

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL

Sub: In the matter of Petition U/S. 142 of the Electricity Act, 2003 for Disobedience and Contempt Proceedings for Non-Compliance of Order dt. 28.11.2022 by this Hon'ble Commission.

ORDER

(Hearing through video conferencing)
(Date of Order: 21.09.2023)

M/s. SAP Energy, C/o Shrenik Marble (P) Ltd.

Makrana Road, Madanganj,
Kishangarh (Raj.), 305801

- **Petitioner**

Vs.

CGM,

M.P. Power Management Co. Ltd.

Shakti Bhawan, Rampur,
Jabalpur, (MP) 482008

- **Respondents**

Shri Dharamvir Sharma and Shri Om Shankar Shrivastava, Advocate appeared on behalf of the petitioner.

Shri Manoj Dubey, Advocate appeared on behalf of the Respondent

The subject petition is filed under section 142 of the Electricity Act, 2003 for disobedience and contempt proceedings for non-compliance of Order dt. 28.11.2022 passed by the Commission.

2. By affidavit dated 29th March' 2023, the petitioner broadly submitted the following:

- i. *That, this Hon'ble commission was pleased to pass final order dated 28.11.2022 in OA no.47/2022 titled as "M/s SAP Energy vs. M.P. Power Management Co. Ltd.*
- ii. *That, the Petitioner M/s SAP energy in compliance with regard to the directions passed in the above order, issued a letter dated 14.12.2022 with detailed calculations of amount payable to Petitioner as per the order passed by the Hon'ble Commission for reconciling the matter with Respondent M.P. Power management passed in the final adjudication. Thereafter, a reminder letter dated 02.01.2023 was again sent to the Respondent by the Petitioner to reconcile the matter and of LPS payable as per MPERC order, within 10 days thereof otherwise it would be presumed that the calculation given by the Petitioner shall be treated as Final and having been accepted by the Respondent.*
- iii. *That the Contemnor/ Respondent did not reply till 10.02.2023 i.e. even after*

elapse of more than five weeks. The Contemnor/ Respondent, M. P. Power Management Co. Ltd with malafide intention and to avoid the directions for complying with the same, has forwarded a letter on 10.02.2023 through e-mail putting back dated as 18.01.2023 with the clear-cut mind-set not to Honor/ Obey the order/ directions of this Hon'ble Commission. Respondent clearly and willfully committed contempt of this Hon'ble Commission.

- iv. *That the Petitioner immediately replied to the said letter vide its letter dated 11.02.2023 clarifying all doubts/ misinterpretations/ confusions and explained the correct applicability of the verdicts of the order of Hon'ble MPERC.*
- v. *That even after discussions on issues mentioned in a letter of Contemnor/ Respondent in the virtual meeting with the representative of the Contemnor/ Respondent organized on 21.02.2023 the Contemnor/ Respondent choose to reject the payment of LPS on outstanding payment and delayed payment in an arbitrary manner. The Contemnor/ Respondent sent a letter on 09.03.2023 with it's mind set not to Honor/ Obey the order passed by this Hon'ble Commission and refused to make the said LPS payments.*
- vi. *That the Petitioner without wasting any further time immediately sent reply to Notice in response to said letter vide its letter dated 11.03.2023. Therefore, the present application is being filed for contravening the provisions of this Act/ Rules made there-under for which, Contemnor/ Respondent is liable for consequences and penalty under the said Act.*
- vii. *The Respondents/ Contemnor have failed to appraise the quintessence of the issue wise order of the Hon'ble Commission which is as under:*

Issue No. 2: Payment of outstanding dues along with LPS thereon as per Article 7.6 of PPA:

- viii. *That the Hon'ble Commission discussed this issue in Para Nos. 19 to 23 of its order particularly, in Para No. 19 the Hon'ble Commission elaborated the terms of Article 7.6 regarding Late Payment Surcharge and in Para 20 elaborated the provisions of Article 12.20 of Tariff Order regarding liberty to third for party sale. The Hon'ble Commission concluded issue regarding payment of LPS, when option for liberty of sale to third party is available, which relates to issue No. 2 and 3 both. The Hon'ble Commission decided this in favour of the Petitioner in Para No. 21 with regard to Article 12.20 of Tariff Order for procurement of power from Wind Energy Generator 2013 by holding that ".....and therefore, the argument of the Respondent that Petitioner should have availed this option and as a result of which **respondent was not liable for payment of delayed payment surcharge does not hold any reasoning.**"*
- ix. *The Hon'ble Commission finally concluded the issue No. 2 in para No. 24 as under :*
"The Petitioner in the subject Petition has provided the details of

overdue payments and LPS thereon till 30th June 2022 amounting to INR 82,61,617 which has been disputed by the Respondents. The Commission direct both the parties to reconcile the details of overdue payments and late payment surcharge in the light of conditional waiver given by the Petitioner and applicable LPS rates as per PPA and LPS Rules 2021 and 2022 notified by Ministry of Power, Government of India from time to time."

It is very much pertinent to note that in this issue No. 2 (dispute No. 1) for Rs. 82,61,617/- (Principal dues Rs. 82,26,618/- plus LPS thereon till 30.06.2022 Rs. 55,999/-) is related to **FOUR** outstanding Bills bearing Nos. SE/WEG/Ringnod-II/21-22/11, 21-22/12, 21-22/13 and 21-22/14 for Rs. 13,13,068/- + 12,23,096/- + 23,63,856/- + 33,06,598/-, principal due payments of which were received since than on 23.08.22, 23.08.22, 23.08.22 and 26.08.22 respectively. **No subsequent letter to letter dated 27.03.2017 or even any other letter of any kind of conditional letter was given by the Petitioner for the payments cited above.** Despite clear direction to reconcile dues and LPS thereon by the Hon'ble Commission the Respondent/ Contemnor have failed to make the payment of LPS amounting to Rs. 2,32,340/- as per point no. 72 to 75 of calculation sheet submitted along with letter dated 14.12.2022 and thereby the Contemnor/ Respondent has contravened the orders of Hon'ble Commission and are liable for action to be taken u/s 142 of the Electricity Act 2003.

Issue No. 3: Payment of LPS at 2 % above Prime Lending Rate (PLR) of SBI for delayed payment as per Article 7.6.3 of PPA :

- x. That the Hon'ble Commission discussed/ covered this issue no. 3 in issue no. 2 partially as mentioned in Para 25, but issue No. 3 was not decided/ concluded in issue no. 2 as being pleaded by the Contemnor/ Respondent. The Hon'ble Commission finally decided/ concluded the said issue no 3 in favour of the Petitioner in Para 27 of the order in very clear and unambiguous words as under:-
- "Considering the provisions of LPS Rules 2021 and 2022 read with applicable provisions of Power Purchase Agreement dated 22.08.2016, **Commission direct the Respondent to comply with the provisions of LPS Rules 2021 and LPS Rules 2022 read with PPA conditions, and accordingly, include LPS in payment of outstanding dues. The LPS computation on delayed payment surcharge prior to 22nd Feb., 2021 shall be made based on the rates specified dated 22.08.2016."** But not obeyed/ complied by the Contemnor/ Respondent till date.*
- xi. That the Hon'ble Commission has not directed to consider any conditional waiver while calculating/ reconciling payment of LPS in Para 27 of the order as is being done by the respondent. The direction of the Commission cannot be manipulated arbitrarily as is being done by the respondent for issue No. 3.
- xii. That the Hon'ble commission while deciding Issue No. 3 in Para 26 held that:

“As per above mentioned Rules Discoms will be bound to pay LPS on the outstanding amount after the due date at the base rate, applicable for first month of default...”

- xiii. *That in Para 23 of order of the Hon'ble Commission referred by the Contemnor/ Respondent is in respect of issue No. 2 only. Whereas the Contemnor/ Respondent arbitrarily using observations of said Para 23 of issue No. 2 in the calculations of LPS as per decision/ conclusion of issue No. 3. That the Contemnor/ Respondent are intentionally misconstruing and misinterpreting the above order passed by the Hon'ble Commission and also confusing the same by mixing the issues of **'Outstanding payment and LPS thereon'** with the issue of **'LPS on delayed payment'**, therefore, directions given in Para 27 of the order passed by Hon'ble Commission is completely Non-Complied. That the Hon'ble Commission concluded/ decided the issue No. 3 separately in Para 27.*
- xiv. *That it is pertinent to mention at this stage that, the petitioner has already submitted detailed calculations of claim for dispute No. 2 (issue no. 3) on the basis of Order passed by This Hon'ble Commission vide our letter dated 14.12.2022 addressed to the respondent.*
- xv. *That the Hon'ble Commission finally awarded its order in favor of petitioner and has directed to reconcile the dues of LPS payments and make payment thereof within 60 days of its order dated 28.11.2022 as under :*

*“With the above observations the instant Petition is partially allowed. **Respondent is directed to pay Late Payment Surcharge as reconciled within 60 days of passing of this Order and report its compliance to the Commission.**”*

- xvi. *That, the Respondent/ Contemnor has contravened the directions of this Hon'ble Commission by not obeying the directions of Hon'ble Commission and by not making the payment within 60 days, has clearly, with malafide intention, disobeyed the order of Hon'ble Commission and the liabilities incurred thereby has not been fulfilled. Therefore, thereby making liable to make the payment as per direction by the Hon'ble Commission and also as prayed by the Applicant/ Petitioner. The Respondent may also be proceeded as per section 142 of Electricity Act 2003. The notice for Contravening Order of Hon'ble MPERC dated 28.11.2022 issued to Respondent/contemnor by the petitioner applicant vide letter dated 11.02.2023 and 11.03.2023.*
- xvii. *That the Petitioner's letter dated 27.03.2017 and subsequent letters were conditional letters subject to receiving payment by a particular date, that too only for not making the payment of LPS together with the principal dues in this payment. The Respondent had even not fulfilled such condition by not making the **entire principal dues** by such date(s) and hence the explicitly partial allowance given to him through Petitioner's said letters for not making the payment LPS together with principal dues also became null and void. The quintessence of said letter dated 27.03.2017 is clear from the*

wordings of said letter being reproduced hereunder:

*“.....we therefore have to accept that if payment is made by 30.03.2017 LPS will not be made **in this payment.**”*

*The Petitioner has **never** accepted that LPS will not be made **on this payment or for this payment.** The acceptance was clearly made only for ‘LPS will not be made **in this payment**’ meaning thereby that payment of LPS will be released later on. The Respondent has replaced words “**on such payment**” instead of “**in this payment**” as mentioned in its letter dated 18.01.2023, Para 2, to create misinterpretation.*

- xviii. *That it is very pertinent to note that the Petitioner had submitted a letter dated 16.03.2017 to the Respondent before said latter dated 27.03.2017 which reads as under:*

“.....the demand of waiver is not acceptable. And even if it agreed for getting payments under these circumstance would mean coercion and would not waive our rights under the contract terms.”

*It is evident from the above that the condition of PPA regarding LPS could not be waived in any condition. Without prejudice to the fact that the Petitioner had **never given its acceptance for waiver of LPS**, even otherwise had it been so, the rights of petitioner as per terms of PPA cannot be treated as waiver of LPS in light of our letter dated 16.03.2017 given to Respondent in advance.*

- xix. *That the total amount of LPS is Rs. 82,56,870/- as per mentioned in row No. 78 of letter dated 14.12.2022 out of which an amount of Rs. 80,24,530/- pertains to LPS on delayed payment and is payable by the Respondent to the Petitioner.*
- xx. *That Non-Payment of LPS on outstanding payment as well as Non-payment of LPS on delayed payment, as stated above, make the respondent liable for punishment U/s 142 of Electricity Act, 2003.*
- xxi. *That the necessary Court fee for this application is being enclosed and this Commission has Jurisdiction to take action for any Non-Compliance of order under the relevant provisions of Law. This application is being filed within Limitation and with affidavit of the Applicant.*

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

- a. *The Respondent/ Contemnor may kindly be directed to make the payment of LPS amount as applicable in LPS Rules 2021 and LPS Rules 2022 read with PPA dated 22.08.2016 on outstanding payment as per issue No. 2 amounting to Rs. 2,32,340/- as per Para 4 above.*

- b. *The Respondent/ Contemnor may kindly be directed to make the payment of LPS amount as applicable in LPS Rules 2021 and LPS Rules 2022 read with PPA dated 22.08.2016 on delayed Payment as per issue No. 3 amounting to Rs. 80,24,530/- as per Para 14 above.*
- c. *The Respondent/ Contemnor may kindly be directed to punish and award penalty as per the provisions incorporated in the Electricity Act 2003 on the Respondent/ Contemnor and on the officers responsible for this Non-compliance of the orders of Hon'ble Commission.*
- d. *The Hon'ble Commission may kindly pass any other or further orders as deemed fit as stated in above and in the facts and circumstances mention in body of this petition.*

4. At the motion hearing held on 25.04.2023, petition was admitted and the Petitioner was directed to serve notice to respondent within 7 days and Respondent was directed to file its reply within next 15 days. Petitioner might also file rejoinder, if any, within 15 days thereafter. The case was fixed for hearing on the 6th June 2023.

5. Respondent, MP Power Management Company Ltd. by Affidavit dated 05th June 2023 submitted the following in its reply to the petition:

- i. *By way of instant petition u/s. 142 of the Electricity Act, 2003, arising out of order dated 28-11-2022 passed by the Hon'ble Commission in Petition No. 47 of 2022, the Petitioner is, inter-alia, seeking payment of Rs. 2,32,340/- and Rs. 80,24,530/- towards alleged Late Payment Surcharge (LPS). The relevant paragraphs of the said order dated 28-11-2022 are extracted as under:*

"24. The Petitioner in the subject petition has provided details of overdue payments and LPS thereon till 30th June, 2022 amounting to INR 82,61,617 which has been disputed by the Respondents. The Commission direct both the parties to reconcile the details of overdue payments and late payment surcharge in the light of conditional waiver given by the Petitioner and applicable LPS rates as per PPA and LPS Rules 2021 and 2022 notified by the Ministry of Power, Government of India from time to time.

29. With the above observations, the instant petition is partly allowed. Respondent is directed to pay late payment surcharge as reconciled within 60 days of passing of this order and report compliance to the Commission."

- ii. *That, the Petitioner had given a conditional waiver of LPS vide its initial letter dated 27-03-2017 to the effect that if outstanding payments are released in its favour by 30-03-2017, the LPS would stand waived of. In pursuance of order dated 28-11-2022 passed by the Hon'ble Commission, the*

Petitioner submitted its details to the Respondent for reconciliation vide its Letter dated 14-12-2022, as contained in Annexure A/2 to the Petition. A perusal of entries at serial number 1 to 7 of Annexure-1 to said Annexure A/2, which is the calculation of LPS upto 30th November, 2022, clearly reflects that the Petitioner is still, contrary to its LPS waiver letter dated 27-03-2017, claiming LPS on the payments received by it by 30th March, 2017. It clearly suggests that in spite of directions vide para 24 of the order dated 28-11-2022, the Petitioner is not waiving of the LPS.

- iii. *That, the Petitioner would not deny that in spirit similar to as contained in its LPS waiver letter dated 27-03-2017, the it had waived of the LPS for subsequent periods vide its various letters dated September 20, 2017; October 24, 2017; November 21, 2017; December 22, 2017; January 16, 2018; February 19, 2018; March 20, 2018; April 16, 2018; May 21, 2018; June 8, 2018; July 9, 2018; August 8, 2018; September 5, 2018; October 9, 2018, November 10, 2018; December 8, 2018; January 8, 2019; February 8, 2019; March 8, 2019; April 8, 2019; May 8, 2019; June 7, 2019; July 31, 2019; August 29, 2019; September 10, 2019; October 11, 2019; November 8, 2019; December 12, 2019; January 11, 2020; February 14, 2020; March 9, 2020; April 10, 2020; May 7, 2020; June 10, 2020; July 9, 2020, August 10, 2020; September 10, 2020; October 8, 2020, November 11, 2020; February 8, 2021; March 9, 2021; April 9, 2021; May 11 2021; June 10, 2021; July 8, 2021; August 11, 2021; September 14, 2021; October 19, 2021; February 9, 2022; March 10, 2022; April 7, 2022; May 9, 2022; June 11, 2022; July 7, 2022 and others. However, during reconciliation, the Petitioner is not giving effect to its said letters. If the effect of such LPS waiver letters is given effect to the Petition, then it would reveal that there remains no outstanding amount on the part of the Respondent.*
- iv. *That, to reconcile the outstanding overdue amounts, the parties, through their representatives, had met over a virtual meeting lastly on 21-02-2023. However, the issues could not be reconciled for reasons attributable to the Petitioner.*
- v. *That, the Respondent, under its bonafides, had apprised the Petitioner of the entire issues vide its detailed letters dated 18-01-2023 and 09-03-2023. But the Petitioner failed to appreciate the same in true perspectives.*
- vi. *That, thus, there still exists a dispute, as demonstrated above, between the parties hereto. The said dispute would either need to be amicably settled between the parties or in the alternative would need to be adjudicated upon, provided a proper petition with duly composed relief claimed is instituted before the Hon'ble Commission, which for the present, is none.*
- vii. *That, it is only after the dispute relating to reconciliation is adjudicated upon, the Petitioner can seek any redressal u/s. 142 of the Electricity Act, 2003. For the present, redressal u/s. 142 of the Act is not available to the Petitioner.*
- viii. *That, for the reasons aforesaid, the present petition is misconceived and is*

sans-merit. Hence, prayed that the same be dismissed.

6. At the hearing held on 6th June 2023, the Petitioner informed that they have received the reply from Respondent previous night only, therefore 2 weeks' time was requested for filing a rejoinder. The Commission expressed displeasure over such delay in filing replies/ rejoinder by the parties and directed to maintain timelines in future submissions. Proper application should be filed in advance in such cases for time extension/ condonation of delay in filing reply/ rejoinder. If such instances were repeated in future, it would attract imposition of cost. 10 days' time was allowed for filing rejoinder. The case was listed for hearing on 18th July 2023.
7. By Affidavit dt. 14.06.2023, Petitioner filed the rejoinder to the reply filed by the respondent and stated that
 - i. *That, since the Respondent had disputed the outstanding payment claimed by the Petitioner in claim No. 1, the Hon'ble Commission directed in para 24 of the order which requires the parties to reconcile only the details of overdue amount as on 30.06.2022 and LPS calculations thereon. The order of the Hon'ble Commission is extremely clear about the ambit of instructions (i.e. in the details of overdue payment as on 30.06.2022 and calculation of LPS thereon) that the order even mentions the exact amount of such outstanding i.e. Rs. 82,61,617/- which was relating to invoices due as on the date of petition, that is under reconciliation and not to the fact and applicability of LPS otherwise (which were settled by the Hon'ble Commission vide para 26 and 27 of the said order). The Petitioner already explained these facts in Para 9 of its Petition. The Respondent creates confusion by mixing the Issue No. 2 of outstanding payment and LPS thereon with the Issue No. 3 of LPS on delayed payments (payments made earlier). That the Hon'ble Commission directed both the parties to reconcile the details of overdue payment and late payment surcharge in light of letter dated 27.03.2017 and subsequent letters in regard to Claim No. 1 Issue No. 2 only, which are not applicable on Claim No. 2 issue No. 3.*
 - ii. *That moreover no so called waiver/ conditional waiver letters subsequent to the letter dated 27.03.2017 which may be applicable to payments after 31st July, 2022 were given by the Petitioner, whereas the outstanding payments as claimed in Issue No. 2 under question were made on or after 23.08.22. Despite that the Respondent has not made the payment of LPS of Rs. 2,32,340/- (calculated up to actual date of payment) on said outstanding payments in compliance of order of the Hon'ble Commission and thereby the Respondents have committed contempt of order of the Hon'ble Commission and in result the Respondent and the concerned officers are liable to be taken action u/s 142 of the Electricity Act.*

- iii. *In regard of the waiver the Petitioner explained the facts in Para 13, 17 and 18 of its Petition. The Respondents had even not fulfilled the conditions mentioned in letter dated 27.03.2017 by not making the entire principal of Rs. 1,22,82,911/- as mentioned in above referred letter, hence the explicitly partial allowance given of not making the payment of LPS together with principal dues also became null and void. Similarly entire due amounts were not paid in response to subsequent letters of 17.03.2017 and thus the effect of these letters become NIL. And therefore the Petitioner immediately informed the Respondent vide letter dated 12.04.2017 to make balance of due part payment along with complete LPS and specifically mentioned in said letter that the received amount would first be adjusted against due LPS as per Rules.*
- iv. *That the Petitioner would like to draw attention of the Hon'ble Commission on the fact that the Petitioner in its letter dated 16.03.2017 specifically refused to waive any right under the PPA, even in case it may have to accept it in future. That the Hon'ble Commission has further also held that the communication claimed by the Respondent as 'waiver' of LPS, had to be seen in light of the PPA and the LPS Rules vide para 26 and 27 of their order. The Petition had also made it clear that the conditionalities involved would have, in any case, rendered any supposed waiver null and void, and as such no 'waiver' thus existed.*
- v. *That the Hon'ble commission has not directed to consider any conditional waiver while calculating payment of LPS in para 27 of the order as is arbitrarily being done by the Respondent. The direction of the Commission cannot be manipulated arbitrarily as being done by the Respondent for Issue No. 3 Claim No. 2. The Petitioner has explained its contentions in Para No. 12 and 13 of its Petition.*
- vi. *That in regard to Para No.4 of the reply of the Respondent, the Petitioner begs to submit that the respondent made no attempt to reconcile the details as per the directions of Hon'ble Commission. Their efforts were to conflate specific issues by mixing the distinct aspects of the order of the Commission in an arbitrary and disingenuous manner. The Respondent did not delve into detail, which was the specific directive, but only act summarily and superficially.*
- vii. *The Petitioner in right earnest shared the details as required by the order of Hon'ble Commission, which were not heeded by the Respondent in any substantive manner.*
- viii. *That in regard to Para No. 6 of the reply of the Respondent, the Petitioner begs to submit that the respondent is attempting to rekindle and reinvent an alleged dispute which has been clearly and completely settled by the Hon'ble commission.*
- ix. *That the Petitioner respectfully submits that since the Respondent has do blatant disobedience/ non-compliance of the orders of Hon'ble Commission,*

this Petition is warranted u/s 142 of the Electricity Act, 2003. Therefore, the Petitioner prays to take action against the Respondent and their concerned officers and to allow the Petition in favour of the Petitioner.

8. By Affidavit dt. 10.07.2023, Respondent filed additional submission and stated that:
- i. *That, the respondent had filed its reply dated 05.06.2023 in the above referred case. Subsequent to it, the Petitioner has filed its rejoinder dated 14.06.2023 and has brought on record, for the first time, a new letter dated 12.04.2017 filed by it to its rejoinder. The said letter was not relied upon and filed by it in the instant main petition or in the earlier disposed of Petition no. 47/2022. The said newly relied upon letter dated 12.04.2017 does not find any reference in its subsequent letters by the Petitioner. The said letter was not stressed upon by the Petitioner during the meeting for reconciliation of accounts which took place on 21.02.2023. therefore, the petitioner is stopped from agitating on the basis of said letter.*
 - ii. *That, the present petition and the Rejoinder has been articulated in a self-conflicting manner tending to create confusion in order to miss-lead the Hon'ble Commission and impair proper adjudication of the dispute.*
 - iii. *That, an extent of various waiver letters by the Petitioner is as per Annexure R/3 hereto. A perusal of Annexure R/3 would reflect that the Petitioner had never before stressed upon its newly placed letter dated 12.04.2017 (Annexure A/10). For the purpose of reconciliation, the Petitioner cannot be permitted to change its stand and disturb/ alter the process of reconciliation.*
 - iv. *That, the spirit of said letter dated 12.04.2017 runs in derogation to the spirit of various other letters mentioned in Annexure R/3 hereto. During the reconciliation process the Petitioner cannot be permitted to blow hot and cold together in order to get itself to undue advantageous position. The respondent calls upon the Petitioner to place on recodes of the present case the copies of various conditional waiver letters written by it to the Respondent for kind consideration of the Hon'ble Commission. The Respondent is sanguine that perusal of such conditional waiver letters would well demonstrate that the Petitioner is taking baseless stand in order to tactfully recover the LPS which it has already waived of on various occasions.*
 - v. *That in present case, the Petitioner in the grab of instant petition, is trying to get the impugned order dated 28.11.2022 misinterpreted in order to disturb fair, just and proper adjudication of present case. the order dated 28.11.2022, in simple terms was that it directed the parties to reconcile the disputed overdue amount of Rs. 82,61,617/- in light of conditional waiver given by the Petitioner and after reconciliation, if any amount remains overdue still, the same be paid as per LPS rates PPA and as per the LPS Rules of 2021 and 2022.*
 - vi. *That, the Respondent reiterates that the entire outstanding amount has been paid to the Petitioner and there are no overdue in view of the conditional waiver letters given by the Petitioner.*

- vii. *That every time, the Respondent had made payments to the Petitioner which were matching to the principal amounts mentioned in the respective invoices. Therefore, the Petitioner, in view of its conditional waiver letters cannot assert that it was first appropriating the amount received by its first towards the LPS.*
- viii. *That the contrary to the allegations of the Petitioner, the Respondent, under all its bonafides, has never attempted to manipulate arbitrarily the directions of the Hon'ble Commission.*
- ix. *That, even otherwise, the last conditional waiver letter given by the Petitioner supersedes its earlier letters in the context. The Respondent has cleared the overdue accordingly.*
- x. *That, it is not apposite on the part of the Petitioner to allege that the Respondent has made no attempt on this part to reconcile the details and its efforts were to conflate specific issues.*
- xi. *That, in view of all that is stated above, all the adverse averments made in the rejoinder are denied specifically.*
- xii. *That, it is humbly submitted that instant additional submission be taken on record.*

9. By Affidavit dt. 15.07.2023, in response to additional submission dated 10th July' 2023 made by respondent, petitioner submitted following:

- i. *That the Annexure A-10 document dated 12.04.2017 is not presented for the first time but this letter is already on record as ANNEXURE 13 of the main Petition No. 47/2022. Moreover this letter is a subsequent letter to letter dated 27.03.2017. Hence the additional submissions made in Para 1 to 4 thereof nullifies.*
- ii. *That the Respondent submitted the document R/3 chart showing extracts of various LPS waiver letters by M/s SAP Energy which is completely wrong, misleading and confusing, inasmuch as it merely asserts the applicability of so called waiver, suo-moto, without properly taking into consideration the nature of petitioner's letters and communication and the directions of the regulatory Commission.*
- iii. *That the document of Petitioner Annexure A/8 letter dated 27.03.2017 is not a letter of waiver of LPS but is a conditional letter only. The condition is that the payment of due amount of Rs. 1,22,82,911/- is made by 30.03.2017, the Petitioner accepts that LPS will not be made **in this payment**. As per this condition it is mandatory to pay **entire** due payment by the specified date mentioned in the letter. Similarly in the subsequent letters complete due amount had to be paid compulsorily by the concerned specified date.*

- iv. *That the contents of Para 5 & 6 are wrong and denied.*
- v. *With regard to Para no. 7, the petitioner states that he always categorically apprised and mentioned in its letters dated 14.02.2017, 07.03.2017 and 12.04.2017 that it would first appropriate the amount received by it towards the due LPS. And it is so ordered by the Hon'ble Commission in its order with regard to LPS rules.*

That The Petitioner herewith submits the proper chart which will clearly show that the Respondent has not fulfilled the conditions of such conditional letters. Hence the effect of conditional letters nullifies.

EXTRACTS OF CONDITIONAL LETTERS GIVEN BY THE PETITIONER

SR No.	Letter Dated	Last date of payment as per condition	Amount due on the date of issue of conditional letter without LPS	Payment made by Respondent on said last date (including Rebate)	Required due payment as per mandatory condition paid or not on date mentioned in concerned letter ?	Condition of letter fulfilled or not?	Effect of Conditional letter?
1	27.03.17	30.03.17	12,282,911.00	8,407,895.00	NO	NO	NIL
2	20.09.17	29.09.17	19,580,923.00	8,995,179.00	NO	NO	NIL
3	24.10.17	31.10.17	11,890,989.00	1,795,595.00	NO	NO	NIL
4	21.11.17	30.11.17	10,095,394.00	2,763,799.00	NO	NO	NIL
5	22.12.17	30.12.17	9,007,150.00	2,547,613.00	NO	NO	NIL
6	16.01.18	30.01.18	7,361,023.00	2,953,269.00	NO	NO	NIL
7	19.02.18	28.02.18	5,988,293.00	1,830,713.00	NO	NO	NIL
8	16.04.18	30.04.18	5,020,527.00	1,675,555.00	NO	NO	NIL
9	21.05.18	31.05.18	5,896,764.00	901,486.00	NO	NO	NIL
10	07.06.19	30.06.19	4,905,158.00	2,021,721.00	NO	NO	NIL
11	11.10.19	31.10.19	10,254,583.00	5,620,804.00	NO	NO	NIL
12	08.11.19	30.11.19	5,701,048.00	2,788,675.00	NO	NO	NIL
13	12.12.19	31.12.19	3,689,355.00	1,845,104.00	NO	NO	NIL
14	11.01.20	31.01.20	2,502,721.00	1,067,269.00	NO	NO	NIL
15	14.02.20	29.02.20	3,100,144.00	776,982.00	NO	NO	NIL
16	09.03.20	31.03.20	3,732,507.00	658,470.00	NO	NO	NIL
17	10.04.20	30.04.20	3,074,037.00	1,664,692.00	NO	NO	NIL
18	09.07.20	31.07.20	6,309,111.00	1,409,345.00	NO	NO	NIL
19	08.02.21	28.02.21	16,879,669.00	4,899,766.00	NO	NO	NIL
20	09.03.21	31.03.21	13,077,323.00	5,087,186.00	NO	NO	NIL
21	11.08.21	31.08.21	19,105,822.00	1,545,126.00	NO	NO	NIL
22	10.03.22	31.03.22	4,905,080.00	693,350.00	NO	NO	NIL
23	11.06.22	30.06.22	9,111,750.00	4,211,730.00	NO	NO	NIL

No subsequent conditional letters for payment without payment alongwith LPS was given for the payments made after 30.06.2022.

- vi. *That Para No. 5 & 6 relates to issue No. 2 only, and no conditional letter was given against payment of Rs. 82,61,617/-, hence LPS on such payment has to be made as per orders of the Hon'ble commission.*
- vii. *That there was no direction in the order of Hon'ble commission to consider any conditional letter or so called waiver letter for issue No. 3 regarding LPS on delayed payments.*
- viii. *That, it is humbly submitted that the above submissions be taken on record.*

10. At the hearing held on 18th July 2023, arguments were made by both the parties. Shri Manoj Dubey, Advocate appearing on behalf of the Respondent informed that they could receive the additional submissions made by Petitioner only on 17.07.2023 and further some documents on which arguments were made by Petitioner, are not available with him. Petitioner was directed to provide all the relevant documents to Respondents within 3 days and Respondents might make written submission within 7 days after receipt of documents from Petitioner. The case was listed for final arguments on 01st August' 2023.

11. By Affidavit dt. 21.07.2023, in its written submission, Petitioner submitted following:

- i. *That the Hon'ble Commission has been pleased to hear the above captioned matter and directed the parties to file the Written Submissions on 18.07.2023. In compliance, thereof, the humble applicant filing the instant submissions before this Hon'ble Commission :*
- ii. *That, the present Petition was filed by the Applicant on account of non-compliance of the Hon'ble Commission cogent order passed on dated 28.11.2023 and directed to the Respondent in Para 29 of the said order as under :*

"With the above observations the instant Petition is partially allowed. Respondent is directed to pay Late Payment Surcharge as reconciled within 60 days of passing of this Order and report its compliance to the Commission."

- iii. *That the Respondent, despite repeated reminders by the Petitioner, neither made the payment of LPS nor even reconciled the detailed calculations of LPS sent by the Petitioner sent in 15 days of the order of the Hon'ble Commission. But the Respondent's first response through a letter e-mailed on 10.02.2023 was made after 75 days of the order, in which also respondent made no attempt to reconcile the details as per the directions of Hon'ble Commission. Their efforts were only to conflate specific issues by mixing the distinct*

aspects of the order of the Commission in an arbitrary and disingenuous manner. The Respondent did not attempt to realize the Hon'ble Commission's direction, but stuck to preconceived view of the case did not delve into details of, which was the specific directive, but only acted summarily and superficially. Please refer Para 2 to 6 of the Petition for detail. The above referred letter of the Respondent was sent via e-mail on 10.02.2023, was mentioned as dated 18.01.2023, the ignorance of the same was noted and informed to the Respondent immediately.

- iv. That the Respondents have neither made the payment of LPS nor reconciled the details, as yet, and thereby made gross contravention of the order of the Hon'ble Commission to be liable for action u/s 142 of the Electricity Act 2003.
- v. That while deciding the Issue No. 3 the Hon'ble Commission directed to the Respondent in operating para (Para No. 27 read with para No. 29) of the said order as under:

Para 27: "Considering the provisions of LPS Rules 2021 and 2022 read with applicable provisions of Power Purchase Agreement dated 22.08.2016, **Commission direct the Respondent to comply with the provisions of LPS Rules 2021 and LPS Rules 2022 read with PPA conditions, and accordingly, include LPS in payment of outstanding dues.** The LPS computation on delayed payment surcharge prior to 22nd Feb. 2021 shall be made based on the rates specified dated 22.08.2016."

Para 29: "With the above observations the instant Petition is partially allowed. **Respondent is directed to pay Late Payment Surcharge as reconciled within 60 days of passing of this Order and report its compliance to the Commission.**"

- vi. That as per the Rule 4 (1) of the Electricity (Late Payment Surcharge) Rules 2021 :

"Late Payment Surcharge shall be payable on the payment outstanding after the due date at the base rate of Late Payment Surcharge applicable for the period for the first month of default."

Thus LPS is payable to the generating company or electrical trader for power produced from it on account of delay in payment of monthly charges beyond the due date by the distribution company.

- vii. That despite above specific directions of the Hon'ble Commission with regard to Issue No. 3 for the payment of Late Payment Surcharge on **delayed payments**. The Respondent tried to conflate specific issues by mixing the distinct aspects/ issues of the order of the Commission in an arbitrary and disingenuous manner. The Respondent did attempt to compute the LPS applying the Rules, which was the specific directive, but only acted summarily and superficially.

- viii. *That the plain reading of the operating para of the order of Hon'ble Commission is clear that there is no direction given to Respondent to consider any conditional letter while calculating/ reconciling payment of LPS on delayed payments in Para 27 and 29 of the order while deciding Issue No. 3, reproduced in para 5 supra, as is being done by the respondent. The direction of the Commission cannot be manipulated arbitrarily as is being done by the Respondent for issue No. 3. The Respondent was specifically directed to only reconcile the calculation of LPS as per Para 27 of the order while deciding the Issue No. 3 in favour of the Petitioner, but the Respondent did not do so as yet.*
- ix. *That accordingly the total amount of LPS on delayed payment is Rs.80,24,530/- and is payable by the Respondent to the Petitioner as detail given Para 19 of the Petition.*
- x. *That the Respondents have not made the payment of LPS on delayed payment despite specific directives in the order of Hon'ble Commission, as yet, and thereby made gross disobedience of the order of the Hon'ble Commission to be liable for action u/s 142 of the Electricity Act 2003.*
- xi. *That the argument of the Respondent regarding Issue No. 2 & 3 for third party sale was covered in the Issue No. 2 as mentioned in Para 25 of the order and held in Para 21 as under:*
- “....., the argument of the Respondent that the Petitioner should have availed this option and as a result of which respondent was not liable for payment of delayed payment surcharge does not hold any reasoning.”*
- xii. *That while deciding the Issue No. 2 the Hon'ble Commission directed both the parties in Para 24 of the said order as under :*
- “The Petitioner in the subject Petition has provided the details of overdue payments and LPS thereon till 30th June 2022 amounting to INR 82,61,617 which has been disputed by the Respondents. The Commission direct both the parties to reconcile the details of overdue payments **and late payment surcharge** in the light of conditional waiver given by the Petitioner and applicable LPS rates as per PPA and LPS Rules 2021 and 2022 notified by Ministry of Power, Government of India from time to time.”*
- xiii. *That in compliance of para 24 of the order of Hon'ble Commission, the Petitioner submitted the detail of its claim of due amount as well as LPS thereon through petitioner's letter dated 14.12.2022 to the Respondent for reconciliation. This provision of the Hon'ble Commission's order related to the FOUR invoices which were outstanding on the date of petition making up this claim amounting to Rs. 82,20,618/- as under :*

i) SE/WEG/Ringnod-II/21-22/11	dt. 28.03.22	Rs. 13,13,068
ii) SE/WEG/Ringnod-II/21-22/12	dt. 29.04.22	Rs. 22,23,096
iii) SE/WEG/Ringnod-II/22-23/01	dt. 22.05.22	Rs. 23,63,856
iv) SE/WEG/Ringnod-II/22-23/02	dt. 22.06.22	Rs. 33,06,598
v) LPS till 30.06.2022		Rs. 55,999/-

- xiv. That the total principal payment of above invoices amounting to Rs. 82,20,618/- was received on 23.08.2022, 23.08.2022, 23.08.2022 and 26.08.2022 respectively and this issue had since been resolved to the extent of principal amount of invoices, but regarding the LPS payable on these delayed payment, up to date of actual payment, amounting to Rs. 2,32,340/- was required to be reconciled as per the direction of the Hon'ble Commission. The Petitioner submitted its detail at point No. 72 to 75 of calculation sheet submitted together with letter dated 14.12.2022 for reconciliation and payment thereof in compliance of the directions of the Hon'ble Commission.
- xv. That Petitioner has been specifically reiterating since order of the Commission that no letters conditional or otherwise any letter referring to the letter dated 27.03.2017 were given by the Petitioner with respect to invoices related to this matter as detailed above in para 13 supra. But the Respondent, instead of either showing any concerned letter or considering petitioner's insistence for reconciliation, went on ignoring the direction of the Hon'ble Commission intentionally in order to escape themselves from making the genuine payment of LPS. The letters referred by the Respondent in Para 3 of its reply to the Petition were not given for payments made in the month of August, 2022 relating to the above invoices. The Respondent did not submit any document in support of their contention.
- xvi. That Respondent has ignored the directions of the Hon'ble Commission as such the Respondent made gross disobedience of the order of the Hon'ble Commission to be liable for action u/s 142 of the Electricity Act 2003.
- xvii. That, In **Kurugunda Solar Power Project LLP v. Hubli Electricity Supply Company Limited** (Appeal no. 12 of 2019) it was held by the Appellate Tribunal as follows: ".....116. In terms of the Articles and various Clauses especially Clause 6.4 of the PPA, **if the amounts are due, not paid in time, the Solar Developer is entitled for late payment surcharge.** Since the delay was not on account of the Appellants and they did commission the solar plant within the extended SCOD, we are of the opinion that they are entitled for late payment surcharge..."
- xviii. That In the case of **Lanco Amrkantak Power Limited v. Haryana Electricity Regulatory Commission** (dated 22.05.2019 in Appeal No. 308 of 2017) it was held by the Appellant Tribunal that:
- ".....93.. (iv) Therefore, for equity and restitution payments made at a later stage, of the amount, due in the past, must be compensated by way of appropriate rate of interest so as to compensate for the loss of money value. This is a proven concept of time value of money to safeguard the

interest of the receiving party

v) The Appellant has placed reliance on several judgments passed by this Tribunal in several similar matters wherein it has been clearly brought out that the developers are entitled to interest on the differential amount due to them as a consequence of redetermination of tariff. It has been clarified in various judgments that the interest is of a penal charge if it is fixed according to commercial principles. It is only compensation for the money denied at the appropriate time.

xix. *That, though, the Hon'ble Commission has already published its Judgment considering all the correspondence, documents, PPA and LPS Rules including Petitioner's letters dated 16.03.2017, 27.03.2017 and 12.04.2017 etc. and these letters do not affect the implication of the order of the Hon'ble Commission as explained above, but since the Respondent again and again intentionally making efforts to conflate specific issues by mixing the distinct aspects of the order of the Commission in an arbitrary and disingenuous manner through misinterpreting these letters, the Petitioner begs to submit following additional submissions.*

xx. *That it is very pertinent to note that the Petitioner had submitted a letter dated 16.03.2017 to the Respondent before said letter dated 27.03.2017 which reads as under :*

".....the demand of waiver is not acceptable. And even if it agreed for getting payments under these circumstance would mean coercion and would not waive our rights under the contract terms."

xxi. *That it is evident from the above that the condition of PPA regarding LPS could not be waived in any condition. Without prejudice to the fact that the Petitioner had **never given its acceptance for waiver of LPS**, even otherwise had it been so, the rights of petitioner as per terms of PPA cannot be treated as waiver of LPS in light of its letter dated 16.03.2017 given to Respondent in advance.*

xxii. *That the Petitioner had to submit Letter dated 27.03.2017 under the circumstance enumerated in letter dated 16.03.2017. The quintessence of said letter dated 27.03.2017 is clear from the wordings of said letter being reproduced hereunder :*

".....As on date an amount of relating to our invoices totaling Rs. 1,22,82,911 is overdue. As per PPA, LPS is payable on these delayed payments."

"Non-realization of amounts in time has caused severe and intolerable cash crunch in our organization and if same is not received and repayment made to bankers by 31st March-2017, we risk our account to be classified as an NPA, which would have severe and

*unbearable impact on our entire business. We, therefore, have to accept that if payment is made by 30.03.2017 LPS will not be made **in this payment.***

- xxiii. *That the Petitioner has **never** accepted that LPS will not be made **on this payment or for this payment.** The acceptance was clearly made only for 'LPS will not be made **in this payment**' meaning thereby that payment of LPS will be released later on. The Respondent has replaced words "**on such payment**" instead of "**in this payment**" as mentioned in its letter dated 18.01.2023 (second para 3rd - 4th line) and in its all submissions, to create misinterpretation. Even otherwise in the light of Petitioner's letter dated 16.03.2017 the right of LPS of the Petitioner under terms of conditions of PPA cannot be waived.*
- xxiv. *That the document of Petitioner letter dated 27.03.2017 is not a letter of waiver of LPS but is a conditional letter only. The condition is that the payment of due amount of Rs. 1,22,82,911/- is made by 30.03.2017, the Petitioner accepts that LPS will not be made **in this payment.** As per this condition it is mandatory to pay **entire** due payment by the specified date mentioned in the letter. Similarly in the subsequent letters complete due amount had to be paid compulsorily by the concerned specified date.*
- xxv. *That on reference of Para 3 of the Petitioner's submission dated 15.07.2023 in response to additional submissions of Respondent submitted dated 10.07.2023 it will be clear that the Respondent had not fulfilled the prime condition of the conditional letter dated 27.03.2017 and its subsequent letters. The extract chart shows that the prime condition of conditional letters Sr. No. 1 to 23 was not fulfilled and thereby the effect of conditional letter comes to NIL.*
- xxvi. *That on perusal of said extract, the Hon'ble Commission will find that in Sr. No. 1 as per the Petitioner's letter dated 27.03.2017 the Respondent was liable to make payment of Rs. 1,22,82,911/- by 30.03.2017 to fulfill the prime condition of conditional letter but the Respondent made the payment of only Rs. 84,07,895/- and as such did not fulfill the said condition and hence the effect of said letter dated 27.03.2017 nullifies. Similarly in Sr. No. 2 as per the Petitioner's letter dated 20.09.2017 the Respondent was liable to make payment of Rs. 1,95,80,923/- by 29.09.2017 to fulfill the prime condition of conditional letter but the Respondent made the payment of only Rs. 89,95,179/- and as such did not fulfill the said condition and hence the effect of said letter dated 20.09.2017 nullifies. And similarly condition of all the subsequent letters were not fulfilled and thereby effect of all such subsequent letters nullifies.*
- xxvii. *That, therefore, the Petitioner immediately informed the Respondent vide letter dated 12.04.2017 to make balance of due part payment along with complete LPS and specifically mentioned in said letter that the received amount would first be adjusted against due LPS as per Rules.*

xxviii. *The Respondent in Para 6 of its reply has stated that there still exists a dispute, whereas the Hon'ble Commission has already decided Issue No. 3 in favour of the Petitioner vide Para 27 read with Para 29 of the order.*

12. At the hearing held on 01st August 2023, Respondent stated that copies of Annexure A8 to A10 mentioned by the Petitioner in his Petition/ Submission are not received. Respondent also requested to grant some time for arguments after receipt of documents from Petitioner. Commission directed Petitioner to provide copies of Annexure A8 to A10 within 3 days and Respondent might make written submission within 10 days thereafter. The case was listed for hearing on 22.08.2023.

13. By letter dt. 09.08.2023, Respondent (MPPMCL) submitted following in its written submission:

i. *By way of instant petition u/s. 142 of the Electricity Act, 2003, arising out of order dated 28-11-2022 passed by the Hon'ble Commission in Petition No. 47 of 2022, the Petitioner is, inter-alia, seeking payment of Late Payment Surcharge (LPS) alleged to be outstanding for payment. The relevant paragraphs of the said order dated 28-11-2022 are extracted as under:*

"24. The Petitioner in the subject petition has provided details of overdue payments and LPS thereon till 30th June, 2022 amounting to INR 82,61,617 which has been disputed by the Respondents. The Commission direct both the parties to reconcile the details of overdue payments and late payment surcharge in the light of conditional waiver given by the Petitioner and applicable LPS rates as per PPA and LPS Rules 2021 and 2022 notified by the Ministry of Power, Government of India from time to time.

*29. With the above observations, the instant petition is partly allowed. Respondent is directed to pay late payment surcharge **as reconciled** within 60 days of passing of this order and report compliance to the Commission."*

[Emphasis supplied]

ii. *A perusal of operative/ directive part in para no. 29 of the said order makes it very clear that the payment of late payment surcharge was contingent on the reconciliation to be made between the parties **but in the light of conditional waiver given by the Petitioner.** The parties did meet for it, but the quantum of the Late Payment Surcharge due could not be reconciled further because the sanctity of the waiver letter dated 27.03.2017 submitted by the petitioner which has been also observed by Hon'ble Commission as "Conditional waiver" was challenged by the petitioner. Therefore, the contingent event mentioned in the aforesaid order having not been met, it was not possible for the Respondent to make payment of the Late Payment Surcharge alleged to be*

due within the period of 60 days mentioned in the said order. Therefore in absence of the contingent event having happened, the present proceedings u/s. 142 of the Electricity Act, 2003 are not maintainable. The proceedings ought to be dropped. The quantum of alleged Late Payment Surcharge due remains unreconciled and not adjudicated upon till date and which would need to be done by separate proceedings. It is submitted that despite absolute willingness and best efforts, the Respondent is helpless in complying with the directions of the Hon'ble Commission for such reasons. It is submitted that there is no intent whatsoever to bring the authority and administration of law into disrespect or to disregard or to interfere with or to undermine the authority of the Hon'ble Commission or to cause any prejudice to the Petitioner.

- iii. That, the operative part of Petitioner's letter No. 3756 dated 27-03-2017 is extracted as:

*"As you are aware As on date an amount relating to our invoices totaling to Rs. 1,22,82,911 is overdue. **As per PPA LPS is payable on these delayed payments.***

*Non-realization We therefore have to accept that, if payment is made by 30-March-2017, **LPS will not be made in this payment.**"*

The aforesaid letter makes it very clear that as on the date of said letter, to the admission of the Petitioner, an amount of Rs. 1,22,82,911/- was due for payment towards pending invoices of the Petitioner and on said invoices LPS was applicable. But, in case, the payments of pending invoices (principal amounts) was made by 30th March, 2017, then the Petitioner would not claim LPS on the said payment. Undisputedly, the payment of pending invoices available was made by 30th March, 2017. Hence, the LPS was not applicable on said payment.

- iv. That, thereafter, in all the subsequent invoices, details of which are extracted in Annexure R/3 filed by the Respondent, the Petitioner had waived off the LPS in terms of its aforesaid letter dated 27-03-2017. Therefore, to the bonafides understanding of the Respondent, there had been complete waiver of LPS outstanding in payment of the pending invoices.
- v. That, however, during the process of reconciliation of the LPS amount due, the Petitioner stressed that the order dated 28-11-2022 passed by the Hon'ble Commission in Petition No. 47 of 2022 provided that the reconciliation needs to be made in view of applicable LPS rates as per PPA and LPS Rules 2021 and 2022 only. The Petitioner intends to give a complete go-by to all its waiver letters as extracted in Annexure R/3 filed by the Respondent. Once having issued such waiver letters, and the payments having been made by the Respondent in tune to such conditional waiver letters, the Petitioner is estopped from raising its claim for LPS.

- vi. *That, the parties hereto were not ad-idem over interpretation of conditional waiver letters issued by it and for this sole reason a reconciled amount in the light of conditional waiver given by the Petitioner and applicable LPS rates as per PPA and LPS Rules 2021 and 2022 notified by the Ministry of Power, Government of India from time to time could not be arrived at.*
 - vii. *That, even otherwise, in subsequent early payments made by the Respondents towards invoices, the Petitioner has satisfactorily accepted the payments with rebates. The Petitioner has never informed to the Respondent that any amount was due towards LPS. The Petitioner never informed the Respondent the manner in which it is adjusting the payments made towards invoices first towards the LPS. The Petitioner, by way of his demand notice dated 10/11/21 never claimed the LPS of previous period. The Petitioner has never claimed in its invoices the LPS accrued but not paid to it. It is also believed that the Petitioner has also not accounted for and reflected the alleged LPS due in its relevant audited financial statements as income accrued but not received. Hence, there is a presumption that it has always waived of the LPS. The Petitioner has also not claimed the LPS alleged to be outstanding in its demand notice.*
 - viii. *That, even otherwise for want of the condition precedent of reconciling and ascertaining the LPS due there arose no possibility of making payments of the same within 60 days of passing of the order dated 28-11-2022.*
 - ix. *That, the Petitioner has approached the Hon'ble Commission with unclean hands and in material suppression of facts.*
 - x. *That, in view of all that is submitted that instant proceedings may be dropped, to meet the ends of justice.*
14. The last hearing in the subject matter was held on 22nd August' 2023. During the hearing Petitioner as well as respondent completed their arguments in the matter. On the request of respondent, 3 days' time was allowed for making written submission.
15. By affidavit dt. 24.08.2023, Petitioner SAP Energy Ltd. submitted following in its final written submission:
- i. *That the Hon'ble Commission has been pleased to hear the above captioned matter on 22.08.2023 and directed the parties to file the Written Submissions, if required. In compliance, thereof, the humble applicant is filing the instant submissions before this Hon'ble Commission :*
 - ii. *That, the present Petition was filed by the Applicant on account of non-compliance of the Hon'ble Commission cogent order passed on dated 28.11.2023 and directed to the Respondent in Para 29 of the said order as under :*

“With the above observations the instant Petition is partially allowed. Respondent is directed to pay Late Payment Surcharge as reconciled within 60 days of passing of this Order and report its compliance to the Commission.”

- iii. *That contrary to the allegation of the Respondent in Para 6 of its reply where he has blatantly in disingenuous manner claimed that there still exists a dispute, Petitioner states that the Hon’ble Commission has already decided Issue No. 3 in favour of the Petitioner vide Para 26 and 27 read with Para 29 of the order in clear and unambiguous words that the Discoms will be bound to pay LPS in the light of terms of PPA and LPS Rules 2021 and 2022. The Petitioner immediately submitted the detail of calculation of its claim for Rs. 80,24,530/- vide letter dated 14.12.2022 to the Respondent for reconciliation in accordance with the direction of the Hon’ble Commission but the Respondent neither reconciled the same nor wanted to reconcile and did not make the payment in the stipulated timeframe in the grab of reconciliation and disobeyed the orders of Hon’ble Commission.*
- iv. *That the Respondent, despite repeated reminders by the Petitioner, neither made the payment of LPS nor even reconciled the detailed calculations of LPS sent by the Petitioner sent in 15 days of the order of the Hon’ble Commission. But the Respondent’s first response through a letter e-mailed on 10.02.2023 was made after 75 days of the order, in which also respondent made no attempt to reconcile the details as per the directions of Hon’ble Commission. Their efforts were only to conflate specific issues by mixing the distinct aspects of the order of the Commission in an arbitrary and disingenuous manner. The Respondent did not attempt to realize the Hon’ble Commission’s direction, but stuck to preconceived view of the case and did not delve into details of computation, which was the specific directive, but only acted summarily and superficially. Please refer Para 2 to 6 of the Petition for detail. The above referred letter of the Respondent was sent via e-mail on 10.02.2023 (being much later than the stipulated deadline), was mentioned as dated 18.01.2023, this discrepancy was noted and informed to the Respondent immediately.*
- v. *That the Respondents have neither made the payment of LPS nor reconciled the details, as yet, and thereby made gross contravention of the order of the Hon’ble Commission to be liable for action u/s 142 of the Electricity Act 2003.*
- vi. *That while deciding the Issue No. 3 the Hon’ble Commission directed to the Respondent in operating para (Para No. 26 & 27 read with para No. 29) of the said order as under:*

*Para 26- “As per the above-mentioned rules, **Discoms will be bound to pay LPS on the outstanding amount after the Due Date at the Base Rate**, applicable for the first month of default. The rate of LPS for successive months of default will increase by 0.5% for every month of delay, subject to a maximum cap of not more than 3% higher than Base Rate and further, LPS shall not be higher than the rate of LPS*

specified in the agreement between the Parties.”

*Para 27 : “Considering the provisions of LPS Rules 2021 and 2022 read with applicable provisions of Power Purchase Agreement dated 22.08.2016, **Commission direct the Respondent to comply with the provisions of LPS Rules 2021 and LPS Rules 2022 read with PPA conditions, and accordingly, include LPS in payment of outstanding dues.** The LPS computation on delayed payment surcharge prior to 22nd Feb., 2021 shall be made based on the rates specified dated 22.08.2016.”*

*Para 29 : “With the above observations the instant Petition is partially allowed. **Respondent is directed to pay Late Payment Surcharge as reconciled within 60 days of passing of this Order and report its compliance to the Commission.**”*

- vii. That despite above specific directions of the Hon’ble Commission with regard to Issue No. 3 for the payment of Late Payment Surcharge on **delayed payments**. The Respondent tried to conflate specific issues by mixing the distinct aspects/ issues of the order of the Commission in an arbitrary and disingenuous manner. The Respondent did attempt to compute the LPS applying the Rules, which was the specific directive, but only acted summarily and superficially.*
- viii. That the plain reading of the operating para of the order of Hon’ble Commission is clear that there is no direction given to Respondent to consider any conditional letter while calculating/ reconciling payment of LPS on delayed payments in Para 26 and 27 of the order while deciding Issue No. 3, reproduced in para 5 supra, as is being done by the respondent. The direction of the Commission cannot be manipulated arbitrarily as is being done by the Respondent for issue No. 3. The Respondent was specifically directed to only reconcile the calculation of LPS as per Para 26 and 27 of the order while deciding the Issue No. 3 in favour of the Petitioner, but the Respondent did not do so as yet.*
- ix. That accordingly the total amount of LPS on delayed payment is Rs. 80,24,530/- and is payable by the Respondent to the Petitioner as detail given Para 19 of the Petition.*
- x. That the Respondents have not made the payment of LPS on delayed payment despite specific directives in the order of Hon’ble Commission, as yet, and thereby made gross disobedience of the order of the Hon’ble Commission to be liable for action u/s 142 of the Electricity Act 2003.*
- xi. That the argument of the Respondent regarding Issue No. 2 & 3 for third party sale was covered in the Issue No. 2 as mentioned in Para 25 of the order by the Hon’ble Commission that this issue was partially covered in para 19 to 21 and held in Para 21 as under :*

“....., the argument of the Respondent that the Petitioner should have availed this option and as a result of which respondent was not liable for payment of delayed payment surcharge does not hold any reasoning.”

- xii. That para 24 of the order of Hon'ble Commission is operating para regarding only Issue No. 2 in which the Hon'ble Commission directed both the parties regarding the claim pertaining to issue No. 2 as under :

“The Petitioner in the subject Petition has provided the details of overdue payments and LPS thereon till 30th June 2022 amounting to INR 82,61,617 **which has been disputed** by the Respondents. The Commission direct both the parties to reconcile the details of overdue payments **and late payment surcharge** in the light of conditional waiver given by the Petitioner and applicable LPS rates as per PPA and LPS Rules 2021 and 2022 notified by Ministry of Power, Government of India from time to time.”

- xiii. That in compliance of para 24 of the order of Hon'ble Commission, the Petitioner submitted the detail of its claim of due amount as well as LPS thereon through petitioner's letter dated 14.12.2022 to the Respondent for reconciliation. This provision of the Hon'ble Commission's order related to the FOUR invoices which were outstanding on the date of petition making up this claim amounting to Rs. 82,20,618/- as under :

i) SE/WEG/Ringnod-II/21-22/11	dt. 28.03.22	Rs. 13,13,068
ii) SE/WEG/Ringnod-II/21-22/12	dt. 29.04.22	Rs. 12,23,096
iii) SE/WEG/Ringnod-II/22-23/01	dt. 22.05.22	Rs. 23,63,856
iv) SE/WEG/Ringnod-II/22-23/02	dt. 22.06.22	<u>Rs. 33,06,598</u>
v) Principal	Total	Rs.82,06,618
vi) LPS till	dt. 30.06.22	Rs. 55,999
Total Including LPS up to 30.06.22		Rs.82,20,618

- xiv. That the total principal payment of above invoices amounting to Rs. 82,20,618/- as per above para v) was received on 23.08.2022, 23.08.2022, 23.08.2022 and 26.08.2022 respectively and hence **this issue had since been resolved to the extent of claim for principal amount of invoices amounting to Rs 82,20,618/-**. But regarding the LPS payable on these delayed payment claimed for Rs 55999/- as above para vi), increased due to delay in payment beyond 30.06.222 of above invoices and actual LPS comes to Rs 2,32,340/- up to the date of actual payment. **This amount of Rs. 2,32,340/- of LPS was required to be reconciled as per para of 24 of the order of the Hon'ble Commission** and was required to be paid within 60 days as per direction given in para 29 of the order of the Hon'ble Commission. The Petitioner submitted its detail at point No. 72 to 75 of calculation sheet submitted together with letter dated 14.12.2022 for reconciliation and payment thereof in compliance of the directions of the Hon'ble Commission.

- xv. That it is very pertinent to note that in respect to directions given by the

Hon'ble Commission, while deciding Issue No. 2 in para 24 of the order, regarding reconciling the details of amount of Claim Rs. 82,61,617/- (specifically relating to Issue No. 2 only as alleged to be disputed by the Respondent) in light of conditional waiver given by the Petitioner, the Petitioner submits that he has specifically been reiterating to the Respondent that since the order of the Hon'ble Commission no conditional letters consequent to letter dated 27.03.2017 or otherwise were given by the Petitioner with respect to invoices related to payment of the invoices of this claim as detailed above in para 12 & 13. But the Respondent, instead of either showing any concerned letter or considering petitioner's insistence for reconciliation, went on ignoring the direction of the Hon'ble Commission intentionally in order to escape themselves from making the genuine payment of LPS. The letters referred by the Respondent in Para 3 of its reply to the Petition were not given for payments made in the month of August, 2022 when payment relating to the above invoices were made. It was also mentioned in Para 9 of this Petition that **"No subsequent letter to letter dated 27.03.2017 or even any other letter of any kind of conditional letter was given by the Petitioner for the payments cited above."** But respondent had neither denied nor crossed. That makes it clear that he has agreed with the facts of this claim. The Respondent did not produce any document.

xvi. That Respondent has ignored the directions of the Hon'ble Commission as such the Respondent made gross disobedience of the order of the Hon'ble Commission to be liable for action u/s 142 of the Electricity Act 2003.

xvii. That, In **Kurugunda Solar Power Project LLP v. Hubli Electricity Supply Company Limited** (Appeal no. 12 of 2019) it was held by the Appellate Tribunal as follows: ".....116. In terms of the Articles and various Clauses especially Clause 6.4 of the PPA, **if the amounts are due, not paid in time, the Solar Developer is entitled for late payment surcharge.** Since the delay was not on account of the Appellants and they did commission the solar plant within the extended SCOD, we are of the opinion that they are entitled for late payment surcharge..."

xviii. That In the case of **Lanco Amrkantak Power Limited v. Haryana Electricity Regulatory Commission** (dated 22.05.2019 in Appeal No. 308 of 2017) it was held by the Appellant Tribunal that:

".....93.. (iv) Therefore, for equity and restitution payments made at a later stage, of the amount, due in the past, must be compensated by way of appropriate rate of interest so as to compensate for the loss of money value. This is a proven concept of time value of money to safeguard the interest of the receiving party.

v) The Appellant has placed reliance on several judgments passed by this Tribunal in several similar matters wherein it has been clearly brought out that the developers are entitled to interest on the differential amount due to them as a consequence of redetermination

of tariff. It has been clarified in various judgments that the interest is of a penal charge if it is fixed according to commercial principles. It is only compensation for the money denied at the appropriate time.

xix. *That para 23 of the order of Hon'ble Commission is :*

"The Commission observed that waiver of LPS in letter dated 27.03.2017 was conditional subject to receiving payment by a particular date. The Commission further observed that subsequently also, only conditional waiver of LPS was accepted by Petitioner. The Commission thus finds substance in the claim of Petitioner on this issue and is of the view that if Article 12.20 is given importance the way Respondent wants to, then the entire essence of provisions for outstanding payments and late payments will be lost. Under the garb of third party sale, Respondent cannot escape liability on account of non-payment cast upon them under power purchase agreement and applicable LPS Rules".

xx. *That the Hon'ble Commission concluded in para 23 of the order that it finds substance in the claim of the petitioner and secondly also expressed its view that if Article 12.20 is given importance the way Respondent wants to, then the entire essence of provisions for outstanding payments and late payments will be lost. That the condition of the letter dated 27.03.2017 and subsequent letters was also not fulfilled by the respondent ever, hence the effect of said letter dated 27.03.2017 and corresponding consequent letters get nullified.*

xxi. *That, though, the Hon'ble Commission has already published its Judgment considering all the correspondence, documents, PPA and LPS Rules including Petitioner's letters dated 16.03.2017, 27.03.2017 and 12.04.2017 etc. and these letters do not affect the implication of the order of the Hon'ble Commission as explained above, but since the Respondent again and again intentionally making efforts to conflate specific issues by mixing the distinct aspects of the order of the Commission in an arbitrary and disingenuous manner through misinterpreting these letters, the Petitioner begs to submit following additional submissions.*

xxii. *That it is very pertinent to note that the Petitioner had submitted a letter dated 16.03.2017 to the Respondent before said latter dated 27.03.2017 which reads as under :*

".....the demand of waiver is not acceptable. And even if it agreed for getting payments under these circumstance would mean coercion and would not waive our rights under the contract terms."

xxiii. *That it is evident from the above that the condition of PPA regarding LPS could not be waived in any condition. Without prejudice to the fact that the Petitioner had **never given its acceptance for waiver of LPS**, even otherwise had it been so, the rights of petitioner as per terms of PPA cannot*

be treated as waiver of LPS, in light of its letter dated 16.03.2017 given in advance to Respondent, in the eyes of law.

- xxiv. *That the Petitioner had to submit Letter dated 27.03.2017 under the circumstance enumerated in letter dated 16.03.2017. The quintessence of said letter dated 27.03.2017 is clear from the wordings of said letter being reproduced hereunder :*

“.....As on date an amount of relating to our invoices totaling Rs. 1,22,82,911/- is overdue. As per PPA, LPS is payable on these delayed payments.”

*“Non-realization of amounts in time has caused severe and intolerable cash crunch in our organization and if same is not received and repayment made to bankers by 31st March-2017, we risk our account to be classified as an NPA, which would have severe and intolerable impact on our entire business. We, therefore, **have to accept** that if payment is made by 30.03.2017 LPS will not be made **in this payment.**”*

- xxv. *That the Petitioner has **never** accepted that LPS will not be made **on this payment** or **for this payment** or **on such payment**. The acceptance was clearly made only for ‘LPS will not be made **in this payment**’ meaning thereby that payment of LPS will be released later on. The Respondent has replaced words “**on such payment**” instead of “**in this payment**” as mentioned in its letter dated 18.01.2023 (second para 3rd - 4th line) and in its all submissions, to create misinterpretation. Only in case Petitioner would have written “on such payment” instead of “in this Payment” the contention of Respondent could persist. Even otherwise in the light of Petitioner’s letter dated 16.03.2017 the right of LPS of the Petitioner under terms of conditions of PPA cannot be waived as per settled law.*
- xxvi. *That the document of Petitioner letter dated 27.03.2017 is not a letter of waiver of LPS but is a conditional letter only. The condition is that the payment of due amount of Rs. 1,22,82,911/- is made by 30.03.2017, the Petitioner accepts that LPS will not be made **in this payment**. As per this condition it is mandatory to pay **entire** due payment by the specified date mentioned in the letter. Similarly in the subsequent letters complete due amount had to be paid compulsorily by the concerned specified date. The Respondent never fulfilled the required mandatory condition mentioned in said letters.*
- xxvii. *That contrary to the submission of the Respondent in para 3 of Written Submission 09.08.2023 that “Undisputedly, the payment of pending invoices available was made by 30th March, 2017. Hence LPS was not applicable on said payment.”, the Petitioner refer Respondent’s Annexure R/3 attached with additional submissions dated 01.07.2023 which shows that invoice at sr. No. 1 to 12 (total 12 invoices) were available to him as per column 3 of said Annexure R/3 by 30th March, 2017 **but payment was made only for 1st FIVE***

invoices by 30th March, 2017 and not for all twelve available invoices.
That at every time the Respondent did not fulfill the condition of letter dated 27.03.2017 and its subsequent letters.

- xxviii. That the extract chart given in para 5 of Petitioner's submission dated 15.07.2023, (chart again enclosed herewith for ready reference as Annexure A-11), clearly shows that the prime condition of conditional letters Sr. No. 1 to 23 was not fulfilled by the Respondent and thereby the effect of all conditional letters comes to NIL.
- xxix. That on perusal of said extract (Annexure A-11), the Hon'ble Commission will find that in Sr. No. 1 as per the Petitioner's letter dated 27.03.2017 the Respondent was liable to make payment of Rs. 1,22,82,911/- by 30.03.2017 to fulfill the prime condition of conditional letter but the Respondent made the payment of only Rs. 84,07,895/- and as such did not fulfill the said condition and hence the effect of said letter dated 27.03.2017 nullifies. Similarly in Sr. No. 2 as per the Petitioner's letter dated 20.09.2017 the Respondent was liable to make payment of Rs. 1,95,80,923/- by 29.09.2017 to fulfill the prime condition of conditional letter but the Respondent made the payment of only Rs. 89,95,179/- and as such did not fulfill the said condition and hence the effect of said letter dated 20.09.2017 nullifies. And similarly condition of all the subsequent letters were not fulfilled and thereby effect of all such subsequent letters nullifies.
- xxx. That contrary to the allegation of the Respondent that the letter dated 12.04.2017 (Annexure A-10) was brought on record for the first time, it was filed by Petitioner in the earlier disposed of Petition No. 47/2022 as Annexure-13.
- xxxi. That contrary to the allegation of the Respondent that the Petitioner never informed the Respondent the manner in which it is adjusting the payment made towards invoices first towards the LPS, the Petitioner informed to Respondent by letter dated 12.04.2017 Annexure A-10 that "Please also note that whatever payment shall first be adjusted against due interest (LPS) and balance, if any, would be adjusted against principal due and as such principal due after such adjustment shall continue to carry interest (LPS) till complete payment." The same verdict was also mentioned in letter dated 14.02.2017 and 07.03.2017 (Annexure 8 and Annexure 9 respectively of earlier disposed of Petition No. 47/2022). The LPS Rules 2021 and 2022 also provide the same procedure.
- xxxii. That contrary to the allegation of the Respondent in para 7 of his Written Submissions dated 09.08.2023, Petitioner submits that (i) LPS is payable with the payment of delayed payment of invoices as per the terms of PPA and need not to be invoiced separately. (ii) In regard to demand Notice dated 10.11.21, though it is irrelevant, without prejudice to it the Petitioner submits that at para 12 at page 10 of said notice the LPS of Rs. 39,05,874/- on already received delayed payment considered apart and stands outstanding due to the operational creditor. (iii) It is also against the belief of Respondent as LPS

due has been accounted for in audited financial statement.

xxxiii. *That an affidavit is being submitted in support of this argument. Therefore, the humble petitioner prays to this Hon'ble Commission to allow the present application and direct the respondent to release the due LPS as legal rights as per laws and precedence set by the various courts of laws.*

16. By letter dt. 25.08.2023, Respondent (MPPMCL) submitted following in its written submission:

i. *The Petitioner by way of emphasizing on letter dated 16.03.2017 and asserting on the circumstances for furnishing letter dated 27.03.2017 is trying to demonstrate the presence of 'element of duress' in demanding LPS waiver by the respondent. But the presence of any 'element of duress' has already been set aside by the Hon'ble MPERC in observations made vide Para No. 16 to 18 in their order dated 28.11.2022.*

ii. *A perusal of Second Para of the letter dated 27.03.2017 from M/s SAP Energy which is reproduced as below:*

*"We therefore have to accept that, if payment is made by 30-Mar-2017, LPS (Late Payment Surcharge) will not be made in this payment" shows that the petitioner is stating here a condition for the waiver of LPS and it crystal clearly means that **"if payment is made by 30-Mar-2017, LPS (Late Payment Surcharge) will not be made in this payment i.e. the payment made by 30-Mar-2017"**.*

Apart from above similar language is incorporated by the petitioner, in his further waiver letters up to June-2022 submitted to MPPMCL time to time onwards. Hence, the petitioner is deliberately trying to confuse the Hon'ble Commission by using roundabout words. By doing such misinterpretation, he is also spoiling the time of Hon'ble Commission.

iii. *Regarding letter dated 12.04.2017 of the petitioner, it is reiterated that no communication informing adjustment of payments received by the petitioner in a particular way/ standard format as mentioned in the said letter dated 12.04.17 has been done with Respondent (MPPMCL) either in form of letter or Monthly/Supplementary Invoice.*

*Further in a letter dated 20.09.2017 (which has reference of letter dated March 27,2017 only) mentions that "As discussed, as regards payment of LPS **on our overdue payments**, we undertake that our letter dated March 27, 2017 regarding payment of LPS shall continue to apply to payments made till September 29,2017 to us".*

iv. *In continuation of aforesaid letters, waiver letters were submitted by the Petitioners on various occasions regularly till June 2022 on similar lines as letter dated 20.09.17 and it specifically included following term:*

"We are expecting payment of our due invoices. As regards, the LPS on these due payments, we undertake that our letter dated March 27, 2017 regarding payment of LPS, shall also apply to payments made by (end of respective month)"

On the receipt of such letters as mentioned above payments of available Invoices were released from time to time.

- v. *Petitioner did not presented any communication which shows that LPS was claimed/ raised either in Monthly Invoices or through Supplementary invoices by them separately, since beginning of issue. Had, the invoices, if any, for payment of Late Payment Surcharge were submitted by Petitioner well in time, the Respondent must have taken appropriate action on such claims.*
- vi. *Legality/Applicability of LPS and its rules as stated in the order the Hon'ble MPERC dated 28.11.2022 is never contested by MPPMCL, but admissibility of claim of LPS is always subjected to various waiver letters which were furnished by the Generator time to time for securing outstanding payments.*
- vii. *Hence, most humbly submitted that the present petition is misconceived and is sans-mérite. Hence, it is prayed that the same be dismissed.*

Commission's observations and findings:

17. The Commission has observed from the petition and the submissions of the petitioner and Respondent in this matter that as directed by Commission in its order dated 28.11.2022 passed in Petition No. 47 of 2022, proper reconciliation of LPS could not be made by the parties on account of interpretation of directives given in the said order dated 28.11.2022. Since, the matter is regarding interpretation of order passed in petition 47 of 2022, Commission, at this stage, would not deal the prayer to take action under section 142 of the Electricity Act 2003 and would provide a clear direction for proper implementation of reconciliation of LPS by both the parties. The Petitioner may approach this Commission under section 142 of the Act if the Respondent failed to properly reconcile the LPS even after clarification being given under this order.

18. The genesis of dispute lies in the language of letter dated 27.03.2017 of petitioner under which some relaxation regarding LPS payment was made as stipulated as under:

"Non-realization of amounts in time has caused severe and intolerable cash crunch in our organization and if same is not received and repayments made to Banks by 31.03.2017 we rise our account to be classified as an NPA, which would have severe and intolerable impact on our entire business. We therefore have to accept that if payment is made by 30-March-2017 LPS will not be made in this payment."

19. Subsequently, also petitioner gave same relaxation for payment of monthly bills quoting

the conditions of letter dated 27.03.2017 till June 2022.

20. The case of Petitioner is that the relaxation given in letter dated 27.03.2017 does not mean that they had waived the LPS but as in the undertaking dated 27.03.2017, it was stipulated that LPS will not be made in this payment of March 17. Similar conditions were also made in subsequent months also. According to petitioner, they had never waived the LPS. While the respondent's case is that the petitioner at his will waived the payment of LPS subject to payment of outstanding dues without any duress and after receiving payment, dispute is being made by petitioner which is not maintainable.

21. The Commission while dealing with the issue of conditional waiver given by Petitioner in order dated 28.11.2022 passed in Petition No. 47 of 2022 had taken cognizance of letter dated 27.03.2017 given by petitioner to respondent. The Commission in said order observed as under: -

"22. Respondent has submitted that Petitioner has given consent for receiving outstanding payment without LPS. The Respondent has also disputed the LPS claimed by the Petitioner in the chart annexed as Annexure-5. The Petitioner in his response in rejoinder has submitted that in his letter dated 27.03.2017 (Annexure-12) conditional acceptance to receive overdue payment without LPS was given as under: -

"Non-realization of amounts in time has caused severe and untearable cash crunch in our organization and if same is not received and repayments made to Banks by 31.03.2017 we rise our account to be classified as an NPA, which would have severe and untearable impact on our entire business. We therefore have to accept that if payment is made by 30-March-2017 LPS will not be made in this payment."

23. *The Commission observed that waiver of LPS in letter dated 27.03.2017 was conditional subject to receiving payment by a particular date. The Commission further observed that subsequently also, only conditional waiver of LPS was accepted by Petitioner. The Commission thus finds substance in the claim of Petitioner on this issue and is of the view that if Article 12.20 is given importance the way Respondent wants to, then the entire essence of provisions for outstanding payments and late payments will be lost. Under the garb of third party sale, Respondent cannot escape liability on account of non-payment casted upon them under power purchase agreement and applicable LPS Rules.*

24. *The Petitioner in the subject petition has provided details of overdue payments and LPS thereon till 30th June 2022 amounting to INR 82,61,617 which has been disputed by the Respondents. The Commission direct both the parties to*

reconcile the details of overdue payments and late payment surcharge in the light of conditional waiver given by Petitioner and applicable LPS rates as per PPA and LPS Rules 2021 and 2022 notified by Ministry of Power, Government of India from time to time.”

22. The Commission in its order dated 28.11.2022 was of the view that if, entire outstanding principal amount (without LPS) is paid by the respondent within due date then in such case, petitioner will not be entitled to claim LPS because of his undertaking given in letter dated 27.03.2017. To bring clarity in the order dated 28.11.2012, waiver considered by Commission is illustrated as under: -

Suppose total outstanding principal amount due without LPS was – **X**

LPS computed as per LPS rules was -**Y**

Total payment due was – **X+Y**

Last date of payment was 30.03.2017,

If payment of total amount of X was paid by respondent by 30.03.2017, LPS amount of Y would be considered waived as per undertaking dated 27.03.2017

However, if full amount of X was not paid by respondent by due date of 30.03.2017, as per condition of letter dated 27.03.2017, LPS would become due and recoverable as per applicable LPS rules.

23. The Commission directs that the reconciliation of LPS should be made by the parties in light of the above clarification for the month March 2017 and subsequent months also whenever such undertakings were given by Petitioner to Respondent. The Commission further directs respondent to reconcile the LPS as per clarification provided within a period of 30 days of this order and make payment of LPS, if due any as per reconciliation within 7 days thereafter. Petitioner shall be at liberty to approach this Commission for non-compliance, if the order as per the clarification provided in this order is not complied with by respondent within stipulated time frame.

With the aforesaid observations and findings, the subject petition stands disposed of.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member(Law)

(S.P.S. Parihar)
Chairman