has been specifically and expressly admitted to hereinafter in writing, any omission on the part of the Petitioner to deal with any specific averment, contention, or allegation of the Respondent, should not be construed as an admission on the part of the Petitioner. The contents of the petition may be read as part and parcel of the present rejoinder.*

Para wise response to the reply:

- (2) *In responseto para 1 of the reply, it is submitted that the Respondent has in fact, willfully and deliberately not complied with the directions issued by this Hon'ble Commission in the Original Petition. It is most humbly submitted that the Respondent has time and again failed to make payments to several generators in the State and it is to the knowledge of*

the present petitioner that in the past, other generators have been constrained to file Section 142 petitions against the Respondent. This Respondent is habitually not making payments to the generators in the State, including the present Petitioner. The submission of the Respondent that it is only on account of financial liquidity constraints that the payments are delayed, ought to be rejected by this Hon'ble Commission because the Respondent is liable to arrange funds and make payments to the Petitioner, with whom the Respondent has entered a valid contract. The onus is on the Respondent to ensure that it complies with its contractual obligations and the failure to do so ought to be punished by this Hon'ble Commission. It is most humbly submitted that if continued leniency is shown to the Respondent, then the generators such as the Petitioner will become unviable and will be forced to discontinue generation of electricity in the State. This Hon'ble Commission must take strict cognizance of the Respondent's failure to make payments to the Petitioner despite the directions of this Hon'ble Commission in the Original Order. It is submitted that the tables in Annexure R/1 only shows that some payments have been made to the Petitioner. In terms of the details provided in the last row on page 12 of the reply, the last payment was made for the bill dated 05.11.2020 for the supply period from 01.09.2020 to 30.09.2020 vide cheque dated 31.03.2022. As is amply demonstrated by the Respondent's own submissions, the payments for the month of September 2020 (bill raised on 05.11.2020) has been made after a period of 17 months. It is pertinent to note that no payment towards LPS has been made till date. Such delayed payment fails to show any bonafide on behalf of the Respondent and only shows the dismal situation in the State as regards the sale and purchase of electricity by the generators such as the Petitioner and the Respondent. The Respondent has released the payment amounting to INR 39,59,40,761 from the total outstanding amount of INR 56,94,40,314 for invoices as on 15.09.2020. Therefore, it is clear from the attached sheet that Respondent did not make any payment towards delay payment surcharge i.e 17,34,99,554. This payment was made subsequent only to the passing of the Original Order and only after the timeline as prescribed in the Original Petition was lapsed. Thus, in view of the Respondent's failure to comply with the Hon'ble Commission's directions, the present case is a fit case to initiate proceedings against the Respondent under Section 142 of the Electricity Act, 2003.

*A calculation sheet detailing the payment of INR 39,59,40,761 is attached herewith and marked as **Annexure P-1**.*

- (3) *At this juncture, it is relevant to state that the Respondent has as on 31.03.2022 released payment amounting to only INR 43,89,40,434/- from the total of INR 1,13,22,21,616.64. As is evident, the Petitioner has only gotten some relief vis a vis the past payments. However, the Respondent is once again creating a situation wherein the Petitioner will be constrained to approach this Hon'ble Commission for payment of its dues. It is submitted that the Petitioner is caught up in a never-ending cycle of litigations only to be paid a non-disputed amount. The Hon'ble Commission may in exercise of its vast regulatory powers, direct the Respondent to clear all pending dues of the Petitioner and make timely payments henceforth.*

- (4) *In para 2 of the reply, the Respondent has extracted paras from the Original Order and thus, there is no need to respond to the same.*
- (5) *In response to para 3 it is submitted that the directions given by the Hon'ble Commission in the Original Order are abundantly clear. The Respondent was mandated to make the payment of INR 28,31,02,582 within 30 days of the Original Order. It is submitted that there was no provision of the PPAs/tariff orders which were required to be complied with prior to making of the said payment. In terms of the PPAs/tariff orders, the Petitioner had already issued invoices for the relevant months and the Respondent was in receipt of the same. The said amount was also an admitted amount and the same is recorded in the Original Petition. Thus, in terms of the PPAs/tariff orders, the only requirement was that payment was to be done by the Respondent to the Petitioner by acceptable modes of payment. In addition to the direction to make the payments towards the admitted amount of INR 28,31,02,582, this Hon'ble Commission further directed that "in the meantime", both the parties are directed to sit together and reconcile the actual amount outstanding as on date "within a period of 45 days". Further, the Hon'ble Commission directed that the Respondent "shall" ensure to make payment of all reconciled and remaining dues/amount to the petitioner in terms of the provisions of the PPAs/ tariff order within 60 days. Thus, as is abundantly clear the Respondent was mandated to make payments towards such reconciled and remaining dues as was the subject matter in the Original Petition within 60 days. The Respondent's contention that the 'said period of 30 days and/or 60 days was not from the date of the order, but was from the date subsequent to that which the terms of the provisions of the PPAs were complied by the parties' is a deliberate and malafide attempt to give an erroneous interpretation to the direction of this Hon'ble Commission to create the impression that there is a dispute as regards the very obvious mandate of the Hon'ble Commission regarding the payments to be made to the Petitioner by the Respondent. The Hon'ble Commission must take strict cognizance of the manner in which the Respondent, a state entity is resorting to such methods of giving erroneous interpretation to clear direction of the Hon'ble Commission to purposely deny the Petitioner its valid and legitimate dues. It is reiterated that the Petitioner has duly complied with the terms of the PPAs, and the tariff orders and the only remaining obligation was that of the Respondent to make payments. Thus, the payments were to be made from 30 days/60 days calculated from the order and the time period has nothing to do with the tariff order/PPAs.*
- (6) *That in para 4 of the reply, the Respondent has extracted Articles 9.4.1 to 9.4.5 of the PPAs executed between the parties and thus, no response is needed.*
- (7) *In response to para 5 it is submitted that the Respondent's contention that the Hon'ble Commission was pleased to observe that while making payments of outstanding amounts, the parties should adhere to the terms of the provisions of Article 9.4.1 to 9.4.5 of the PPAs is baseless and has no relevance to the present case. The direction of the Hon'ble Commission regarding the payment are abundantly clear that the Respondent shall make payment of INR 28,31,02,582 within 30 days of the Original Order*

and the remaining payment shall be made within 60 days. The Hon'ble Commission further recorded that for all 'future bills' the Petitioner "may" avail the option as provided under the Articles 9.4.1 to 9.4.5 of the PPAs. The Respondent's contention that it has to firstly be ascertained that whether the parties have adhered to the said terms of the PPAs before approaching the Hon'ble Commission under Section 142 of Electricity Act, 2003 has no basis. The Respondent is attempting to create confusion where none exists. This Hon'ble Commission was pleased to give clear directions to make payments along with a timeline and the Respondent has not only failed to make the payments as per the directions but is now wasting the time of this Hon'ble Commission by making irresponsible submissions.

- (8) *That the contents of para 6 have no relevance in the present petition. It is submitted that none of the questions raised by the Respondent regarding the compliance with the Articles 9.4.1 to 9.4.5 of the PPAs have any bearing whatsoever with the present case. The Respondent has purposely not complied with the directions in the Original Order and is now trying to reargue the grounds of notice under the said articles, even though the Original Order was passed after already having heard the Respondent on this issue and the Hon'ble Commission had taken the view that if in the future the Respondent fails to make payments as per the PPAs then the Petitioner shall be entitled to take recourse under the Article 9 of the PPAs and sell the contracted capacity to a third party. The Hon'ble Commission's directions to the Respondent to make the payments towards the liabilities as prayed for in the Original Petition was not conditional upon performance of any other obligations. The Hon'ble Commission only directed that if in the future the Respondent fails to make payments, then the Petitioner was at liberty to invoke Article 9.4.1 to 9.4.5 of the PPAs, which provisions give the Petitioner the right to issue a default notice to the Respondent and, thereafter, the Petitioner shall be free to sell the Contracted Capacity to any third party of its choice.*
- (9) *That the contents of para 7 are matters of record.*
- (10) *That the contents of para 8 are repetitive, whereby the Respondent is attempting to argue that the usage of the words "in terms of the provisions of the PPAs/tariff order" by the Hon'ble Commission means that the Petitioner is required to send notice to the Respondent under Article 9 of the PPA, and that there were no clear directions to make payments within 30 days and 60 days. It is submitted that this assertion is wholly erroneous and a mischievous attempt by the Respondent to add words to the directions of the Hon'ble Commission in the Original Order. The Respondent's interpretation is wholly absurd. There is nothing in the findings of the Hon'ble Commission to show that the Hon'ble Commission has directed the Petitioner to send notice to the Respondent under Article 9 of the PPAs. In fact, the Hon'ble Commission has clearly referred to the notice under Article 9 only for the purpose of future bills. It is pertinent to mention herein, that the exercise of the right to terminate the PPAs under Article 9 and to sell the power to a third party, is a right conferred on the Petitioner to safeguard its interest and is no manner a ground for the Respondent to wriggle out of its obligation to make payments to the Petitioner for the power supplied by the Petitioner and sold by the*

Respondent to its consumers.

- (11) *That in response to para 9, it is submitted that vide the letters dated 28.10.2021 and 06.10.2021 by which letters the Petitioner requested that the Respondent complies with the directions of the Hon'ble Commission in the Original Order and makes payment to the Petitioner. It is submitted that there is no requirement of a separate notice to the Respondent, once the Hon'ble Commission has passed an order and given directions to the Respondent to make payments to the Petitioner, and therefore there is no mention of relevant clause of the PPAs. The submissions of the Respondent are absurd and without any basis. Not only has the Respondent failed to comply with the directions of the Hon'ble Commission but is now twisting facts and making baseless representation before this Hon'ble Commission. The Respondent has deliberately not complied with the directions of this Hon'ble Commission and ought to be penalized for its conduct. It is pertinent to note that in compliance with the directions of this Hon'ble Commission in the Original Order, the representatives of the Respondent and the Petitioner had met on 17.11.2021 for the reconciliation of the amounts. Even on this date, there was a clear understanding that the reconciliation is being done for the purposes of making payments to the Petitioner. The reconciliation statement (page 162 of the petition) clearly records that "outstanding balance as on date as per the records of M/s MPPMCL is Rs. 73,68,50,796.00 (Attached Annexure "A") on the basis of verified bills received in O/o CFO, MPPMCL" and that the "Receivable balance as on date as per the books of account of M/s OIL is Rs. 95,49,82,748.61 (Attached Annexure 'B') and further clear reasons for the difference is spelt out and signed by both parties. Thus, having reconciled the accounts and having admitted the payments, the Respondent instead of making said payments is today demanding that appropriate notice under the PPAs be sent before payments can be made. It is reiterated that the submissions of the Respondent are absurd, irresponsible and ought to be rejected.*
- (12) *That the contents of para 10 are repetitive. The Respondent is trying to make a case where none exists. The submissions requiring notice under the PPAs have no relevance in the present petition on account of the clear directions given by the Hon'ble Commission to the Respondent to make payments to the Petitioner within the specified timeline.*
- (13) *That in response to para 11, it is submitted that the Respondent's contention that it is facing liquidity crunch is an oft-repeated contention and the Respondent cannot be given the liberty to breach the terms of the agreements and put an entire generating company at risk of bankruptcy. The Respondent is bound by law to comply with the terms of the agreements entered into with the generating companies. While the generating companies such as the Petitioner after having made crores of investment in the State, are complying with all the terms of the PPAs, it's a travesty that they have to suffer financial losses and continuously be at the risk of being unviable, on account of the financial mismanagement of the Respondent. The Respondent ought to make every effort possible, including securing loans if so needed, to make payments to the Petitioner. The Petitioner cannot be made to suffer on account of the Respondent. It is*

pertinent to note that while the Respondent is not making payments to the Petitioner, it is entering into contracts with new generating companies for purchase of power. Furthermore, on a year-on-year basis, the Hon'ble Commission approved the ARR of the Respondent and crores of sum is allocated to it towards the purchase of power. However, the Respondent under the pretext of liquidity crunch is not making payments to the Petitioner. It is submitted that if laxity is shown to the Respondent, then the Petitioner will unfairly suffer.

- (14) *That the contents of paras 12 and 13 are repetitive and the submissions made hereinabove, may be read as part and parcel of the response to paras 12 and 13.*
- (15) *That in response to para 14 wherein the Respondent has submitted that the Petitioner has "in all malafides made a bald pleading that a considerable amount has been borrowed by it from banks/financial institutions and under financing documents it is bound to timely service its debts.", it is submitted that the Petitioner is not bound to demonstrate to the Respondent that the Petitioner has to service its debts in order for the Respondent to perform its obligations under the PPAs and comply with the directions of the Hon'ble Commission. In any event, it is a well-known fact that most companies secure loans and are funded by banks/financial institutions for the purpose of setting up generating stations which requires several crores of investments.*
- (16) *That in response to para 15 it is submitted that the non-compliance of directions of this Hon'ble Commission by the Respondent has no relationship with a default notice under the PPAs and the submissions made hereinabove, may be read as part and parcel of the response to para 15.*
- (17) *That the contents of para 16 are denied. The Respondent has failed to make payments to the Petitioner despite having collected tariff from the consumers. The onus is on the Respondent to prove that it has not collected the tariff or that sums have not been allowed to it under the yearly tariff orders by this Hon'ble Commission.*
- (18) *That in response to para 17, it is submitted that the non-compliance of directions of this Hon'ble Commission by the Respondent has no relationship with a notice under the PPAs and the submissions made hereinabove, may be read as part and parcel of the response to para 17.*
- (19) *That in response to para 18, it is submitted that the Respondent has deliberately and with malafide intent not complied with the directions of this Hon'ble Commission. The Respondent did not respond to any of the letters sent by the Petition requesting compliance of the Original Order. The Respondent is today making absurd and baseless submissions before this Hon'ble Commission.*
- (20) *It is submitted that the present case is a fit case to initiate proceedings under Section 142 of the Electricity Act, 2003. The Respondent has despite several requests and reminders not made payments to the Petitioner. Even*

after specific directions were issued by this Hon'ble Commission, the Respondent in the most brazen manner did not comply with the same and today, it is making irrelevant submissions to misguide this Hon'ble Commission.

(21) *In view of the submissions made hereinabove, it is most humbly prayed before this Hon'ble Commission to initiate proceedings against the Respondent under Section 142 of the Electricity Act, 2003 and direct the Respondent to make payments to the Petitioner towards the outstanding dues as admitted in the reconciliation statement dated 17.11.2021 within a week."*

Commission's observations and findings:

9. The Commission has observed the following from the contents in this petition and submissions of the Petitioner and Respondent:

(i) That the Petitioner is a Government of India enterprise owns and operates a total of 63.2 MW Wind Energy Generating Projects in the State of Madhya Pradesh. The Petitioner and Respondent have executed various PPAs dated 02/07/2015, 13/04/2018 and 07/01/2017 for the supply of power from the Petitioner's 63.2 MW Wind Energy Generating projects to Respondent.

(ii) The Petitioner has been supplying power to Respondent as per PPAs. However, in violation and non-compliance of the terms of the PPAs and tariff orders, the Respondent failed to make payments to the Petitioner towards the power supplied over a period of several months. Consequently, the Petitioner had filed Petition No. 67 of 2020 before this Commission seeking directions to Respondent to make complete payments to the Petitioner amounting to INR 56,94,40,314 (Fifty Six Crores Ninety Four Lacs Forty Thousand Three Hundred and Fourteen) as on 15.09.2020 and for initiating proceedings under Section 142 of the Electricity Act, 2003.

(iii) After hearing both parties and on perusal of submissions by parties in aforesaid petition 67 of 2020, the Commission vide order dated 06/10/2021 issued following directives:

"(xi) In view of the foregoing observations, the Commission has noted that there is a dispute between the petitioner and the Respondent on total outstanding amount claimed by petitioner as on 15.09.2020. Notwithstanding the dispute, the Respondent has admitted that the outstanding amount is Rs. 28,31,02,582/- as on 15.09.2020. Therefore, at the outset, the Respondent is directed to make payment of aforesaid admitted outstanding amount to the petitioner in terms of the provisions of the PPAs/tariff order within 30 days. In the meantime, both parties are directed to sit together and reconcile the actual amount outstanding as on date with in a period of 45 days. Thereafter, the Respondent shall ensure to make payment of all reconciled and remaining dues/amount to the petitioner in terms of the provisions of the PPAs/tariff order within 60 days. In future bills, if Respondent doesn't ensure payment as per provisions of the PPAs executed between the Petitioner & Respondent, the Petitioner may avail an option as provided under articles 9.4.1 to 9.4.5 of the PPAs as mentioned at Para 15 (ix) (e) of this order."

(iv) As recorded in Para 15 (viii) of Commission's last order dated 06.10.2021 in Petition No. 67 of 2020 in this matter, the amount outstanding against each WEG of petitioner's

power project with bifurcation of principal amount and delayed payment surcharge were as given below:

Project Capacity	Applicable Tariff Order	PPA Date	Outstanding Dues as on 15.09.2020	
			Principal Amount (Rs.)	DPS (Rs.)
38 MW	2013 Tariff Order	02.07.2015	26,90,89,415	14,98,21,256
18.9 MW	2016 Tariff Order	13.04.2018	7,72,38,481	1,48,06,283
6.3 MW	2016 Tariff Order	07.01.2017	4,96,12,865	88,72,015

(v) As per above position, the total outstanding against principal amount was INR 39,59,40,761/- and Delayed Payment surcharge was INR. 17,34,99,554/- as on 15.09.2020. Subsequent to Commission's above-mentioned order, the following developments are observed from the submissions in the instant matter:

- (a) As per statement of payments submitted by Respondent, some payments have been made by Respondent to Petitioner and the last payment was made for the bill dated 05.11.2020 for period of supply from 01.09.2020 to 30.09.2020. Further, payment for the month of September 2020 (bill raised on 05.11.2020) has been made after a period of 17 months. The Respondent has released the payment amounting to INR 39,59,40,761 from the total outstanding amount of INR 56,94,40,314 **for invoices as on 15.09.2020**. As stated by petitioner, this payment was made subsequent to the Commission's order dated 06.10.2021 in aforesaid petition No. 67 of 2021 but beyond the timeline prescribed in the said order. However, the Respondent did not make any payment towards delayed payment surcharge i.e towards INR 17,34,99,554. The petitioner has filed a calculation sheet with its rejoinder detailing the payment of INR 39,59,40,761 as **Annexure P-1**.
- (b) Pursuant to directions of Commission, a conciliation meeting was convened between both the parties on 17/11/2021. In the minutes of aforesaid reconciliation meeting annexed as Annexure P-6 at page 162 of the petition, it is mentioned that *"outstanding balance as on date as per the records of M/s MPPMCL is Rs. 73,68,50,796.00 (Attached Annexure "A") on the basis of verified bills received in O/o CFO, MPPMCL"* and that the *"Receivable balance as on date as per the books of account of M/s OIL is Rs. 95,49,82,748.61 (Attached Annexure "B")"*. The reasons for difference in figures are mentioned in the aforesaid minutes signed by both the parties.
- (c) As stated by petitioner in its rejoinder, as on 31.03.2022, the Respondent has released payment amounting to only INR 43,89,40,434/- from the total of INR 1,13,22,21,616. The petitioner has submitted that it has got some financial relief from the aforesaid payment made by Respondent, however, again increase in outstanding amount would create a situation for the petitioner to approach the Commission with such prayers as made in this petition and earlier petition as well.

(vi) The Respondent in its reply to the subject petition argued that the undisputed

outstanding amount of Rs. 28,31,02,582/- as on 15-09-2020 and the remaining disputed amount to be reconciled by the parties were to be paid in terms of the provisions of the PPAs within the aforesaid periods of 30 days and 60 days respectively and failing which the Petitioner was given liberty to exercise his option as provided under articles 9.4.1 to 9.4.5 of the PPAs. The aforesaid contention of Respondent does not have any merit since Respondent was clearly directed in Commission's Order dated 06.10.2021 in petition No. 67 of 2021 that it shall make payment of INR 28,31,02,582/- within 30 days of said order and the payment of all reconciled and remaining dues/ amount shall be made by Respondent to petitioner within 60 days after reconciliation within 45 days. Accordingly, in aforesaid directions, there were clear time lines for making payments by Respondent to petitioner for admitted amount and also for disputed amount after due reconciliation.

- (vii) As per Respondent, the payments got delayed to the Petitioner due to financial liquidity constraints faced by Respondent over a long period. The Respondent has not denied or disputed any legitimate payment outstanding to the Petitioner and stated that payments against several outstanding bills have been released in favour of the Petitioner as and when its liquidity permitted.
- (viii) The contention of Respondent that the payments are delayed on account of financial liquidity constraints may not be considered because the Respondent is liable to make legitimate payments to petitioner in compliance with its contractual obligations. The Respondent has made payments for principal amount only that too intermittently with a substantial delay as against the timelines specified by the Commission. Further, the Respondent has not paid surcharge on delayed payments.

“Section 142. (Punishment for non-compliance of directions by Appropriate Commission) provides as under:

“In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”

- (ix) At the hearing held on May 31, 2022, Respondent prayed for filing additional written submission for which time of one week was given. Respondent was also asked to submit details of payments made after October 6, 2021 till now and to provide details of subsidy disbursed by the State Government since October, 2021. Besides, updated status on reconciliation with regard to outstanding payment was also to be provided by Respondent. Despite a reasonable time having been allowed to the Respondent, it has failed to produce the aforementioned submissions/documents.
- (x) The Commission has noted that despite clear directives in Commission's order dated 06.10.2021 in Petition No. 67 of 2020, the Respondent has failed to make payment to the petitioner as per time lines specified in aforesaid order and it has not paid any amount towards Delayed Payment Surcharge till date in terms of provisions under PPA.

10. In view of all foregoing, the findings of Commission on the prayer made by the petitioner in the subject petition are as under:

- a. In compliance with Commission's order dated 06.10.2021 in petition No. 67 of 2021, the Respondent is directed to pay all the legitimate dues along with delayed payment surcharge to the petitioner in terms of PPAs within 45 days of this order.
- b. The Respondent is directed to pay a penalty of Rs One Lakh to the Commission within 45 days of this order towards non-compliance of the Commission's order dated 06.10.2021 in petition No. 67 of 2021.
- c. No order as to cost.

With the aforesaid observations and directions, the subject petition is disposed of.

(Gopal Srivastava)
Member (Law)

(Mukul Dhariwal)
Member

(S.P.S. Parihar)
Chairman