MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

BHOPAL

Sub: In the matter of Petition filed under section, 86(1)(e) of the Electricity Act, 2003 and Clause 14.1 of Agreement for 1.5 MW and clause 13.1 of agreement for 2.55 MW and MPERC Regulations 2010 Revision-I (Co-generation and Generation of electricity from renewable source of energy) as amended from time to time and Non-compliance of Hon'ble MPERC Order dt. 29.11.2017 passed in Petition No. 37/2017 and PPWA dt. 05.05.2014 for 1.5 MW and 05.11.2019 for 2.55 MW and Hon'ble MPERC order dt. 22.07.2022 in Petition No. 22/2022.

ORDER

(Hearing through video conferencing)
(Date of Order: 22.09.2023)

Porwal Auto Components Ltd (Solar Division),
Plot No. 209, Sector-1,
Pithampur, District Dhar,
(MP) 454775

- Petitioner

Vs.

1. **The Managing Director,**
MPPMCL, Shakti Bhawan, Rampur
Jabalpur- 482008

2. Chief General Manager (Comml-NCE)
Regional Office, MPPMCL, Bhopal
462016

3. General Manager (Solar)
Regional Office, MPPMCL, Bhopal
462016

4. SE (Comml- HT), Corporate Office,
MPPaKVVCL, GPH Compound, Indore

5. SE O/o ED (CRA), MPPTCL,
Shakti Bhawan, Rampur, Jabalpur,
482008

6. SE (SLDC), MPPTCL,
Nayagaon, Rampur, Jabalpur,
482008

- Respondents

Shri Parinay Deep Shah, Advocate & Shri Ajay Porwal appeared on behalf of the petitioner.
Shri Manoj Dubey, Advocate, appeared on behalf of the Respondent No. 1, 2 & 3
Shri Vijay B Sharma, Advocate along with Shri Sanjay Malviya, SE appeared on behalf of the Respondent No. 4
None appeared on behalf of the Respondent No. 5 & 6

The subject petition is filed under section, 86(1)(e) of the Electricity Act, 2003 and Clause 14.1 of Agreement for 1.5 MW and clause 13.1 of agreement for 2.55 MW and MPERC Regulations 2010 Revision-I (Co-generation and Generation of electricity from renewable source of energy) as amended from time to time and Non-compliance of Hon'ble MPERC Order dt. 29.11.2017 passed in Petition No. 37/2017 and PPWA dt. 05.05.2014 for 1.5 MW and 05.11.2019 for 2.55 MW and Hon'ble MPERC order dt. 22.07.2022 in Petition No. 22/2022.

2. By affidavit dated 31st March' 2023, the petitioner broadly submitted the following:

1. ***Facts of the Case*** *:-*

1.1 That Petitioner has established two solar PV power captive power plants for use of 100% power as captive use under GOMP Solar policy 2012 and under section 9 of The Electricity Act 2003 and have also availed open access under section 9 (2) of The Act for transmitting of power generated at Point A (at Village Karodia, Tehsil Tarana, Dist Ujjain to point B to its industrial unit at Pithampur sector 1 Pithampur. The plants were commissioned on dated 27/12/2013 for 1.5MW and dated 08/11/2017 for 2.55MW.

1.2 That Hon'ble Commission notified Regulation 2010 on (Co generation and generation of electricity from renewable sources of energy). Petitioner reproduced Clause 4.5 of these Regulations.

1.3 That Hon'ble Commission notified Regulation 2010 on (Co generation and generation of electricity from renewable sources of energy) as amended in 2011 the procedure was laid down for the execution of the Agreement the relevant provision. Petitioner reproduced Clause 4.8 of these Regulations.

1.4 That Regulation 2010 on (Co generation and generation of electricity from renewable sources of energy) as per the 7th amendment. Petitioner reproduced Clauses 9 and 12.2 of these Regulations. Thus the issue of "Scheduling" was coined in the 7th amendment which was notified on 17.11.2017.

1.5 That the petitioner established new solar captive power plant of 2.55 MW and approached the Discom and the Power Management vide letter dated 28th August 2017 to sign the Agreement as per the applicable Regulation, 2010. That the Respondent had directed the Petitioner to submit an undertaking in order to avail the permission for wheeling.

1.6 That the Petitioner pursuant to the said direction submitted an undertaking that the payment of surplus power will not be claimed by the Petitioner for availing open access under compulsion. The Respondent without the said undertaking would not have given open access to the Petitioner.

1.7 That the Respondent against this undertaking by Petitioner had vide letter dated 02.11.2017 granted the permission for Wheeling Power and it is pertinent to mention here that the Respondent had in the said letter mentioned that there was a Petition filed for the direction on the issue of the inadvertent power injected in the grid.

1.8 That after lapse of considerable time the Respondent sent a mail along with first draft of PPWA/Agreement to the Petitioner on 27.6.2018 the Petitioner had objected to certain clause of the draft Agreement as the same was not in line and again on 31st August 2018 new Agreement was forwarded by the Respondent pursuant to the order passed by the Hon'ble Commission in Petition no 37/2017.

1.9 That the Respondent conducted meeting on 27.9.2018 with all Renewable generators at its regional office Bhopal for negotiation of rate towards the inadvertent energy injected in the grid and had offered to all renewable generators Rs 1 per unit for surplus power injected into the grid instead of APPC rate.

1.10 That Respondent sent a letter dated 11/12/2018 to DISCOM for giving wheeling credit till PPWA is finalized.

1.11 That the Respondent thereafter executed the Agreement dated 5.11.2019 and had mentioned in the agreement in the preamble that the tariff for the inadvertent power supplied to the grid shall be considered by mutual consent as directed under the order passed by the Hon'ble Commission in petition no 37/2017 which is absolutely false and misinterpreted the relevant portion of the order is reproduced hereunder "Having heard the petitioner and on considering the written submissions, the Commission has noted that the power supply from the renewable sources of energy viz. solar, wind and small hydro, are must run in terms of the provisions of the Indian Electricity Grid Code, 2010 as amended. Accordingly, the Power Purchase and Wheeling Agreements have been executed by the petitioner with the RE generators based on some terms and conditions along with the purchase of power including inadvertent flow. As such, it would not be appropriate to replace the phrase Power Purchase and Wheeling Agreement(s) {PP & WAs) with the Power Wheeling Agreement (s) and to amend the relevant Regulations. ***Similarly, the prayer to review and/or modify the relevant provisions of the tariff orders to the effect that the tariff for such inadvertent flow of power into the system by the Electricity Generators from new and renewable sources of energy is nil, is not tenable****. Also, execution of only Power Wheeling Agreement (PWA) for third party sale or captive consumption of Renewable Energy cannot be allowed under the present circumstances. The Commission, therefore directs the petitioner that looking to the current scenario of the development of RE projects, the petitioner may explore the*

possibility of making legally tenable appropriate changes in the aforesaid Power Purchase Agreements after arriving at the mutual consents with the RE generators."

1.12 *That it is further submitted that the Madhya Pradesh Electricity Regulatory Commission (Forecasting ,Scheduling, Deviation Settlement Mechanism and related matters of wind, solar generating Regulation 2018 was notified (hereinafter referred as Regulation 2018. The Clause 3.2 of the said regulation,2018 mentioned that the Regulation shall be applicable to the Solar generators having the installed capacity of 5 MW and above including those connected via pooling stations selling power within or outside the State.*

> *That Initially for the period Nov 17 to April 18, Freewings Power and Infra Limited (Interstate) and PACL plants were transmitting power through the same feeder and once regulation was implemented wef April 2018, the Freewings Power and Infra limited power was not scheduled by SLDC during August 2018 to 10th Oct 2019. From 11th Oct to 9th February 2020 power scheduled on common feeder. From 10th February 2020 separate feeder was commissioned.*

1.13 *Later on Freewings Power and Infra limited generator was shifted to other Interstate feeder wef 10/02/2020 vide amendment to regulation 2018 dated 25.09.2019 under heading Procedure Hon'ble commission had allowed transmission of power for a period of one year.*

1.14 *That thus the Solar Plant of the Petitioner on the day when the amendment to the said Regulation of 2018 was effected had the capacity of 2.55 MW according as per Clause 3.2 it does not fall within its ambit as it was less then 5 MW, however the Regulation, 2018 was applicable to 1.50 MW power plant as the same was reaching to 10 MW with other Generators.*

1.15 *That the Hon'ble Aptel has also observed in Appeal no 197 of 2019 "**127. From the above, it is evident that there is a clear mandate in the Act and the Policy to promote renewable energy generation. The Must Run status conferred to renewable energy is also meant for its promotion. The MNRE had also stated before the Commission that given its nature renewable energy shall not be curtailed. It is seen that the Government of India is also conscious of the backing down of solar projects by some SLDCs. The Appellant had also submitted that in many states SLDCs are APPEAL NO.197 OF 2019 Page 87 of 94 violating the provisions of the IEGC and the applicable State Grid Codes by curtailing the renewable energy generation for reasons other than grid safety and security. Therefore, any action taken contrary to the objective set out in Act needs to be dealt sternly. The Appellant has also submitted that the Tribunal should look into this issue and frame certain guidelines to curb the unauthorized backing down of renewable energy generation.***

> ***128. On the issue of compensation, the Appellant has placed reliance on judgement of Hon'ble Supreme Court in Union of India vs United India Insurance Company Ltd. & Ors (1997) 8 SCC 683 to contend that non***

exercise of public law or statutory power did create a private law action for damages for breach of statutory duty. Reliance is also placed on the judgement of this Tribunal in Appeal No 175 of 2012 (Tata Power Co Ltd vs MERC & Ors) wherein the Tribunal had held that the Appellant Tata Power Co Ltd. was entitled to claim compensation from SLDC after establishing that SDLC was guilty of legal mala-fide by knowingly breaching its statutory duty. The Appellant has alleged that Respondents 2 to 4 are not neutral, fair or transparent in discharging their duties and would, therefore, be jointly and severally liable to pay damages for loss of generation apart from the SLDC itself being liable to pay damages."

1.16 *That the Hon'ble Commission notified 8th amendment to Regulation 2010 on (Co generation and generation of electricity from renewable sources of energy) (Revision 1) dated 17th December 2019 with regard to "Renewable Energy Based Captive Generating Plants. As per clause 12 D Processing of application and applicable fee(i) The renewable energy-based captive generating plants intending to avail facility made available under the provisions of this amendment shall have to submit an application and register with distribution licensee through specific application form as provided by the Distribution License.*

1.17 *That the Respondents till January 23 never raised any billing issue with regard to deviation in scheduling of both the generators but have suddenly revised all bills without any notice vide letter ref 06/02/2023 creating a demand of Rs 2,22,58.603.00 with a notice to pay same within 15 days' time.*

1.18 *That the Petitioner through its various correspondence had informed the Respondent that the Agreement was not in line with the Regulations of the Hon'ble Commission as also was dehors the order of the Hon'ble Commission but the same fell on deaf ears*

1.19 *That the Petitioner submitted bills for Surplus energy for the period February 2019 to November 2022 to the Respondent, the same was not entertained therefore the Petitioner preferred Petition before the Hon'ble MPERC. The Petitioner had preferred a petition being Petition No 22/2022 for non-compliance of MPERC (Co-generation and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 and its amendments for non-payment of surplus energy injected in Grid by 1.5 MW and 2.55 MW solar captive power plants of the petitioner. That the Hon'ble Commission vide order dated 22.07.2022 while disposing the petition had directed to resolve dispute between parties which are signatories to the agreements namely, Power Purchase and Wheeling Agreements, be first set up and thereafter,* ***if through this process it is not possible to settle the dispute, the matter be referred to the Commission for adjudication.***

1.20 That the issues with respect to the payment of the inadvertent/unadjusted power injected into the grid was placed before the Committee so formed on 17.11.2022 and the Minutes were drawn by the Committee.

1.21 That the Respondent had with malafide intention placed incorrect facts before the Committee it was mentioned by the Respondents that the Petitioner had submitted an irrevocable undertaking that the matter of injection of inadvertent/unadjusted power was explicitly mentioned in the clause 10b of the Agreement.

> *"In line with the MPERC order dated 29.11.2017 in Petition No 37/2017it is agreed by the parties on mutual consent basis that in case of inadvertent energy injection in to the grid the same shall be settled at Tariff at Rs 00.00 (Zero)KWH*

1.22 The Committee had observed at the end of the meeting that the next meeting shall be held after the commercial issues pertaining to the energy injected into the grid and its energy consume at the consumption end are segregated/apportioned are reconciled and verified by the West Discom.

1.23 That the Respondents have in complete violation of the Minutes of the meeting and also the order of the Hon'ble Commission have issued a bill dated 06.02.2023 15 days' notice to pay the same despite the fact that the matter was pending and the same was to be decided by the Committee. Being aggrieved by the act of the Respondent of issuing the invoice which is also not in line and is erroneous the Petitioner has preferred the present petition on following amongst other grounds.

a. *That the Respondent has completely misconceived the order passed by the Hon'ble Commission in Petition no 37/2017 the order reads as under:*

   ***Similarly, the prayer to review and/or modify the relevant provisions of the tariff orders to the effect that the tariff for such inadvertent flow of power into the system by the Electricity Generators from new and renewable sources of energy is nil, is not tenable**.*

b. *That the action on the part of the Respondent is completely arbitrary and in violation of the provisions of the Act and orders of Aptel.*

c. *That the impugned bill dated 06.02.2023 raised by the Respondent is bad in law and should be quashed.*

d. *That as per Clause 2.3 of the Agreement for 2.55 MW the inadvertent flow of energy into the grid shall be agreed by mutual agreement and under Clause 10 b the Respondents have mentioned that the tariff is mutually settled at 0.00*

KWH thus the Clause of the Agreement itself are contradictory and shows the high handedness of the Respondent.

e. *That the preamble of the Agreement is not in line with the prevailing law should be modified. The Hon'ble Apex Court has held in catena of judgements that Agreement which is inconsistent with the applicable law cannot sustain in the eyes of law.*

f. *That the Respondents have acted in complete violation of the Agreements and the applicable provision.*

g. *That the Respondent have acted in complete high handedness and issued the bill/invoice dated 06.02.2023 despite the fact the Co-ordinate Committee was yet to settle the dispute.*

h. *That the Government has been trying to issue various policies to bring the renewable and Nonrenewable generating companies in the State and the Respondent are twisting the arms of the Generators by misinterpreting the law to suite their needs.*

i. *That the Respondents have acted in a way that suits them whether the same is legally tenable or not is not their concern the Respondents have themselves mentioned in the Agreement that order passed in Petition no 37/2017 shall be applicable the said order itself state* ***s that the review and/or modify the relevant provisions of the tariff orders to the effect that the tariff for such inadvertent flow of power into the system by the Electricity Generators from new and renewable sources of energy is nil, is not tenable*** *despite the Respondents are calculating it at NIL.*

j. *That the Petitioner craves leave to refer to other grounds at the time of the argument.*

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

i. *To Admit the Present Petition;*
ii. *To direct the Respondent not to take any coercive steps till the Petition is finally decided*
iii. *To extend the benefit of the power inadvertent energy injected into the grid in line with the order passed by the Hon'ble Commission in petition no 37/2022.*
iv. *To direct the Co-ordinate committee to settle the issue of 1.5MW expeditiously*

v. *To direct the Respondents to modify the Agreement dated 05/11/2019 executed with the Petitioner for 2.55 MW.*

vi. *To set aside the bill dated 06.02.2023 for Rs. 2,22,58603/-.*

vii. *For such other and further relief as the Commission may in the facts and circumstances of the present case, deem fit and proper.*

4. At the motion hearing held on 06th June' 2023, petition was admitted. Petitioner was directed to serve a copy of notice to the Respondents within 7 days, and Respondents to submit their replies in 10 days thereafter. On the request of petitioner, Commission directed the respondents not to take any coercive action against petitioner for recovery of disputed demand in the meanwhile. The case was listed for hearing on **18th July 2023.**

5. Respondent No. 4, MP Paschim Kshetra Vidyut Vitaran Company Ltd., Indore broadly submitted the following in its reply by affidavit dated 04th July 2023:

i. *That no pressure was put on the petitioner. Undertaking was voluntarily submitted by petitioner. No objection was taken by the petitioner before submitting the undertaking. It is pertinent to mention that no documentary evidence has been produced that the petitioner was pressurized.*

ii. *That petitioner has mentioned that in the agreement are in violation of the directives given by Hon'ble MPERC in petition No 37/2017 is baseless and misleading. The Hon'ble MPERC in it order dated 29.11.2017 has directed that the petitioner may explore the possibility of making legally tenable appropriate changes in the aforesaid power purchase agreement after arriving at the mutual consents with the RE generators. The clause 4 of order in petition No 37/2017 is reproduced as below:*

"…… The Commission, therefore directs the petitioner that looking to the current scenario of the development of RE projects, the petitioner may explore the possibility of making legally tenable appropriate changes in the aforesaid power purchase Agreements after arriving at the mutual consents with the RE generators."

In line with the MPERC order dated 29th Nov 2017 in petition 37/2017, it was agreed by the parties on mutual consent basis that in case of inadvertent energy injection into the grid, the same shall be settled at tariff at Rs. 00.00 (zero) / kWh. The relevant clause of PPA which is mutually agreed between petitioner and the stake holders.

iii. *That all the Renewable Energy based Captive Generating plants shall be governed as per PPWA entered by the petitioner with PMCL, Discom and Others. As per clause 11.3 of PPWA of 2.55 MW Generator of M/s Porwal auto Component Ltd. The clause of 11.3 of PPWA is reproduce as below: -*

*"**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 block, as per allocation indicated by the Company in Annex-IV (a). 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 conditions 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 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 tariff at Rs. 00.00 (zero)/kWh**."*

iv. *That 2.55 MW Solar Plant of M/s Porwal Auto Components Ltd. and 2.55 MW Solar Plant of M/s Freewings power and Infra Ltd. had been connected through the common 33 KV line emanating from 132 Kv S/S Makdone of MPPTCL. Thus, the total solar generation capacity of both the solar plants was 5.10 MW which were connected with 132 KV S/s Makdone through 33 KV line. Further the petitioner has himself asserted that total pooling load in case of 1.5 MW power plants was reaching up to 10 MW with other generators. Thus, the petitioner was liable for 15-minute energy settlement in both cases.*

v. *That as per clause no 11.3 of the Power Purchase and Wheeling Agreement for captive use of 2.55 MW solar PV Plant of M/s Porwal Auto Components Ltd., executed between M/s Porwal Auto Component Ltd., M.P. Power Management Co. Ltd. and Madhya Pradesh Paschim Kshetra Vidyut Vitran Company Ltd. under category II, the energy accounting shall be done form each 15-minute block separately. The relevant clause 11.3 is again reproduced by the Respondent.*

vi. *That as per the clause no. 21(a) of the Power Purchase and Wheeling Agreement for captive use of 2.55 MW Solar PV plant of M/s Porwal Auto Components Ltd., executed under category II, the effective date and duration of the agreement is the date of the commissioning of the plant or the date of obtaining Long Term Open Access from MPPTCL, whichever is later. The relevant clause is reproduced by the Respondent.*

vii. *That, the petitioner has signed the PPWA and he is well aware about the clauses of PPWA and agreed with the terms and conditions of the same.*

viii. *That, the PPWA for captive use of 1.5 MW Solar PV Plant of M/s Porwal Auto Components Ltd., executed between M/s Porwal Auto Component Ltd., M.P. Power Management Co. Ltd. and Madhya Pradesh Paschim Kshetra Vidyut*

Vitran Company Ltd., the energy accounting to be done as per TOD (Time of Day) concept ***but it is not practically feasible to provide different type of solar credit adjustment (i.e. TOD manner and 15 minute block) against a single service connection.***

ix. *Therefore, generation of the both generators (2.55 MW Solar Power Plant and 1.5 MW Solar Power Plant) has been adjusted in 15 minute block manner and supplementary bill of Rs. 2,22,58,603/- was issued to the petitioner.*

x. *That the next meeting of committee was held of 12.04.2023 in which the representative was also present in the meeting. In the meeting deliberations on the related issue were made by the committee members and the conclusion of the meeting were also circulated to all members.*

xi. *That the petitioner has tried to conceal the facts to make false allegation. The fact is that the first meeting of dispute committee was held on 17.11.2022 In which to West Discom was asked to submit the data of inadvertent flow of energy. The next meeting held on 12.04.2023 the West Discom has submitted the data before committee which was recorded in para 3 of point no. 2, which is reproduced as below:–*

"The committee observed that as per data submitted by West Discom there was an inadvertent flow from the date of commissioning of 2.55 MW plant, however considering this undertaking generator had not raised any invoices for energy related to inadvertent flow up to the instant case. Now generator is raising the invoice under the ambit of Force Majeure, where under the provisions of this clause it is provided that no party is liable for any claims due to events leading to Force Majeure conditions and thus after examining the claims they are not found to be tenable."

Further, it is also emphasized that the invoice dated 06.02.2023 raised by Discom has no relation with the matter of co-ordinate committee. The invoice dated 06.02.2023 is related to difference of energy derived from change of method of settlement of energy from TOD manner to 15-minute manner.

xii. *That the bill raised dated 06.02.2023 is in adherence to regulations and PPW.*

xiii. *That the co-ordinate committee settled the dispute in its meeting 12.04.2023. There is no any relation between invoice dated 06.02.2023 and the subject matter of Co-ordinate Committee.*

6. Respondent No. 1 to 3 namely MD, MPPMCL, Jabalpur, CGM (Comml-NCE), MPPMCL Bhopal & MD (Solar) MPPMCL, Bhopal by Affidavit dated 13th July 2023 submitted the following in their reply to the petition:

i. *That, the Petitioner being a Captive Power Generator, having solar plants of Unit 1 of 1500 KW and Unit 2 of 2550 KW capacity, has instituted instant petition, seeking reliefs, inter-alia, to extend the benefit of inadvertent power injected by it into the grid in line with the order passed by the Hon'ble Commission in Petition No. 37/2017, direction to the Co-ordination Committee to settle the issue of 1.5 MW Unit 1, direct the Respondents to modify the agreement dated 05-11-2019 executed with the Petitioner for 2.55 MW Unit 2and to set aside the bill dated 06-02-2023 for Rs. 2,22,58,603/-.*

ii. *That, on the issue of extending the benefit of inadvertent power injected by the Petitioner into the grid in line with the order dated 29-11-2017 passed by the Hon'ble Commission in Petition no. 37/2017 it is submitted that the Petitioner was not a party to said Petition No. 37/2017 and by that order, the Hon'ble Commission had merely rejected the plea of MPPMCL to amend the relevant provisions of the tariff order to the effect that the tariff for inadvertent flow of power into the grid is nil. That, does not mean that the parties cannot mutually choose and agree for a tariff which is lower than the tariff mentioned in the tariff order. The respective PPWA was executed by the Petitioner of its free will and in all consciousness after having understood the contents of the same. Therefore, the Petitioner cannot seek get the PPWA altered in any way. There is nothing in the said order dated 29-11-2017, the benefit of which can be extended to the Petitioner.*

iii. *That, the petitioner has not mentioned the conclusive statement of Hon'ble Commission.*

"…… The Commission, therefore directs the petitioner that looking to the current scenario of the development of RE projects, the petitioner may explore the possibility of making legally tenable appropriate changes in the aforesaid power purchase Agreements after arriving at the mutual consents with the RE generators."

iv. *That, Co-ordination Committee was set upto decide the issue of payment of inadvertent energy of 1.5 and 2.55 MW for a particular period for which minutes of meeting had already been issued on 12.04.2023 and same was informed to commission along with Petitioner vide letter dated 17.04.2023 wherein it was deliberated as under:-*

- *"The committee observed that as per data submitted by West Discom there was an inadvertent flow from the date of commissioning of 2.55 MW plant, however considering this undertaking generator had not raised any invoices for energy related to inadvertent flow up to the instant case. Now generator is raising the invoice under the ambit of Force Majeure, where under the provisions of this clause it is provided that no party is liable for any claims due to events leading to Force Majeure conditions and thus after examining the claims they are not found to be tenable".*

- *M/s Porwal Auto Components Ltd had submitted invoices of period 25.03.2020 to 16.05.2020 in respect of 1.5 MW Captive power plant registered under Category-III, In this regard, as per clause 19.1 "Force Majeure" of PPWA executed on 05.05.2014 "no party shall be liable for any claim for any loss or damage whatsoever arises out of failure to carry out the terms of the agreement to the extent that such a failure is due to Force Majeure Events such as fire, rebellion, mutiny, civil unrest, riot, strike, lockout. Forces of nature, accident, act of God or any similar act bound the control of parties".*

- *In view of the above, as per the Force Majeure Clause, it is evidently clear that no claim by either of the parties can be raised due to conditions creating Force Majeure. Thus, the claim of the Generator to pay for the inadvertent flow due to Force Majeure event is not tenable.*

v. *That, the impugned bill amounting to Rs. 2,22,58,603/- has been issued by MP Paschim Kshetra Vidyut Vitaran Company and is related to difference of energy derived from change of method of settlement of energy from TOD manner to 15 minute as per PPWA and as per Forecasting, Scheduling and Deviation Settlement Mechanism 2018 and does not suffer any infirmity. The invoice dated 06.02.2023 raised by Discom has no relation with the matter of co-ordinate committee manner.*

vi. *The Petitioner has failed to point out any infirmity in the bill. The Petitioner has not challenged the said bill on any cognate grounds. It appears that the Petitioner intends to defer and / or avoid timely payment against said bill to enjoy unlawful gains to grave prejudice of the Respondents.*

vii. *The Petitioner has mixed following three different issues pertaining to various subject of the aforesaid two plants in an effort to create confusion:-*

a. The first issue is regarding the prayer of Petitioner to not take any coercive action regarding claim raised by MPPaKVVCL Indore (Resp. No 4) to pay supplementary demand of Rs 22258603 within a period of 15 days, be withheld till the petition is finally decided. This demand is as per Regulatory provisions.

b. The second issue is with respect to payment of inadvertent power injected into the grid by CPP of 1.5MW. This matter was placed before the Coordination committee formed on 17-11-2022 as per the order dt 22-07-22 of MPERC in petition no 22/2022. The Coordination committee Report has already been placed before the Hon'ble MPERC and it is not prudent for the petitioner to raise this issue in a separate petition when already this issue is being decided by petition no 22/2022.

c. *The third issue is related to payment of inadvertent flow where he has raised objection to settlement of this energy at nil rate. This request is not tenable because as per clause 2.3 of the PPWA for 2.55MW CPP it is clearly mentioned that the inadvertent flow of energy into the grid shall be settled at tariff based on mutual agreement between the parties which in the instant PPWA as per clause 10b is Rs0 .00 per KWH. That, in the facts and circumstances of the case it is submitted that the instant petition is sans-merit and is liable to be dismissed.*

7. Respondent No.6, SE, SLDC, MPPTCL, Jabalpur by letter dt. 17.07.2023 submitted the following in its reply:

i. *That the Respondent, State Load Despatch Centre, MPPTCL, Jabalpur hereinafter called SLDC, is the apex body for scheduling and system operation in the State of MP incorporated under Section 31 of Electricity Act 2003. In exercise of the Powers conferred under Section 31(1) of Electricity Act-2003 (Central Act 36 of 2003), the Government of MP vide order No 2489/13/04 dated 17-05-2004 has notified the State Load Despatch Centre, Jabalpur as apex body to ensure integrated operation of the power system in the state, to be operated by the State Transmission Utility, hereinafter called as STU.*

ii. *Section-32 (1) (c) of the Electricity Act 2003 is reproduced below-*

The State Load Despatch Centre shall keep accounts of the quantity of electricity transmitted through the State grid.

Thus the responsibility of State Load Despatch Centre is to prepare the monthly State Energy Account as per provisions contained in M.P. Electricity Grid Code and Clause-7(1) of MP Electricity Balancing & Settlement Code, 2015, which broadly contain the following information:

a. *Details of PAFM (Plant Availability Factor achieved during the Month in %) for each State Area Generating Station/ Independent Power Producer;*

b. *Details of mis-declaration of Declared Capability by State Area Generating Station/ Independent Power Producer (if any);*

c. *Details of Energy scheduled to Discoms from Inter State Generating Station and State Area Generating Station /Independent Power Producer;*

d. *The details of energy injection of Renewable Energy Generators (REG) at common metering point, energy purchased by Madhya Pradesh Power Management Company Limited and energy wheeled to Discoms for own use / third party sale as furnished by respective Discoms/ Madhya Pradesh Power Transmission Company Limited; and*

e. Any other details which State Load Despatch Centre feels necessary to complete the State Energy Account;

Thus, in State Energy Account, SLDC indicates the energy generated by REG Generators and energy purchased by MPPMCL, energy wheeled to Discoms in which captive user or third-party consumer of RE Generator is located in accordance with the Power Purchase and Wheeling Agreements.

iii. The Petitioner (M/s Porwal Auto Components Ltd., Dhar) has filed the present petition No. 17/2023 with a pray for issuance of direction to the respondent not to take coercive steps till the petition is decided, to set aside the bill dated 06.02.2023 for Rs. 2,22,58,603/- issued by MPPKVVCL, to extend the benefit of inadvertent energy injected into the grid and direct the respondents to modify the Agreement dated 05.11.2019 for 2.55 MW and to direct the Co-ordinate Committee to settle the issue of 1.5 MW expeditiously.

iv. It is to submit that responsibility of SLDC is limited to prepare monthly State Energy Account which contains details in terms of energy only. All the commercial settlement based on the energy indicated in the monthly State Energy Account is done by the various entities of the State Grid as per PPAs / Agreements and various regulatory provisions in this regard. Thus, commercial settlement amongst the various State Grid entities is beyond the purview of SLDC.

v. The settlement of Renewable Energy between Generator and third-party consumer / CPPs is done by the Discoms only in accordance with the provisions of Power Purchase and Wheeling Agreements.

vi. The amount claimed by the M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd. from the Petitioner is due to settlement of RE energy in 15 minutes time block as per regulatory provision. The generation of both the Solar Plants 2.55MW and 1.5MW is being consumed by the single consumer therefore two different methodology of TOD and 15 minutes time block as per PPWA cannot be adopted for providing credit to consumer. Thus, SLDC is of the view that claim raised by the M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd. is a subsequent correction in change in settlement procedure of energy drawn against contract demand in accordance with regulatory provisions.

vii. The contents of para 3.12 to 3.14 are misplaced, it is to submit that matter has already been discussed and decided in the petition no. 20 / 2022 filed before the Hon'ble Commission vide order dated 04.08.2022. The petitioner has now filed the appeal no. 396 / 2022 before Hon'ble Appellate Tribunal against MPERC order dated 04.08.2022 in petition no. 20/2022 and the matter is sub judice before Hon'ble Appellate Tribunal.

viii. Thus, owing to the roles & responsibilities of SLDC defined in Electricity Act 2003 and M.P. Electricity Grid Code, SLDC cannot offer any comments on various paras of this petition which is purely commercial and legal in nature and involves financial dispute between the Consumer and Discom.

ix. The issues under which relief is sought by the Petitioner are purely of commercial nature and be decided by the provisions of respective regulation of the Hon'ble Commission in this regard.

8. Respondent No. 5, SE O/o (CRA) SLDC, MPPTCL, Jabalpur vide letter dated 17.07.2023 stated that the relief sought by the petitioner are purely of commercial & regulatory nature pertaining to jurisdiction of MPPMCL/ MPPKVVCL, Indore. The commercial disputes arising out of PPWA, or other connected orders do not directly involve Respondent No. 5.

9. At the hearing held on 18th July 2023, Commission allowed 15 days' time to petitioner to file rejoinder and respondents were directed not to take any coercive action against petitioner till next date of hearing. The case was listed for hearing on 16.08.2023.

10. Petitioner submitted rejoinder on 09.08.2023 in which the petitioner summarizes the disputes under three issues and broadly submitted the following:

Issue No 1: - *Notice no. 1586 dated 06/02/23 for the supplementary bill for Rs. 2,22,58,603/- for the period 2017 to 2021 towards readjustment of 2.55 MW Solar CPP power on 15 minutes time block basis instead of a TOD basis*

Issue No 2: -*Non-Payment of surplus energy injected in the grid by Petitioners 2.55 MW solar CPP is a violation of M. P. E. R. C. (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 dated 19th November 2010 and first amendment 2011*

Issue No 3:-*Pending Payment of surplus energy injected in the grid by Petitioners 1.5 MW solar CPP as per M. P. E. R. C. (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 dated 19th November 2010 and first amendment 2011.*

Petitioner made detailed submissions on above issues as under:

ISSUE NO 1:- *The 15 days' notice ref 1586 dated 06/02/23 for the supplementary bill for the period 2017 to 2021 towards readjustment of 2.55 MW Solar CPP power on 15 minutes time block basis instead of TOD basis is illegitimate in lieu of Clause 12 B, 8th amendment dated 17th December 2019 of M. P. E. R. C. (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 (RG- 33 (I) OF 2010) read with Clause3(2) Objective and Scope of MPERC (forecasting, Scheduling, Deviation Settlement Mechanism and Related matter of wind and solar generating stations) Regulations 2018 dated 30/04/2018.*

- *Respondent No 2 raised a supplementary bill on 06/02/23 for Rs. 2,22,58,603.00 for 2017 to 2021 claiming that units generated by Petitioners solar CPP were earlier adjusted on TOD manner instead of 15 minutes basis. However, the letter does not specify under what regulation said a supplementary bill was raised.*

- *That the Petitioner further submits that the said notice and supplementary bill is illegitimate as the Bill is contrary to the prevailing regulations, because while raising the said supplementary bill the Respondent 2 never submitted/ supported the said bill with any regulations.*

- *That the Petitioner objected to the said supplementary bill dated 06/02/2023 (annexure P-11 of Petition) vide letter no 11 dated 15/02/2023 and explained to the Respondent that said the bill is contrary to following regulations as petitioner's is 2.55 solar CPP which is less than 5 MW capacity hence 15 minutes time block-wise adjustment is not applicable for it as per regulation and thus bill to the extent of Rs (22258603 – 172046)= 22086557 is absolutely wrong. Petitioner reproduced Clause 12 B of 8th amendment dated 17th December 2019 of MPERC (Cogeneration and Genaration of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 (RG- 33 (I) OF 2010).*

  Thus, the intent of the above regulation was to bring Renewable energy-based Captive Generating plants under the ambit of MPERC (forecasting, Scheduling, Deviation Settlement Mechanism, and Related matter of wind and solar generating stations) Regulations 2018 dated 30/04/2018 with certain limits, to be specified in said regulation.

- *that as per Clause 3, (2) Objective and Scope of MPERC (forecasting, Scheduling, Deviation Settlement Mechanism and Related matter of wind and solar generating stations) Regulations 2018 dated 30/04/2018 solar CPP up to 5 MW were not included in the scheduling regulation for 15 minutes time block accounting, relevant part reproduced by the Petitioner.*

- *That by virtue of both above regulations, Petitioner's 2.55 MW solar CPP energy was not accounted for under 15 minutes time block and should be accounted as per the ToD method as was done by Respondent 2 till the raising of an illegitimate supplementary bill.*

- *That the Petitioner again sent a reminder vide letter dated 7th April 2023 and 11th April 23 for withdrawal of the supplementary bill.*

- *That it is further submitted under section 18 of the Limitation Act 1963, the bills are under the limitation Act, relevant part reproduced below:-*

  "Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

- *Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), the oral evidence of its contents shall not be received.*

  Explanation. — For the purposes of this section,—

  (a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance, or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

  (b) the word "signed" means signed either personally or by an agent duly authorized on this behalf, and

  (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right."

*2. **ISSUE NO 2**:- That Non-Payment of surplus energy injected in the grid by Petitioners 2.55 MW solar CPP is a violation of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 (RG- 33 (I) OF 2010) dated19th November 2010 and first amendment 2011 The Petitioner submits that non-payment of surplus energy injected in the grid is contrary to the provisions of Hon'ble Commission regulations.*

- *That as per MPERC regulation 4.8 of the first amendment/addendum 2011 to MPERC (Cogeneration and Generation of Electricity from Renewable sources of energy) (Revision-I) Regulations, 2010 read with regulation 7.4. of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 (RG- 33 (I) OF 2010) dated 19th November 2010 and Regulation 4.8 of Amendment 2011, Respondent MPPMCL shall pay as per the certificate issued by DISCOM. The relevant part of Regulation 7.4 of Regulation 2010 is reproduced by the petitioner. The relevant part of Regulation 4.8 of Regulation 2011 is also reproduced by the petitioner.*

- *That the Respondents have failed to consider that the Wheeling NOC undertaking dated 28th August 17 for 2.55 MW solar CPP commissioning and LTOA was given UNDER PRESSURE to avoid closer of the solar power plant. The Respondents cannot under the garb of the undertaking can impose a condition dehors the prevailing MPERC regulations.*

- *That the Hon'ble Supreme Court has in catena of judgements held that the waive of any right should be consciously done by the parties to the contract. In the present case the Petitioner was not aware of the decision of the Hon'ble Commission in Petition No 37/2017 and has given the undertaking.*

- *That the Agreement executed between the Petitioner and the Respondents falls under the Adhesion Contract As held by the Apex Court .in various judgements and as per Black's Law Dictionary "Adhesion Contract" is defined as:*

  "A standard-form contract prepared by one party, to be signed by the party in a weaker position, usually a consumer, who has little choice about the terms. Also termed Contract of adhesion; adhesory contract; adhesionary contract; take it or leave it contract; leonire contract."

  The consumer has very little option or choice to negotiate the terms of the contract, except to sign on the dotted lines. Such contracts are obviously one-sided, grossly in favor of the dominant party due to the weak bargaining power of the consumer. (Civil Appeal No 8249 of 2022).

- *That the Petitioner approached Respondent No. 1 for the signing of PPA for the supply of surplus power with all relevant documents vide its letter dated 28th August 27.*

- *That the Petitioner submits that its 2.55 MW solar CPP was ready for commissioning as it had received charging permission from GOMP electrical inspector and Respondent MPPKVVCL had also issued final grid connectivity vide letter no 20131 dated 12/10/2017. Hence vide letter no 06 dated 12/10/2017 Petitioner wrote to Respondent MPPTCL to issue LTOA.*

- *That the Petitioner did not receive any response from Respondent 1 Petitioner wrote to the Managing Director of Respondent 1 vide its letter dated 25/10/2017 that for want of wheeling agreement, our plant could not be commissioned for long and we are losing green power generation, hence NOC shall be granted to avoid further generation loss.*

- *That the Petitioner submits that having invested about Rs 12 crores in establishing 2.55 MW solar CPP and not being able to inject power for want of PPA or wheeling NOC from respondent 2 was in a critical situation for immediate action to save its Rs 12 cr investment goes as waste and its account becoming NPA with its bank. Respondent MPPTCL vide letter ref 2701 dated 27/10/2017 required Petitioner to sign PPWA with Respondent 1 for availing LTOA.*

- *Respondent SLDC vide letter dated 31/10/17 also required a wheeling agreement from Respondent 1 for the commissioning of Petitioner 2.55 MW solar CPP.*

- *That the Petitioner was on weaker side of bargaining and could not negotiate at the cost of the investment made and even otherwise the Respondents attitude was take it or leave it. Thus under pressure Petitioner gave an undertaking dated 30/10/2017 to Respondent MPPMCL, that it will forego the claim of payment toward the flow of surplus energy into the grid and it will execute the wheeling agreement as soon as the final MPERC notified draft of wheeling agreement provided by MPPMCL.*

- *That the Petitioner submits that only after submission of the UNDERTAKING Respondent issued NOC vide letter ref 1544 dated 2/11/2017. Petitioner submits that Said wheeling NOC refers to a* ***"Pending Petition"*** *before the Hon'ble Commission in the matter of inadvertent flow of renewable energy, in case of third party /captive consumption under open access which is likely to be finalized soon. However, Petitioner did not specify Petition no, nor was Petitioner ever a party to said Petition.*

- *That the 3-judge bench of AM Khanwilkar, BR Gavai* and Krishna Murari has explained the true test to determine whether a party has waived its rights or not. It has held that for establishing waiver, it will have to be established, that a party expressly or by its conduct acted in a manner, which is inconsistent with the continuance of its rights. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them (Kalparaj Dharamshi v. Kotak Investment Advisors Ltd, 2021 SCC On Line SC 204).*

  In the present case the Petitioner was not aware of the fact that the Hon'ble Commission had vide order dated 29.11.2017 in Petition No 37 of 2017 preferred by the Respondents have clarified the issue involved.

- *That the Respondent MPPMCL had filed the above Petition before the Hon'ble Commission for the under mentioned relief: -*

  (i) To amend Regulation 4.8 of the first amendment/addendum to MPERC (Cogeneration and Generation of Electricity from Renewable sources of energy) (Revision-I) Regulations, 2010 and in this Regulation, phrase Power Purchase and Wheeling Agreement(s) {PP & WAs) may be replaced with the Power Wheeling Agreement (s) {PWAs};

  (ii) To review and/or modify the relevant provisions of the tariff orders to the effect that the tariff for such inadvertent flow of power into the system by the Electricity Generators from new and renewable sources of energy is nil;

  (iii) To allow Discom(s) to execute the Power Wheeling Agreement (PWA) which contains the provisions of energy accounting under the ambit of ABT metering (i.e. 15 minutes block-wise consumption credit against the corresponding 15-minute block of RE injected by RE generators) for third party sale or captive consumption of Renewable Energy.

  (iv) To issue RE Deviation Settlement Regulations including inadvertent flow of RE onto the system.

  However, the Hon'ble Commission did not give the above relief and instead directed respondent MPPMCL that ***it would not be appropriate to replace the phrase Power Purchase and Wheeling Agreement(s) {PP & WAs) with the Power Wheeling Agreement (s) and to amend the relevant Regulations. Further, the tariff for such inadvertent flow of power into the system by the Electricity***

Generators from new and renewable sources of energy is nil, is not tenable. Also, execution of only the Power Wheeling Agreement (PWA) for third-party sale or captive consumption of Renewable Energy cannot be allowed under the present circumstance and directed the petitioner to explore the possibility of making legally tenable appropriate changes in the aforesaid Power Purchase Agreements after arriving at the mutual consent with the RE generators.

- *That therefore the Petitioner alleges that Respondent MPPMCL in clear violation of said order forced Petitioner to sign PPWA for sale of surplus power at ZERO rate. Signing of PPWA on 05/11/2019 with the condition of Zero paise payment for surplus energy UNDER PRESSURE TO AVOID CLOSER OF SOLAR POWER PLANT, hence it is invalid to the extent it is not in line with prevailing MPERC regulations*

- *That even after having failed to get an amendment in regulation 4.8 in Petition 37/2017, Respondent MPPMCL went ahead with its agenda of not giving any credit for the injection of surplus power in the grid by solar CPP and sent PPWA to Petitioner vide mail dated 31/08/2018 without any credit for surplus energy.*

- *That the* ***Petitioner objected to the condition of zero paise credit for injection of surplus energy and submitted a corrected draft agreement as per regulation 4.8 but Respondent did not agree.*** *Respondent MPPMCL vide letter ref 546 dated 30/06/2018 provided a draft of PPWA with the specific condition of zero paise payment towards surplus energy injected in the grid by the solar plant, in light of undertaking given for wheeling of power.*

- *That Petitioner objected to said condition of zero paise payment for surplus energy in the draft PPA however Petitioner received notice no 1185 dated 01/09/2018 from Respondent MPPKVVCL that PPWA with MPPMCL shall be provided otherwise credit of energy injected by Petitioner 2.55 MW solar CPP shall not be given from next month.*

- *That a meeting was held on 27/09/2018 under the chairmanship of the Managing Director of Respondent MPPMCL with developers of solar generators and representative of MPPKVVCL and MP Genco for negotiating a rate for surplus energy injected by solar generators. During the meeting, the MPGENCO representative suggested Rs 1 per unit price for surplus energy. Developers of solar plants could not agree to this proposal.*

- *That Respondent MPPKVVCL stopped giving credit of energy from its solar CPP in August 2018 hence* ***UNDER PRESSURE,*** *Petitioner wrote a letter no 02 dated 1 2nd September 2018 to Respondent MPPMCL that Petitioner shall visit their office on 14th September 2018 for the signing of the agreement. Petitioner submits that on 5th November 2019 UNDER PRESSURE, PPWA was signed by Petitioner.*

- *That for ready reference the Petitioner has in a tabular form tried to enumerate the clause of the Agreement that are inconsistent MPERC co-generation regulation and order in Petition no 37/2017, detailed below:-*

S no	*PPWA clause*	*Cogeneration regulation /MPERC orders*	*Remark*
1	*Clause 2.3 – Notwithstanding anything* *As explained in any regulation, policy, and tariff order, settlement of inadvertent flow of energy into the grid by MPPMCL shall be settled at the tariff based on mutual agreement among the parties, in line with the MPERC order dated 29th November 2017 in the petition 37/2017*	*As per MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION (Conduct of Business) (Revision-I) Regulations, 2016 clause 53 (2) "(2) Notwithstanding such repeal, anything done or any action taken or proposed to have been done or taken including any code, notification, inspection or order or notice made or issued or any appointment, confirmation or declaration made or any license, permission, authorization, or exemption granted or any document or instrument executed or any direction given under the repealed regulations shall, in so far as it is not inconsistent with the provisions of the Regulation, be deemed to have been done or taken under corresponding provisions of the Regulations"*	*Hence all clauses in PPWA which are inconsistent with prevailing regulations are invalid.* *1. Clause 2.3 is inconsistent with regulation 4.8 of ARG-33(I)(i) of 2011 dated 30th June 2011*
2	*Clause 10 (b)- INJECTING INADVERTENT ENERGY INTO THE GRID:- In line with the MPERC order dated 29th November 2017 in petition 37/2017, it is agreed by the parties on a*	*Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 {ARG-33(I)(i) of 2011} clause 4.8 as described above under para 2.2 above requires signing of PPWA at rate determined by MPERC*	*Clause 10 (b) is inconsistent with regulation hence invalid*

	mutual consent basis that in case of inadvertent energy injection into the grid, the same shall be settled at tariff at Rs 00 (zero)/Kwh		
3	*ENERGY ACCOUNTING- Clause 11.1: - Energy accounting and determination of deviation charges shall be done by SLDC and deviation charges shall be applicable as per the provisions of MPERC (forecasting, scheduling, deviation settlement mechanism, and related matters of wind and solar generating stations)2018 and subsequent amendments from time to time.* *11.2 The DISCOM (concern S E (O & M) in whose area, the energy drawl point is situated) shall provide the credits of the*	*As per clause 3 (2) MPERC (forecasting, scheduling, deviation settlement mechanism, and related matters of wind and solar generating stations) 2018). Objective and scope – These regulations shall be applicable to seller(s) and Buyer(s) involved in the transactions facilitated through Short term open access, Medium term open access or long term open access in the inter sate transmission or distribution of electricity (including intra state wheeling of power), as the case may be in case of all wind generators having a combined capacity of 10 MW and above and solar generators with capacity of 5 MW and above including those connected via pooling substation and selling power within state or out of state.*	*Clause 11.3 is inconsistent with scheduling regulation as Petitioner's solar plant capacity is only 2.55 MW and, on this feeder, there is no other solar plant connected. Hence 15 minutes time block energy accounting not applicable and TOD adjustment to be done.* *Supplementary Bill for 2.55 MW plant to be reversed*

	units, after deducting applicable wheeling charges/energy losses as decided by MPERC, every month for the captive use in its HT energy bill. *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 block as per allocation indicated by the company in Annexure IV (a). In the case of 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 the balance energy supplied*		

	shall be billed by the concerned DISCOM at the applicable tariff as per the terms and conditions of the HT agreement subsisting between the consumer and the concern DISCOM. Further, if the block-wise energy recorder at the meter at the drawl point in a particular month is less than the corresponding block-wise wheeled energy then the balance energy supplied shall be treated as inadvertent energy injected into the grid, which shall be settled at Rs 00 Zero/kwh		

- *That the Petitioner further submits that Subsequent to the signing of PPWA on 05/11/2019, Hon'ble Commission notified 8th amendment dated 17th December 2019 of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 (RG- 33 (I) OF 2010) The following regulations are important in the present case hence are reproduced below:-*

  Clause 12 (A) The Principles, Energy Accounting and Settlement, RPO, and manner of application of renewable energy-based captive generating plant shall be as under:

a) The renewable energy-based captive generating plant, whether installed in the premises of its captive user (s) or outside the premises of its captive user (s) shall be eligible to sale its surplus power to the distribution licensee subject to the provisions of these regulations, provided that :

i) The captive user (s) of such renewable energy generation plant shall mandatorily be a consumer(s) of any distribution licensee in the State of Madhya Pradesh.

ii) The expenses, if any, incurred on the infrastructure development for evacuation of power are required to be borne by the Renewable energy-based captive generating power plant.

iii) The captive consumer is not availing of the facility of net metering on its premises in accordance with the Madhya Pradesh Regulatory Commission (Grid connected net metering) Regulations, 2015 amended from time to time.

As per clause 12 D Processing of application and applicable fee(i) The renewable energy-based captive generating plants intending to avail facility made available under the provisions of this amendment shall have to submit an application and register with the distribution licensee through a specific application form as provided by the Distribution Licensee ……..

Vide letter dated 14/05/2020 Respondent MPPKVCL registered petitioners 2.55 Solar CPP as per registration no 5277 dated 20/05/2020.

- *That after 12 D registration, Respondent MPPMCL shall have to pay for surplus energy.*

COVID-19 AND PAYMENT FOR SURPLUS INJECTION DURING LOCKDOWN: -

- *That due to lockdown by local administration vide order reference 3787/sw/2020 dated 23/3/2020, its factory was closed. However in lieu of MNRE, New Delhi notification ref F. No. 283/20/2020 GRID SOLAR (ii) dated 4th April 2020 for must-run status and Grid code of India, both solar plants of Petitioner were running hence vide letter Ref: MPPMCL/PACL/01 Date: 2nd April 2020, Petitioner requested Respondent MPPMCL to pay for surplus energy injected into the grid and also amend PPWA in lieu of 8th amendment of dated 17th December 2019 of MPERC (COGENERATION AND GENERATION OF ELECTRICITY FROM RENEWABLE SOURCES OF ENERGY)(REVISION I) REGULATIONS 2010 (RG-33 (I) OF 2010.*

- *That Respondent MPPMCL offered to sign a revised PPWA in 2021 contrary to the provisions of the Tariff order not allowing incentives under tariff HV-3. Vide mail dated 08/04/2021 and letter dated the same, Respondent MPPMCL sent a draft of revised PPWA to Petitioner. However, this draft had clause 2.4 regarding non-payment of incentives under tariff HV-3. Relevant clause reproduced below:-*

"The captive consumer/user of such Renewable Energy based Captive Generating Plant shall not be eligible for any rebates for captive power plant consumers under HV- 3 categories in the applicable Retail Supply Tariff Order for Distribution Licensees issued by the Commission

- *That Petitioner vide mail dated 9th April 2021 submitted draft PPWA with correction in clause 2.4 as under:- The captive consumer/user of such Renewable Energy based Captive Generating Plant shall not be eligible for **rebate in retail tariff order to " captive generating plants"** As per Specific Terms and Conditions Clause (f) Rebate for Captive power plant consumers: as specified in General Terms and Conditions of High Tension Tariff as per Tariff Schedule - HV - 3 INDUSTRIAL, NON-INDUSTRIAL AND SHOPPING MALL.*

- *That Petitioner had written several letters to all Respondents since 2nd April 2020 for payment of surplus power but without any result. Respondent MPPMCL reply no 730 dated 04/06/2020 and Respondent MPPKVVCL letter ref **17638 dated 30.12.2020.***

MPERC ORDER DATED 29TH JUNE 2021 IN PETITION NO 66 OF 2020

- *That Hon'ble Commission in its order dated 29th June 2021 in Petition no 66/2020 in the case of Porwal Auto Components Ltd. (Solar Division) Plot No. 209, Sector-1, Pithampur Distt. Dhar (MP) – 454 775 - Petitioner Vs. The Managing Director M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd. GPH Compound, Pologround, Indore – 452001 – Respondent under para 9 (iii) has clearly directed that under 12 D incentives are available, relevant para is reproduced below:-*

  (iii) Eighth Amendment to MPERC (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulations, 2010 was notified on 17th December' 2019. Regulation 12 (D)(i) of aforesaid Regulations provides as under: "12-D (i) The Renewable Energy based Captive Generating Plants intending to avail the facility made available under the provisions of this Amendment shall have to submit an application and register with Distribution Licensee in the specified form as provided by the Distribution Licensee along with non-refundable registration fee of Rs. 1000 (One Thousand Only) at the office designated by the concerned Distribution Licensee. The Distribution Licensees shall provide the details of their respective designated offices on their web-site in this regard. The Distribution licensee shall make the form available on its website and at its designated office. The existing Captive RE Consumers who intend to avail the above facility shall also be required to submit the application and register their Renewable Energy based Captive Generating Plant with the concerned Distribution Licensee. No fee shall be levied on existing Renewable Energy based Captive Generating Plant."

- *That petitioner vide letter dated 15/02/2020 applied for Registration of its solar captive power plants under Regulation 12 D of Eight Amendment to MPERC (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulation. The above-mentioned solar captive power plants of the petitioner were registered by the Respondent accordingly.*

- *After Registration under Regulation 12 D of Eight Amendment to MPERC (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulations, 2010, the exemptions available under Regulation 12(B)(iv) of the aforesaid amendment were given by Respondent to petitioner. At the same time, the rebates applicable for incremental consumption to the petitioner for its existing HT connections and ToD have been stopped by the Respondent. Therefore, the petitioner has filed this petition against disallowance of Time of Day (ToD) Rebate (as specified in General Terms and Conditions of High-Tension Tariff in Retail Supply Tariff order) by the Respondent. The petitioner has requested to direct the Respondent to allow ToD rebate.*

- *That the issue involved in the subject petition is confined to the provision under Regulation 12(B)(v) of Eighth Amendment to MPERC (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulations, 2010 which provides as under:*

  "12(B) Forecasting, Scheduling, Energy Accounting and Settlement. …… (v) The captive consumer/user of such Renewable Energy based Captive Generating Plant shall not be eligible for any rebates for Captive power plant consumer under HV-3 category in applicable Retail Tariff Order for Distribution Licensees issued by the commission."

- *That it is clearly provided in the above Regulation that the Renewable Energy based Captive Generating Plant, which is registered under Regulation 12 (D), shall not be eligible for any rebates for "Captive power plant consumers" under HV-3 category in applicable Retail Supply Tariff Order. Therefore, in terms of the aforesaid Regulation 12 (B) (v), after registration under Regulation 12(D) of Eighth Amendment to MPERC (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulations, 2010, the petitioner shall not be eligible for rebate applicable under clause (f) with the heading "Rebate for Captive power plant consumers" under specific terms and conditions of Tariff Schedule HV-3 of Retail Supply Tariff Order issued by this Commission. It is however clarified in the letter and spirit of the aforesaid amendment that even after having registered under Regulation 12(D) of the Eighth Amendment to MPERC (Co-Generation and Generation of Electricity from Renewable Source of Energy) (Revision -I) Regulations, 2010, the petitioner is eligible for Time of Day (ToD) Rebate under General Terms and Conditions of High-Tension Tariff mentioned in Retail Supply Tariff Order.*

- *That Petitioner alleges that after said order by Hon'ble Commission Respondent MPPMCL did not sign the revised PPWA in utter violation of said order. Hence Petitioner sent letter Ref: PACL/ENP/MPPMCL/07 Date: 14th August 2021 for the signing of revised PPWA and also for payment of Rs 20,59,641.00 towards injection of surplus power in the grid.*

MPERC (CO-GENERATION AND GENERATION OF ELECTRICITY FROM RENEWABLE SOURCES OF ENERGY) (REVISION -II) REGULATIONS, 2021 dated 02.11.2021

Para 11 up to 11.4 is relevant in the matter hence reproduced by the petitioner.

- *Respondent MPPKVVCL vide letter 17069 dated 13/12/2021 informed Petitioner that in order to avail facilities under said regulation, Petitioner shall submit form RE 04.*

- *That the Petitioner applied for registration and Respondent MPPKVVCL and Respondent MPPKVVCL registered the 2.55 MW captive solar plant of the petitioner vide letter ref MD/WZ/05/ Comm-HT/11.4 (a)Regulation/586 dated 15/01/2022.* ***Petitioner submits that said registration again entitles Petitioner to sale surplus energy to Respondent MPPMCL and claim payment for same****.*

Petition no 22/2022 before Hon'ble MPERC for recovery of payment towards injection of surplus energy by 2.55 MW solar CPP

- *That when all its efforts with Respondent MPPMCL and MPPKVVCL to recover payment towards surplus energy, Petitioner filed a Petition before Hon'ble Commission for directing Respondent MPPMCL to pay for surplus energy injected in the grid as per cogeneration regulations.*

- *Hon'ble commission disposed of said Petition with the directions, that the mechanism to resolve disputes between parties that are signatories to the agreements namely, Power Purchase and Wheeling Agreements, be first set up and thereafter, if through this process it is not possible to settle the dispute, the matter be referred to the Commission for adjudication. Therefore, it is directed that a Co-ordination Committee be constituted in terms of Clause 3.1 of the PPWAs and the dispute in this matter be first referred to the aforesaid Co-ordination Committee in accordance with relevant clauses for dispute resolution in the respective PPWAs.*

Accordingly, on 17th November 2022, a committee of 6 members was formed as under: -

S no	*Name and designation*	*Address*	*Remark*
1	*Shri Baljeet Singh Khanooja CGM (C-NCE)*	*RO, MPPMCL, Bhopal*	*Chairman*

2	*Shri R. K. Thukral GM (Solar)*	*RO, MPPMCL, Bhopal*	*Member*
3	*Shri Nirmal Sharma SE (Com-HT)*	*MPPaKVVCL, Corporate Office, Indore*	*Member*
4	*Shri Anurag Mishra SE (SLDC)*	*MPPTCL, Jabalpur*	*Member*
5	*Shri Debashish Chakraborty, SE*	*O/o ED (CRA), Jabalpur*	*Member*
6	*Shri Ajay Porwal, Consultant, Electricity no problem*	*Plot No. 209 & 215, Sector-I Industrial Area, Pithampur*	*Member*

- *During the meeting members of MPPMCL, MPPKVVCL, SLDC, and MPPTCL raised the issue of irrevocable undertaking given by Petitioner for wheeling NOC dated 30/10/2017 and that PPWA dated 5/11/2019 was signed with ZERO rate for surplus energy.*

- *However, Petitioner's representative argued that undertaking had to be given as without same, LTOA was not approved. Petitioner representative further explained that Hon'ble Commission in Order dated 17/11/2017 in case no 37/2017 and insisted that settlement of surplus energy shall be done as per the Hon'ble commissions prevailing regulations.*

- *Petitioner submitted surplus energy bill for 1.5 solar plants at APPC rate in respective year as per regulation vide letter ref 21 dated 23/12/2022 for Rs 75,40,935/ and for 2.55 MW at lowest solar tariff determined in respective year for Rs 1,80,13756/.*

- *That these bills could not be raised as Respondent never gave break up of surplus energy from both the solar generators.*

- *That only after coordination committee meeting dated 17th November 2022, it was clear to Petitioner to segregate the surplus unit of the basis of solar plant capacity as the HT bills raised by Respondent MPPKVVCL is on gross of credit from both the generators. SE (Com-HT) of WZ agreed to examine the bills submitted by the Petitioner.*

- *Petitioner further submits that vide letter ref 313 dated 24/03/2023 Respondent MPPMCL returned the bills submitted by Petitioner as under: -*

  1. For 1.5 MW bills, the matter is pending before the committee, and the next meeting is proposed in April 2023 first week and the bills shall be verified and examined by DISCOM.

  2. For 2.55 MW, PPWA is signed with a ZERO rate for surplus energy.

Petitioner submits that from the above letter, it was clear that the payment for surplus energy injected by 1.5 MW was under consideration by the committee but 2.55 MW surplus energy payment was not considered.

- *Subsequently, another meeting was held on 12th April 23 only issue discussed was FORCED MAJEURE CLAUSE in both PPWA and all Respondent committee members were firm on the issue.*

- *Petitioner decided not to object to this and decided not to pursue the payment during COVID-19 FROM 1.5 MW SOLAR CPP as a committee was willing to consider payment of surplus energy as per letter dated 24/03/2023. This decision of Petitioner was taken as a GOOD JUSTURE to settle the dispute for 1.5 MW CPP, even though its solar plant had MUST RUN STATUS DURING COVID 19 FORCED MAEJURE SITUATION.*

Petitioner further submits that for recovery of surplus energy for 2.55 MW it had option to approach Hon'ble Commission as per order in case no 22/2022.

Issue no 3:- Payment of surplus power injected by Petitioner's 1.5 MW Captive solar power plant since 2017:-

- *Petitioner submits that after the issue of a letter dated 24/03/2023 by Respondent MPPMCL, Petitioner has received part payment of surplus energy amounting to Rs 12,39,435/- for the period of 2017-2019.*

- *Petitioner submits that it will submit all bills pertaining to 1.5 MW surplus energy and wait for the payment from Respondent MPPMCL till then wish to keep the matter in abeyance.*

- *Petitioner also submitted the para wise reply on the reply of Respondents reiterating points mentioned above.*

ADDITIONAL GROUNDS OVER ABOVE RAISED IN ORIGINAL PETITION

- *Hon'ble APPELLATE TRIBUNAL FOR ELECTRICITY in appeal no 319 of 2018 &IA no 1534 of 2018, appeal no 288 of 2019 & IA no 1997 of 2019, appeal no 377 of 2019 and appeal no 378 of 2019 dated: 27th April, 2021 has held as under: -*

  Hon'ble APTEL has held that surplus power injected in the grid by renewable generators is due to wind/solar radiation availability and ought to be compensated to CPP.

11. At the hearing held on 16th August 2023, Petitioner as well as Respondents completed their arguments in the matter. On the request of petitioner and respondents, 7 days time was allowed for making written submission. The case was reserved for orders.

12. Respondent No. 4 MPPaKVVCL, Indore by letter No. 12210 dt. 21.08.2023 made following additional submissions in its final argument:

- *That the petitioner understands all the conditions of PPWA and petitioner agreed every condition of PPWA and signed PPWA. Petitioner working on PPWA since 4 years and now he has taken objection on conditions of PPWA. It is legally null and void. In these circumstances, Evidence Act section 115 is attracted here:*

  Evidence Act section 115 Estoppels :-

  When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

  Machala Bai V/s Nanak Ram (MPLJ 2006 (2) 484)

  Hon'ble High Court Judgment is perfect fit on in this case circumstances in favor of respondents. Relevant Para is –

- ***"Evidence act section 115 and 21 – Admission in written statement – appellant is stopped from challenging admission in written statement – Such admission is binding in appellant.***

- *That the petitioner stated that the invoice dated 06.02.2023 is time bard and also coated provisions of limitation act and section 56 of Electricity Act-2003. Regarding that* ***Hon'ble Supreme Court passed an order dated 18.02.2020 Assistant Engineer, Ajmer Vidyut Vitran Nigam Ltd. V/s Rahamatullah Khan. (2020) 4 SCC 650 Relevant Para is reproduced by the Respondent.*** *This judgment is perfect fit on in these case circumstances in favor of this respondent.*

13. Petitioner vide his affidavit dated 25.08.2023 made final additional submissions as follows: -

(1) Issue no. 1 for supplementary bill of the Respondent MPPKVVCL on the basis of 15 minutes time block is illegitimate and needs to be revised on a ToD basis.

- *This Petitioner further submits that as per the electrical inspector's permission, ref 1032 dated 15/09/2017 each inverter of 50 KW and associated solar panels is one generator which is generating power at low voltage 415 Volts.*

- *This permission also has a 3600 KVA, 0.4/33 KV step-up inverter transformer (pooling station within the premises of the solar plant) which is the pooling substation for 52 nos 50 KW solar generators of Petitioner.*

- *As per CEA regulation (technical standards for connectivity with grid) dated 15th October 2013, regulation 2 (b)in clause 14 " In case of solar photovoltaic*

generating stations each inverter along with associated modules will be reckoned as a separate generating station.

- *Hon'ble Commission notified MPERC (forecasting, Scheduling, Deviation Settlement Mechanism, and Related matter of wind and solar generating stations) Regulations 2018 dated 30/04/2018. The under mentioned provisions in said regulation are relevant and hence reproduced below: -*

  Clause 2(m) Interconnection point regulation 2 (m) in the 2018 regulation" Interconnection point means the HV side of the pooling station (line isolator of the outgoing feeder of the HV side of the pooling substation) which shall be the same level at which forecast and schedule need to be prepared by the wind and solar generating station for onward submission to SLDC.

  2(r) Pooling station regulation 2(r):- Pooling station means the substation where the pooling of generation of individual generators is done for interfacing with the next higher voltage

  Clause 3 (2) OBJECTIVE AND SCOPE:-These Regulations shall be applicable to Seller(s) and Buyer(s) involved in the transaction facilitated through short-term open access or medium-term- open access or long-term open access in intra-state transmission or distribution of electricity (including intra-state wheeling of power), as the case may be, in respect of all wind generators having a combined installed capacity 10 MW and solar generators with an installed capacity of 5 MW and above including those connected via pooling stations and selling power within or outside the State.

- *In the present case, 52 nos 50 KW solar generators are generating 2.55 MW power at 415 volts and then a pooling substation of 0.4 /33 KV, 3600 KVA is installed, and main and check meters are installed within the solar plant premises along with a standby meter at 33 KV delchi end.*

- *Petitioner submits that it's solar plant is not installed in a solar farm and hence connected with a separate LV feeder at 415 volts before its 0.4/33KV to its own dedicated 0.4/33KV, 3600 KVA pooling substation with a maximum transmission capacity of 2.55 MW, which is less than the 5 MW limit as provided under regulation 3.2 and the main and check meters were installed on 2.55 MW (50x52 nos) solar generator unlike in case of wind generators where only one set of meters is installed for all wind generators in the wind farm and energy accounting for individual wind generators by the developer of a wind farm.*

- *Petitioner submits that even if another solar generator was connected to the same 33 KV feeder after its 3600 KVA, 0.4/33 KV dedicated pooling substation and respective main and check meters for energy accounting then in light of para 3.2 above, the Petitioner's solar generator energy accounting should have been on TOD basis only and not on 15 minutes time block.*

Hence the supplementary bill of the Respondent MPPKVVCL on the basis of 15 minutes time block is illegitimate and needs to be revised on TOD basis

(2) Issue no. 2 for Payment of surplus energy injected into the grid by 2.55 MW solar CPP: -

Since the issue of payment for surplus energy injected into the grid could not be resolved for 255 MW solar CPP, Petitioner filed this petition. Respondent MPPMCL and MPPKVVCL may be directed to pay for surplus energy injected into the grid.

(3) Issue no 3 for payment for surplus energy injected by 1.5 MW solar CPP of Petitioner:-

Petitioner submits that it has received payment of a few bills for surplus energy injected and other bills are under process. Hence Petitioner does not wish to pursue this matter at this stage but would like to reserve its rights to agitate in the future if payment is not made by Respondents to it as per prevailing regulations.

14. Last hearing in the subject matter was held on 16th August' 2023 on which arguments were heard and the case was reserved for Orders.

Commission's observations and findings:

15. The Commission has observed that the petitioner has based his case on following submissions:

    1. That the PP&WA dated 05.05.2014 executed for 1.5 MW Solar CPP has provision of energy accounting in HT connection on TOD block manner and therefore energy has to be accounted as per the provisions of PP&WA.

    2. That the 1.5 MW Solar CPP is out of ambit of scheduling as per the provisions of MPERC (forecasting, Scheduling, Deviation Settlement Mechanism and Related matter of wind and solar generating stations) Regulations 2018, as its capacity is less than 5 MW. Since, the 1.5 MW CPP is not subject to scheduling, energy accounting should have not been done in 15 minutes time block as per clause 12 B of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 (RG- 33 (I) OF 2010, 8th amendment) dated 17th December 2019 read with clause 3 (2) of MPERC (forecasting, Scheduling, Deviation Settlement Mechanism and Related matter of wind and solar generating stations) Regulations 2018 dated 30/04/2018.

    3. That the demand for Rs. 2,22,58603/- for the period from November 2017 to June 2020 and also for October and November 2020, raised by Respondent no. 4 on 06.02.2023 revising the TOD based billing to 15 minutes time block-based billing in respect of 1.5 MW Solar CPP is time barred under limitation act.

4. That despite order dated 29.11.2017 passed by this Commission in Petition no. 37/2017 with the observation that settlement of inadvertent flow of power at Nil rate is not tenable, Respondent No. 1 to 3 forced them to execute PP&WA on 05.11.2019 in respect of 2.55 MW Solar CPP with the provisions of settlement of inadvertent flow of power at "Zero" rate, which is in violation of regulation of Hon'ble Commission.

5. That the wheeling undertaking for 2.55 MW for settlement of inadvertent flow of power into the grid with Zero rate was signed by the Petitioner UNDER PRESSURE to avail long-term open access for its solar plant which was withheld by respondent's contrary to the provisions of the cogeneration regulations 2010 and amendments.

6. That a petition No 22/2022 was filed before Commission in the matter of non-compliance of MPERC (Co-generation and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 and its amendments for non-payment of surplus energy injected in Grid by 1.5 MW and 2.55 MW solar captive power plants on which Hon'ble Commission vide order dated 22.07.2022 had directed that a Co-ordination Committee be constituted in terms of Clause 3.1 of the PPWAs and the dispute in this matter be first referred to the aforesaid Co-ordination Committee in accordance with relevant clauses for dispute resolution in the respective PPWAS. Co-ordination Committee however decided to fix the rate of flow of inadvertent power at "Zero" which was in violation of the provisions of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 as amended.

7. Petitioner has therefore prayed that the revision of billing of HT connection based on 15 minutes time block energy settlement in respect of 1.5 MW Solar CPP is against the provisions of agreement as well as MPERC (forecasting, Scheduling, Deviation Settlement Mechanism and Related matter of wind and solar generating stations) Regulations 2018 and nonpayment of inadvertent flow by 2.55 MW Solar CPP based on agreement with "Zero" rate and Co-ordination Committee recommendation to settle such energy with "Zero" rate is against the provisions of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 as amended.

8. Petitioner has submitted that he does not want to pursue the matter regarding non-payment of inadvertent flow of energy in respect of 1.5 MW CPP at this stage as respondent MPPMCL has made payment of some bills. Petitioner wishes to reserve its rights to agitate in the future if full payment is not made by Respondents to it as per prevailing regulations.

16. Respondent No. 1, 2 & 3 countered the petition on following main grounds: -

1. *That the Petitioner was not a party to Petition No. 37/2017 and by order dated 29.11.2017, Hon'ble Commission had merely rejected the plea of MPPMCL to amend the relevant provisions of the tariff order to the effect that the tariff for inadvertent flow of power into the grid is nil. That, does not mean that the parties cannot mutually choose and agree for a tariff which is lower than the tariff mentioned in the tariff order. The respective PPWA was executed by the Petitioner of its free will and in all consciousness after having understood the contents of the same. Therefore, the Petitioner cannot seek get the PPWA altered in any way. There is nothing in the said order dated 29-11-2017, the benefit of which can be extended to the Petitioner.*

2. *That, Hon'ble Commission in said petition 37/2017 directed the petitioner that looking to the current scenario of the development of RE projects, the petitioner may explore the possibility of making legally tenable appropriate changes in the aforesaid power purchase Agreements after arriving at the mutual consents with the RE generators. That, Co-ordination Committee was set up to decide the issue of payment of inadvertent energy of 1.5 and 2.55 MW for a particular period for which minutes of meeting had already been issued on 12.04.2023 and same was informed to commission along with Petitioner vide letter dated 17.04.2023 wherein it was deliberated that as per data submitted by West Discom there was an inadvertent flow from the date of commissioning of 2.55 MW plant, however considering his undertaking, generator had not raised any invoices for energy related to inadvertent flow up to the instant case. Now generator is raising the invoice under the ambit of Force Majeure, where under the provisions of this clause it is provided that no party is liable for any claims due to events leading to Force Majeure conditions and thus after examining the claims they are not found to be tenable. In view of the above, as per the Force Majeure Clause, it is evidently clear that no claim by either of the parties can be raised due to conditions creating Force Majeure. Thus, the claim of the Generator to pay for the inadvertent flow due to Force Majeure event is not tenable.*

3. *That the issue related to payment of inadvertent flow where he has raised objection to settlement of this energy at nil rate is not tenable because as per clause 2.3 of the PPWA for 2.55MW CPP, it is clearly mentioned that the inadvertent flow of energy into the grid shall be settled at tariff based on mutual agreement between the parties which in the instant PPWA as per clause 10b is Rs 0 .00 per KWH.*

17. Respondent No. 4 countered the petition on following main grounds: -

1. *In line with the MPERC order dated 29th Nov 2017 in petition 37/2017, it was agreed by the parties on mutual consent basis through PP&WA that in case of inadvertent energy injection into the grid, the same shall be settled at tariff at Rs. 00.00 (zero) / kWh.*

2. *That as per 11.3 of PP&WA of 2.55 MW Solar CPP, energy settlement is to be done on 15 minutes time block period as under: -*

   "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 block, as per allocation indicated by the Company in Annex-IV (a). 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 conditions 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 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 tariff at Rs. 00.00 (zero)/kWh."

3. *That PPWA for captive use of 1.5 MW Solar PV Plant of M/s Porwal Auto Components Ltd., executed between M/s Porwal Auto Component Ltd., M.P. Power Management Co. Ltd. and Madhya Pradesh Paschim Kshetra Vidyut Vitran Company Ltd., the energy accounting is to be done as per TOD (Time of Day) concept but it is not practically feasible to provide different type of solar credit adjustment (i.e., TOD manner and 15-minute block) against a single service connection. Therefore, generation of the both generators (2.55 MW Solar Power Plant and 1.5 MW Solar Power Plant) has been adjusted in 15-minute block manner and supplementary bill of Rs. 2,22,58,603/- was issued to the petitioner.*

18. Respondent No. 5 & 6 have also made following main submissions: -

1. *That, Hon'ble Commission in said petition 37/2017 directed the petitioner that looking to the current scenario of the development of RE projects, the petitioner may explore the possibility of making legally tenable appropriate changes in the aforesaid power purchase Agreements after arriving at the mutual consents with the RE generators. That, Co-ordination Committee was set up to decide the issue of payment of inadvertent energy of 1.5 and 2.55 MW for a particular period for which minutes of meeting had already been issued on 12.04.2023 and same was informed to commission along with Petitioner vide letter dated 17.04.2023 wherein it was deliberated that as per data submitted by West Discom there was an inadvertent flow from the date of commissioning of 2.55 MW plant, however considering his undertaking, generator had not raised any invoices for energy related to inadvertent flow up to the instant case. Now generator is raising the invoice under the ambit of Force Majeure, where under the provisions of this clause it is provided that no party is liable for any claims due to events leading to Force Majeure conditions and thus after examining the claims they are not found to be tenable. In view of the above, as per the Force Majeure Clause, it is evidently clear that no claim by either of the parties can be raised due to conditions creating Force*

Majeure. Thus, the claim of the Generator to pay for the inadvertent flow due to Force Majeure event is not tenable.

2. *That, the impugned bill amounting to Rs. 2,22,58,603/- has been issued by MP Paschim Kshetra Vidyut Vitaran Company and is related to difference of energy derived from change of method of settlement of energy from TOD manner to 15 minute as per PPWA and as per Forecasting, Scheduling and Deviation Settlement Mechanism 2018 and does not suffer any infirmity. The invoice dated 06.02.2023 raised by Discom has no relation with the matter of co-ordinate committee manner. The Petitioner has failed to point out any infirmity in the bill. The Petitioner has not challenged the said bill on any cognate grounds.*

3. *That the demand raised by MPPKVVCL, Indore for Rs 22258603/- is as per Regulatory provisions.*

4. *That the payment of inadvertent flow is not tenable because in clause 2.3 of the PPWA for 2.55MW CPP, it is clearly mentioned that the inadvertent flow of energy into the grid shall be settled at tariff based on mutual agreement between the parties which in the instant PPWA is Rs 0 .00 per KWH.*

19. In light of the above submissions from Petitioner and Respondents, following issues have emerged for adjudication in the matter: -

I. Supplementary demand dated 06.02.2023 raised by Respondent No. 4 for Rs 22258603/- for the period Nov 2017 to June 20, Oct 20 & Nov 2020 in respect of change of energy settlement mechanism in respect of 1.5 MW Captive Solar Plant from TOD to 15 minutes time block and withdrawal of captive benefits from July 20 to May 21 on account of cancellation of Captive Registration under Clause 12 D of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 as amended from time to time.

II. Payment towards surplus energy injected into the grid by 2.55 MW Solar Plant

III. Payment towards surplus energy injected into the grid by 1.5 MW Solar Plant

20. Petitioner in his written submission made on 19.08.2023 has mentioned that they have received payment of a few bills for surplus energy injected by 1.5 MW Solar CPP and other bills are under process. **Hence Petitioner does not wish to pursue this matter at this stage** but would like to reserve its rights to agitate in the future if payment is not made by Respondents to it as per prevailing regulations.

21. In view of the additional submission made by Petitioner on 19.08.2023 with regard to issue no. III, Commission would confine its findings and decision on remaining 2 issues namely: -

I. Supplementary demand dated 06.02.2023 raised by Respondent No. 4 for Rs 22258603/- for the period Nov 2017 to June 20, Oct 20 & Nov 2020 in respect of change of energy settlement mechanism in respect of 1.5 MW Captive Solar Plant from TOD to 15 minutes time block and withdrawal of captive benefits from July 20 to May 21 on account of cancellation of Captive Registration under Clause 12 D of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 as amended .

II. Payment towards surplus energy injected into the grid by 2.55 MW Solar Plant

Issue (I) -Supplementary demand dated 06.02.2023 raised by Respondent No. 4 for Rs 22258603/-

22. Let us first deliberate on the provisions of power purchase and wheeling agreement (PP&WA) dated 05.05.2014 executed for 1.5 MW Solar Plant of Petitioner and applicable provisions of MPERC Regulations with respect to settlement of energy injected by Solar CPP of Petitioner in his HT connection. Clause 12.3 of PP&WA signed on 05.05.2014 relevant for energy accounting as reproduced hereunder: -

"12.3 As the solar power generation occurs during day hours (normally between 06:00 Hrs to 18:00 Hrs) hence credit of wheeled energy shall be given by Discom(s) on the basis of TOD concept of generation and consumption as per their practice."

23. Regulation 12(B) (i) MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 **as amended on 27.12.2019 through 8th amendment** is also reproduced as under: -

"12 B. Forecasting, Scheduling, Energy Accounting and Settlement: -

(i) For Renewable Energy based Captive Generating Plant forecasting, scheduling and deviation settlement, energy accounting and settlement shall be done in 15-minute time-block wise as per MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar Generating stations) Regulations, 2018 subject to limits stipulated in the aforesaid Regulations as amended time to time.

Provided that the energy accounting and settlement of energy supplied to the beneficiary consumers by the Renewable Energy based Captive Generating Plants shall be done in 15-minute time-block wise for the entire billing period applicable to such consumers as per subsisting agreement."

24. The MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 (amended on 27.12.2019) was subsequently repealed on 12th Nov 2021 by MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-II) Regulations, 2021. Clause 11.2 (a) of these

revised Regulations was relevant to energy accounting of captive solar plant and the same is reproduced as under: -

"11.2 Forecasting, Scheduling, Energy Accounting and Settlement: -

a) For Solar and Wind Energy based Captive Generating Plant, forecasting, scheduling, deviation settlement, energy accounting and settlement shall be done in 15-minute time-block as per MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar Generating stations) Regulations, 2018 subject to limits specified in the aforesaid Regulations as amended time to time. For Renewable Energy based Captive Generating Plants other than Wind and Solar, forecasting, scheduling, deviation settlement, energy accounting and settlement shall be done in 15-minute time- block as per MP Electricity Balancing and Settlement Code, 2015 and MP Electricity Grid Code, 2019, as may be applicable and as amended, from time to time:

Provided that the energy accounting and settlement of energy supplied to the beneficiary consumers by the Renewable Energy based Captive Generating Plants shall be done in 15- minute time-block for the entire billing period applicable to such consumers as per subsisting agreement."

25. Further, regulation 3(2) of MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 as amended is also reproduced as under: -

"3 Objective and Scope

(1) ……

(2) These Regulations shall be applicable to Sellers) and Buyer(s) involved in the transactions facilitated through short-term open access or medium-term open access or long-term open access in intra-state transmission or distribution of electricity (including intra-state wheeling of power), as the case may be, in respect of all wind generators having a combined installed capacity of 10 MW and above and solar generators with an installed capacity of 5 MW and above including those connected via pooling stations and selling power within or outside the State."

26. It can be observed that as per the aforementioned provisions of regulation 3(2) of MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 as amended, Solar Plants above capacity of 5 MW (in case of pooling, combined capacity of solar plants connected on the same feeder is to be more than 5 MW capacity) are subjected to scheduling for the purpose of computation of deviation and associated charges.

27. The contention of Petitioner is that since their 1.5 MW Plant was under the specified limit of 5 MW required for applicability of scheduling, it should not have been subjected to 15

minutes energy accounting. Commission is of the view that the contention of Petitioner that energy accounting is to be done in 15 minutes time block only when capacity of plant is more than 5 MW is totally misconceived. Scheduling of energy for the purpose of energy deviation under the provisions of MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 as amended has no nexus with the energy accounting of solar energy injected by solar captive power plants of Petitioner to their HT connection which is dealt in another regulation of Commission.

28. Commission has noted that the PP&WA executed for 1.5 MW Solar CPP of the Petitioner on 05.05.2014 has the provision of energy settlement on TOD mechanism which stand in violation of regulation 12(B) (i) and 11.2(a) of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 as amended and MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-II) Regulations, 2021 as amended respectively as discussed above. These provisions stipulate energy accounting and settlement in 15 minutes time blocks. It is well settled principle of law that the regulations framed by Commission have overriding effect on the contradictory provisions of power purchase agreements. Constitutional bench of Hon'ble Supreme Court in its judgement dated 15.03.2010 passed in Civil Appeal No. 3902 of 2006, PTC India Ltd. Vs Central Electricity Regulatory Commission has clearly held that regulations framed by Electricity Regulatory Commissions are sub-ordinate legislations and have overriding effect on power purchase agreements. Relevant extracts of said judgement are reproduced as under: -

"40. …… …… …… A regulation under Section 178 is in the nature of a subordinate Legislation. Such subordinate Legislation can even override the existing contracts including Power Purchase Agreements which have got to be aligned with the regulations under Section 178 and which could not have been done across the board by an Order of the Central Commission under Section 79(1)(j).

Commission has noted that the disputed demand of Rs 22258603/- raised on 06.02.2023 by Respondent No. 4 also includes demand on account of withdrawal of captive status of Petitioner's Solar Plant for the months April 21 & May 21 but Petitioner has not made any objection on this part billing, therefore Commission has not dealt this matter.

29. In light of the regulation 12 (B) (i) of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 as amended with effect from 27.12.2019 and regulation 11.2 (a) of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-II) Regulations, 2021 notified on 12.11.2021, and settled principle of law of overriding effect of regulations on power purchase agreement as decided by constitutional bench of Hon'ble Supreme Court,

Commission finds no irregularities in the energy settlement of 1.5 MW Captive Solar Plant of Petitioner on the basis of 15-minute time block and consequent revision of billing of HT connection of Petitioner.

30. Commission has however noted that Respondent No. 4 has revised the energy accounting of HT connection from Nov 2017 while it should have been revised with effect from 27.12.2019 i.e., the date from which 8th amendment in MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 came into effect. Commission accordingly directs the Respondent No. 4 to revise the demand of Rs 22258603/- issued on 06.02.23 in respect of HT connection on the basis of 15 minutes time block accounting, only from 27.12.2019 onwards. Prior to 27.12.2019, energy accounting be made on TOD basis only as per the provisions of subsisting PP&WA.

31. On limitation issue, Commission noted that, Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009, M/s Prism Cottex V/s Uttar Haryana Bijli Nigam Ltd and Others held that:

> *"If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Sub section (2) of Section-56 has a non-obstante Clause with respect to what is contained in any other Law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Sub-section (2) will not start running. So long as the limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence, the decision in Rahamatullah Khan and Section-56(2) will not go to the rescue of the Appellant."*

32. We are of the view that from the above judgement, it is quite clear that the limitation period starts running only when an issue is first brought to the notice of parties. In the subject matter, it happened on 06.02.2023 when the amount became first due. Therefore, demand raised on 06.02.2023 subject to revision as directed in this order holds good and cannot be held barred under limitation.

33. In view of above, Commission directs the Petitioner to make payment of revised supplementary demand raised by Respondent No. 4 as per directions contained in paragraph 30 above within the stipulated time period.

Issue (II) Payment of surplus energy injected into the grid by 2.55 MW Solar Plant

34. Having decided the issue (I) in preceding paras, let us deal with the issue (II) on the basis of applicable regulations and provisions of PP&WA executed between the parties.

Treatment of inadvertent flow of energy in respect of **PP&WA dated 05.11.2019 of** 2.55 MW Solar Captive Plant is covered under clause 10(b) of PP&WA as under:

"10. TARIFF

(a) …….

(b) INJECTING INADVERTENT ENERGY IN TO THE GRID

In line with the MPERC order dated 29 th Nov. 2017 in petition No. 37/2017, it is agreed by the parties on mutual consent basis that in case of inadvertent energy injection into the grid the same shall be settled at tariff at Rs. 00.00(zero)/kWh."

Further, treatment of inadvertent flow of energy in respect of PP&WA of 1.5 MW Solar Captive Plant is covered under clause 7 of **PP&WA dated 05.05.2014 of 1.5 MW Solar CPP** as under:

"7. TARIFF RATE FOR INADVERTENT FLOW OF POWER

7.1 For surplus/inadvertent flow of energy from the plant into the system of DISCOM/TRANSCO the MPPMCL shall pay to the Company for the energy received at the rate of Average Power Purchase Cost (APPC), being tariff rate computed on year-to-year basis as per methodology laid down for calculation of APPC in CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, amended from time to time.

7.2 The tariff rate is inclusive of all charges on account of taxes/duties/cess/octroi etc. (including Electricity Duty and Cess on consumption/sale of power).

7.3 Previous year APPC rate shall remain applicable till the approval of current year APPC rate, Arrears/Recovery as the case may be due to difference of consecutive APPC rates shall be payable/recoverable in subsequent monthly bills."

35. Commission has noted that different provisions have been made regarding settlement of inadvertent/ surplus energy fed into the grid by 2 different captive power plants of the same consumer. In the case of 2.55 MW Plant, surplus energy is being settled at "Zero" rate while in 1.5 MW Plant, surplus energy is being settled at APPC rates as stipulated in PP&WA agreement.

36. Let us discuss the applicable regulations of the Commission to deal with the surplus energy by RE Captive Power Plant. The provisions regarding payment of surplus energy injected into the grid by RE CPP have been made in the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 through 8th amendment which came into effect on 17.12.2019. Prior to this, settlement of such surplus power was being done as per the PP&WA conditions.

Regulation 12(B) (ii) of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 as amended through 8th amendment effective from 17.12.2019 relevant for the purpose of settlement of surplus energy of the 2.55 Solar CPP of Petitioner is reproduced as under: -

12(B) (ii)

"Surplus power injected by a Solar and Wind Renewable Energy based Captive Generating Plant shall be metered for each 15 minutes time block and surplus power shall be computed. Settlement of such surplus power shall be made at the end of every billing period at the rate equal to the lowest tariff rate discovered in the solar/ wind bidding in that year and for which the Distribution licensee/ M.P. Power Management Co. Ltd. has entered into a Power Purchase Agreement with the solar or wind generating plants, as the case may be. In case no rate is discovered in that year, the available lowest tariff rate discovered in the latest previous years shall be considered. In case of any Renewable Energy based Captive Generating Plant other than solar or wind, the settlement of such surplus power at the end of every billing period shall be done at the applicable Average Power Purchase Cost as determined by the Commission for such period in its Retail Supply Tariff Order for Distribution Licensees in force."

37. Similarly, Regulation 11.2 (b) of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-II) Regulations, 2021 as amended relevant for the purpose of settlement of surplus energy of the Solar CPP of Petitioner is also reproduced as under: -

11.2(b)

"Surplus power injected by a Renewable Energy based Captive Generating Plant shall be metered for each 15-minute time block and surplus power shall be computed. Settlement of such surplus power shall be made at the end of every billing period at the rate equal to the lowest tariff rate discovered under Section 63 of the Act in the solar/ wind bidding in that year and for which the Distribution Licensee/ M.P. Power Management Company Limited has entered into a Power Purchase Agreement with the solar or wind generating plants based Captive Generating Plant, as the case may be. In case no rate is discovered in that year, the available lowest tariff rate discovered in the latest previous years shall be considered. In case of any Renewable Energy based Captive Generating Plant other than solar or wind, the settlement of such surplus power at the end of every billing period shall be done at the applicable Pooled Power Purchase Cost as determined by the Commission for such period in its Retail Supply Tariff Order for Distribution Licensees in force."

(The above regulation came into effect on 12.11.2021.)

38. Commission has noted that Respondents No. 1 to 3 have not aligned PP&WA dated 05.11.2019 of 2.55 MW Solar CPP with the provisions of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 and (Revision-II), 2021 dealing with settlement of surplus power.

39. As already discussed in issue (I) above, provisions of power purchase agreement not consistent with provisions of regulations stand superseded to the extent they are inconsistent with the provisions of regulations. Commission has already held in its order dated 29.11.2017 passed in Petition No. 37/2017 that the prayer to review and/or modify the relevant provisions of the tariff orders to the effect that the tariff for such inadvertent flow of power into the system by the Electricity Generators from new and renewable sources of energy is nil, is not tenable.

40. In light of the provisions of regulation 12(B) (ii) of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 and regulation 11.2(b) of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-II) Regulations, 2021, Commission holds that the settlement of surplus energy of 2.55 MW Solar CPP of Petitioner at "Zero" rate is inconsistent with the provisions of aforesaid regulations. Commission thus holds this issue in favour of Petitioner and directs Respondent No. 1 to 3 to align the clause 10(b) of PP&WA dated 05.11.2019 of 2.55 MW Solar CPP of Petitioner with the provisions of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 read with MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-II) Regulations, 2021 and make the payment of surplus energy fed into the grid by the Petitioner from its 2.55 MW Solar CPP accordingly. Commission also directs that clause of PP&WA dated 05.05.2014 in respect of 1.55 MW Solar CPP should also be aligned with relevant regulations of MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) (Revision-I) Regulations, 2010 and (Revision-II) of 2021.

41. With the aforesaid observations and direction, the subject Petition is disposed of.

(Prashant Chaturvedi)	**(Gopal Srivastava)**	**(S.P.S. Parihar)**
Member	**Member(Law)**	**Chairman**