MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL

Petition No. 14 of 2020 &
IA No. 08 of 2020

Sub: In the matter of petition u/s. 86(1)(f) read with Section 45 of the Electricity Act, 2003, Regulation 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Energy Sources) (Revision-I) Regulations, 2010 and Regulation 8.1.2 of the MPERC (Recovery of Expenses and Other Charges for providing electric line or plant used for the purpose of giving supply) Regulations, 2006 for directions to Respondents to bill the power drawn by the petitioner only under HV-7 category tariff.

ORDER
(Date of order: 18th December' 2020)

M/s. DJ Energy Pvt. Ltd.
A-2, East of Kailash, New Delhi – 110 065 - **Petitioner**

Vs.

(1) M. P. Paschim Kshetra Vidyut Vitaran Co. Ltd.
GPH Compound, Pologround, Indore – 452001

(2) M.P. Power Management Company Ltd.,
Block No. 7, Shakti Bhawan, Rampur, Jabalpur – 482008 - **Respondents**

Shri Parinay Deep Shah, Advocate appeared on behalf of the petitioner.
Shri Shailendra Jain Dy. Director appeared on behalf of the Respondent No.1

The subject petition is filed under section 86(1)(f) read with Section 45 of the Electricity Act, 2003 and Regulation 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Energy Sources) (Revision-I) Regulations, 2010 read with Regulation 8.1.2 of MPERC (Recovery of Expenses and Other Charges for providing electric line or plant used for the purpose of giving supply) Regulations, 2006 for directions to Respondents to bill the power drawn by the petitioner only under HV-7 category tariff.

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

"(i) The Petitioner is an independent power producer having a 94MW wind energy project located in Districts Ratlam and Mandsaur of Madhya Pradesh, comprising 47 Wind Turbine Generators (hereinafter WTGs) of 2 MW each.

(ii) The Petitioner's WTGs are supplying and selling power to MPPMCL under Power Purchase Agreement ("PPA") dated 06.08.2014. The WTGs of the Petitioner were commissioned in 2015 and the Petitioner has been raising invoices on MPPMCL since then.

(iii) The Petitioner has installed WTGs which are "asynchronous generators" or "induction generators". By virtue of their design, such systems need to constantly remain energized and be ready to generate and inject energy as and when adequate wind is available. When there is adequate wind available, the WTGs would inject energy into the grid, and at other times the entire system of WTGs, internal transmission lines, transformers, substations etc. would draw energy from the grid to remain connected, energized and ready for generation.

(iv) The power drawn, by WTGs, to synchronize with the grid is billed under HV-7 tariff category at the rate of INR 9.35/unit as per Regulation 10 of the RE Regulations 2010 read with the tariff order. Regulation 10 of RE Regulations, as amended by 7th Amendment dated 15.11.2017 (hereinafter "Amendment") provides that renewable energy generators will be entitled to draw power for their own use for synchronization of plant with the grid or during shutdown or such other emergencies. The regulation further states that while power availed for synchronization shall be billed as per the Retail Supply Tariff Order, under tariff schedule for synchronization, power drawn during shut down or such other emergencies would be billed at the rate applicable to temporary connection under HT industrial category. Regulation 10 of RE Regulations, 2010 is extracted below:

"10. Drawing Power during shut down by Generator/ Co-generation from Renewable Sources

The generator/Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the Transmission/ Distribution Licensee network for synchronization of plant with the grid or during shutdown period of its plant or during such other emergencies. ***The power availed during synchronization of plant with the grid shall be billed for the period and at the rate as per the retail supply tariff order under tariff schedule for synchronization.*** *In other case, it would be billed at the rate applicable to temporary connection under HT Industrial category." (Emphasis supplied)*

(v) The first bill for drawl of power was raised on the Petitioner for the month of July, 2015 in which only energy charges were applied. Thereafter, from the months of January, 2016 to June, 2016, MPPKVVNL started adding fixed charges to the bills

raised on the Petitioner. However, MPPKVVNL revised these bills in August, 2016 pursuant to this Hon'ble Commission's Orders, dated 05.07.2016 and 08.07.2016, passed in Petitions Nos. 20/2016 and 22/2016, respectively. MPPKVVNL revised its bills raised under HV 3.1 tariff category and refunded the excess amount billed and collected from wind generators. Copy of MPKKVVCL's letter dated 01.08.2016 to this effect is annexed herewith as ***AnnexureP-1 (Colly)****.*

(vi) It is pertinent to mention that the previous tariff orders, passed by the Hon'ble Commission, have also provided for billing generators, for power drawn for synchronization, at the rate given in HV-7 tariff category. The relevant extracts of all tariff orders prescribing that power drawn for synchronization should be billed under HV-7 tariff category are annexed herewith as ***Annexure P-2 (Colly)****. However, from the month of September, 2019, MPPKVVNL suddenly started billing the Petitioner for the power drawn for synchronization of WTGs, under two separate categories i.e. HV-3.1 industrial category and HV-7 tariff category. Thus, while the Petitioner was already paying high energy charges of INR 9.35/unit under HV-7, it was also asked to pay energy charges and fixed charges under HV-3.1 category, at 1.25 times the normal tariff i.e. INR 7.625/unit and INR 8.125/kVA, respectively. Copies of bills raised on the Petitioner by MPPKVVNL are annexed herein as* ***Annexure P-3(Colly)****.*

(vii) It is submitted that under Section 45 of the Electricity Act, 2003, MPPKVVNL can recover charges only in accordance with the tariff fixed by this Hon'ble Commission from time to time. Thus, MPPKVVNL is obligated to bill the Petitioner as per the schedule mentioned in the tariff order. The tariff order nowhere contemplates application of HV-3.1 industrial category on renewable energy generators, drawing power for synchronization.

3. With the above submissions, the petitioner prayed as under:

(i) Direct the Respondents to not apply temporary tariff applicable to industrial consumer under HV-3.1 industrial category on the Petitioner; and
(ii) Set aside and quash the energy bills which have already been raised by MPPKVVNL on the Petitioner and direct MPPKVVNL to adjust the excess amount paid by the Petitioner in its future bills; and
(iii) Direct the Respondents to bill the power drawn by the Petitioner at the rates mentioned under HV-7 tariff category of the applicable tariff order;
(iv) If necessary, exercise power under Regulation 8.1.2 of the MPERC (Recovery of Expenses and Other Charges for providing Electric Line or Plant used for the

purpose of giving supply) Regulations, 2006 and direct that the power drawn by the Petitioner will be billed only as per rate given in HV-7 tariff category of applicable tariff order.

4. The petitioner also filed an application (IA No. 08 of 2020) in the subject matter. In the aforesaid application, the petitioner mentioned about the order dated 06.02.2020 passed by the Hon'ble High Court of MP, Bench at Indore in Writ Petition No. 2430 of 2020 filed by the petitioner against the bills dated 16.01.2020 raised by the Respondent No. 1. The Hon'ble High Court in aforesaid order, while giving liberty to the petitioner to file an appropriate application for grant of interim relief before the Commission, granted protection to the petitioner for 45 days with the directions to the Respondent not to take any coercive action against the petitioner.

5. The subject petition alongwith the application (IA No. 08 of 2020) was admitted on 6th March' 2020 and the petitioner was directed to serve copy of the subject petition along with aforesaid application to all the Respondents. The Respondents were directed to file their reply by 19.03.2020 to the subject petition and the aforesaid application after serving a copy of same to other side also. The petitioner was also directed to clear all dues up-to-date under HV-7 Tariff out of the disputed amount under impugned bills/invoices in subject petition. The Respondents were directed not to disconnect the petitioner's connection in the subject matter till next date of hearing subject to the aforesaid directions to clear all dues up-to-date under HV-7 out of the disputed amount.

6. At the hearing held on 14.05.2020 the representative appeared for the Respondent No. 1 stated that the reply to the petition has been sent to the Commission on 4th May' 2020. The Respondent No. 1 was directed to ensure submission of reply to the subject petition at the earliest.

7. During the course of hearing held on 23rd June' 2020, the following status of submissions by the parties was observed:

(i) The Respondent No. 1 vide letter dated 04.05.2020 filed reply to the subject petition on 26th May' 2020.

(ii) The petitioner filed rejoinder to the above reply.

(iii) The Respondent No. 2 did not prefer to file reply to the subject petition.

(iv) Ld. Counsel of the petitioner and the Respondent No. 1 concluded their arguments.

8. The parties were asked to file their written submissions by 05th July' 2020 and the case was reserved for order on compliance of the above directives.

Respondent's submissions

9. The Respondent No. 1 broadly submitted the following in its reply to the subject petition filed on 26.05.2020:

"(i) That, from perusal of averment made in the petition/IA along with relief claimed, it is apparent that the primary grievance raised by the petitioner vide instant petition is with respect to the billing under temporary Industrial category on the drawl of power over and above the ceiling of 2 hours.

(ii) At the outset, the respondent denies and disputes each and every allegation, averment and contention made in the petition, which is contrary to or inconsistent with what is stated herein, as if the same has been traversed in seriatim, save and except what has been specifically and expressly admitted hereinafter in writing. Any omission on the part of the answering respondent to deal with any specific contention or averment of the petitioner should not be construed as an admission of the same by the answering respondent. Further, all the submission made herein are without prejudice to one another and are to be treated in alternate to one another in case of conflict or contradiction.

RE: Billing of power drawn continuously above Two Hours

(iii) That, this Hon'ble Commission vide Notification No. 3042/MPERC-2010, Dated: 09.11.2010, has issued the "Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 (Revision-I) {RG- 33(I) of 2010}" here in after referred as 'Regulation'. Subsequently, 7 amendments have been made in the Regulations from time to time. The last and 7th amendment in the Regulation has been made on 17/11/2017.

(iv) Regulation 10 of the aforesaid regulation provides as under:

10. Drawing Power by Generator/ Cogeneration from renewable Sources

The Generator/ Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the Transmission/ Distribution Licensees' network for synchronization of plant with the grid or during shutdown period of its plant or during such other emergencies. ***The power availed during synchronization***

of plant with the grid shall be billed for the period and at the rate as per retail supply tariff order under tariff schedule for synchronization. In other cases, it would be billed at the rate applicable to temporary connection under HT Industrial Category.

(v) Hon'ble Commission vide its tariff order has made provision for drawl of power by RE Generators for synchronization purpose under HV-7 tariff schedule and restricted the drawl from Grid for synchronization purpose for a maximum period of 2 hours on each occasion. The relevant conditions of HV-7 Schedule of tariff order 2019-20 are reproduced as under:-

"This Tariff shall apply to those generators who are already connected to the grid and seek to avail power for synchronization with the grid.

(a) The supply for synchronization with the grid shall not exceed 15% of the capacity of unit of highest rating in the Power Plant.

(b) The condition for minimum consumption shall not be applicable to the generators including CPP. Billing shall be done for energy recorded on each occasion of availing supply during the billing month.

(c) _____

(d) _____

(e) For the synchronization with the grid, power shall be provided for a maximum period of 2 hours on each occasion."

(vi) That, in compliance of aforesaid provisions of Regulation and Tariff order, respondent Discom is required to apply 2 different sets of billing methodology for each occasion of drawl by RE Generators.

(vii) Aforesaid Regulation 10 provides that the period and rate shall be considered as per tariff schedule for synchronization and in all other cases billing shall be done as per rate of temporary HT industrial category. It is submitted that under the HV 7 tariff category any generator can draw power for the purpose of synchronization maximum of 2 hours only. Thus, energy drawn over and above two hours falls under the residuary billing mechanism provided under Regulation 10. Accordingly required to be billed as per rate prescribed for HT Temporary tariff under Schedule HV 3.1 (HT Industrial). It is stated that HT industrial tariff (Tariff Schedule HV 3.1) has provision for billing of Monthly Fixed Charges (based on billing demand), Energy Charges (as per units consumption).

(viii) That, considering the aforesaid provision of regulation as well as tariff order billing of power drawn for 'synchronization' purpose (up to two hours only) is to be done under HV-7 tariff schedule. Such drawl can be computed for entire billing month considering that on

each occasion of drawl initial 2 hours allowed for synchronization purpose.

(ix) That, contention of the petitioner that even the power drawn continuously over and above the 2 hour should also be billed under HV-7 is without any substance as HV-7 tariff category doesn't permit use of power more than 2 hours. As per provision of the regulation read with the tariff order said power need to be billed at the rate applicable to temporary connection under HT Industrial Category.

(x) That, petitioner vide instant petition has disputed the billing with respect to the following connections of Wind Generators:

S.No.	*Name of consumer*	*Consumer Code*	*Circle*
1	*D J Energy Pvt Ltd*	*9458358387*	*Mandsaur*
2	*M/s D. J Energy P Ltd (Circuit II)*	*0343808157*	*Mandsaur*

(xi) That, at present energy drawn upto 2 hour at each occasion is being billed under HV-7 tariff schedule. Further, following procedure is being adopted in the billing of power drawn over & above 2 hour:

xi.1. ***Energy charges:*** *Energy drawn continuously over and above 2 hour is being billed at the rate of 1.25 times of energy charges prescribed for temporary connection under HT Industrial Category.*

xi.2. ***Fixed charges*** *: Maximum recorded MD among all the occasion of above 2 hours is being considered as Billing Demand for the entire billing month. Further billing is being done on prorate basis considering only those number of days in which power is drawn over and above 2 hours in any occasion.*

xi.3. Power factor incentive/Surcharge and ToD rebate is being provided on the energy charges billed under temporary HT Industrial Category.

Detailed calculation sheet showing billing under temporary industrial category and day wise consumption summary is enclosed as ***Annexure-1 (Colly).***

(xii) That, it is noteworthy to mention that aforesaid billing is being done by the Discom is subject to upwards revision depending upon the clarification/guideline/decision received from the Hon'ble Commission on the following issues:

"a. Billing Demand for calculation of Monthly Fixed Charges: In case of consumers, Billing Demand is considered as Recorded maximum demand (MD) or 90 % of Contract Demand (CD), whichever is higher. Since in case of Generators, there is no

defined CD, the only parameter available is Recorded MD in each occasion. Whether the maximum recorded MD among all the occasion of non-synchronization period is to be considered as Billing MD for the entire billing month is not clear. The same needs to be clarified. Further, whether the Highest recorded MD during a period of drawl of power beyond 2 hours, is to be treated as the Billing Demand for all successive periods of drawl of power beyond two hours during whole year (as mentioned in clause 'c' of para 1.19 of 'General Terms and Conditions for HT Tariff above) is also not clear.

b. *Calculation of Monthly Fixed Charges : As mentioned in clause 'a' of para 1.19 of 'General Terms and Conditions for HT Tariff above, the Monthly Fixed Charged are to be billed on pro-rata basis for the number of days the Temporary Connection has been availed during the month. However, in case of Grid Connected Generators, there is no specified period for which the Temporary Connection can be said to be availed. Neither there is any application of consumer, nor any subsisting agreement for availing Temporary Supply. As such, how the proportionality rule is to be applied for calculation of monthly fixed charges in case of grid connected generators is not clear.*

c. *Calculation of Guaranteed Annual Minimum Consumption: The guaranteed annual minimum consumption depends upon contract demand. In case of grid connected generators, there is no subsisting contract demand. Hence how Guaranteed Annual Minimum Consumption is to be calculated is not clear. Further, as mentioned in clause 'b' of para 1.19 of 'General Terms and Conditions for HT Tariff above, the guaranteed annual minimum consumption is also required to be calculated on pro-rata basis for the number of days the connection has been availed during the year. Since there is no specified period during which the Temporary Connection has been availed in case of Grid Connected Generators, how the proportionality rule is to be applied for calculation of Guaranteed Annual Minimum Units in case of grid connected generators is not clear.*

d. *Applicability of other terms and condition of tariff order: As mentioned in clause 'i' of para 1.19 of 'General Terms and Conditions for HT Tariff above, Power factor incentives/penalties and the condition for Time of Day Surcharge/rebate shall be applicable in case of Grid connected generators or not.*

e. *Advance payment : As mentioned in clause 'd' of para 1.19 of 'General Terms and Conditions for HT Tariff above, condition of advance payment shall be applicable in case of Grid connected generators or not.*

f. *Applicable Energy Charges: In the Tariff Schedule HV 3.1differential energy charges provided depending upon the load factor upto 50% and above 50%. In the case of grid connected generator there is no contract demand, therefore how the load factor shall be calculated and which rate of energy charges shall be applicable is not*

clear.

g. *Power drawn under HV-7 Exceeds 15% limit: In case grid connected generator drawing power under HV-7 tariff schedule, exceeds drawl limit of 15% what shall be the manner of billing in such circumstances. Whether any action is required to be taken in terms of penal billing or otherwise, if recorded MD of such generators exceeds the 15 % limit prescribed in tariff. The status of drawl of power is enclosed as* ***Annexure-2.*** *It may be seen from the perusal of the status that petitioner is continuously drawing power in excess of permissible 15% limit. Thus, to avoid any further dispute clarification is needed from this Hon'ble Commission in the matter.*

RE: Additional demand for the period from April 2017 to August 2019:

(xiii) In line with the methodology mentioned in para 14, answering respondent has raised demand for escaped billing in accordance with the tariff order/regulation for the period from April 2017 to August 2019. The aforesaid demand is communicated to the petitioner vide letter No. 1566 Indore dated 16.01.2020. Further, answering respondent has developed a dedicated software for the purpose of billing of power drawn from the grid by wind generators. Each developer of the wind generators has provided access of that software though a unique developer ID. Hence, each developer has access to the complete detail of bill issued to them since April 2017. Thus claim of the petitioner that no detail of billing is provided is erroneous.

(xiv) If petitioner is required any further detail in the matter answering respondent is ready to make available the same.

RE: Applicability of bar of section 56 (2) of the Electricity Act 2003 on recovery of legitimate dues of the licensees :

(xv) Petitioner has raised the plea of bar under section 56(2) of the Electricity Act 2003. Before dealing with the contention of the petitioner the relevant provision is reproduced as under:

Section 56. (Disconnection of supply in default of payment): -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or

b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

*(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date **when such sum became first due** unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.*

*(xvi) It may be seen that section 56 provides an additional right of disconnection apart from other rights i.e suit etc. available to the distribution licensee. Further bar of section 56(2) applicable only after two year from the date when the amount become **first due**. Section 56(2) doesn't impose any restriction on supplementary demand of escaped billing as the said demand become first due only when demand note in this regard issued by the licensee. Unless any demand is raised specifying the time limit for payment of the same no such demand can be said as **'due'** and consumers cannot be termed as neglectful of their responsibilities of payment. Thus, aforesaid section has no application in making supplementary demand for escaped billing. It is now a settled legal position through various judicial pronouncements that there is no limitation for making the demand by way of supplementary bill.*

(xvii) The issue of limitation on demand of earlier escaped billing came for consideration before Hon'ble Supreme Court in the M/S. Swastic Industries vs Maharashtra State Electricity (1997) 9 SCC 465. The relevant part of the said judgment is reproduced as under:

> *"The admitted position is that the respondent- Electricity Board had issued a supplementary bill to the petitioner on February 5, 1993 demanding payment of Rs. 3,17,659/-. The petitioner objected to the bill by his letter dated February 16, 1993, However, when letter was issued for payment of the said amount, the petitioner paid it under protest and filed the complaint paid it under protest and filed the complaint before the State Consumers Disputes Redressal Commission. The Commission by order dated May 24, 1995 allowed the complaint and held that the claim was barred by limitation of 3 years. Feeling aggrieved, the Electricity Board filed an appeal. **The National Commission relying upon the judgment of a Division Bench of the Bombay High Court in M/s. Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. Vs. The Municipal Corporation of Greater Bombay & Anr. (Air 1978 Bom. 369) has held that there is no limitation for making the demand by way of supplementary bill.** Section 24 of the Indian Electricity Act, 1910 gives power to the Board to issue such demand and to discontinue the supply to a consumer wh neglects to pay the charges. It*

is contended by the learned counsel for the petitioner that Section 60-A of the Electricity (supply) Act, 1948 prescribes a limitation of 3 years for the Board to institute any suit, after its constitution , for recovery of the arrears. Thereby the limitation of 3 years is required to be observed. The Board in negation of Section 60A of Supply Act cannot be permitted to exercise the power under Section 24 of the Electricity Act, 1910. We find no force in the contention.

……

This is an enabling provision by way of suit. Despite the fact that Section 24 of the Indian Electricity Act clearly empowers the Board to demand and collect any charge from the Consumer and collect the same towards the electrical energy supplied by the Board in the following terms:

"Where any person neglect to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy, to him, the licensee may, after, giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge of other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but longer."

It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of its. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same. They have the power to discontinue the supply or cut-off the supply, as the case may be, when the consumer neglects to pay the charges. The intendment appears to be that the obligation are actual. The board would supply electrical energy and the consumer is under corresponding duty to pay the sum due toward the electricity consumed. Thus the Electricity Board, having exercised that power, since admittedly the petitioner had neglect to pay the bill for additional sum, was right in disconnecting the supply without recourse to filling of the suit to recover the same. The National Commission, therefore, was right in following the judgment of the Bombay High Court and allowing the appeal setting aside the order of the State Commission. Moreover, there is no deficiency of service in making supplementary demand for escaped billing. Therefore may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers. That would be deficiency of

service under the Consumer Protection Act. We do not find any illegality warranting interference.

The Special Leave Petition is accordingly dismissed.

(xviii) From the bare perusal of the aforesaid judgment of the Hon'ble Supreme Court it is clear that :

xviii.1. There is no limitation for making the demand by way of supplementary bill.

xviii.2. Right of disconnection is an additional right provided to licensees apart from other option available for recovery i.e filing of suit etc.

(xix) Issue of applicability of section 56(2) in case of escaped billing came under consideration of Hon'ble Appellate tribunal of Electricity in Appeal Nos. 202 & 203 of 2006 in the case of Ajmer Vidyut Vitran Nigam Limited vs M/s Sisodia Marble & Granites Pvt. Ltd. & Ors. Vide order dated 14/11/2006 Hon'ble APTEL held as under:

"14. We have heard the learned counsel for the parties. The basic question for determination is what is the meaning of the words 'first due' occurring in Section 56(2) of the Electricity Act 2003; Regulation 39(1) of the Regulations, 2004 and condition No. 49 of the Terms and Conditions for supply of Electricity, 2004. In case the words 'first due' is construed as meaning consumption, it would imply that the electricity charges would become due and payable, the moment electricity is consumed. In that case failure to pay charges will entail consequences leading to disconnection of electricity to consumers even though the consumer will only know the units consumed by him and will not know the exact amount payable by him as per the approved tariff as the actual computation depends upon different parameters such as peaking/non-peaking rates; HT/LT rates etc. The responsibility to determine the amount payable by the consumer is that of the licensee. The consumer cannot be expected to discharge the duties of the distributor or the supplier of electricity. Moreover, it will create an anomalous situation as it would be difficult to determine the last date by which the payment is to be made by the consumer and in case last date is not known, it will be difficult to levy surcharge for delayed payment. Besides there will be problem in issuing notice for disconnection for failure to pay the charges on consumption. It appears to us that it could never be the intention of the legislature to equate the words 'first due' with consumption. The consumption of electricity will certainly create a liability to pay but the amount will become due and payable only after a bill or demand is raised by the licensee for consumption of electricity by the consumer in accordance with the Tariff Order. Such a bill/demand will notify a date by which the dues are to be paid without surcharge.

15. It is to be noted that a meter records the consumption of energy uninterruptedly on a continuous basis by the consumer and for such consumption the liability for payment of corresponding amount of charges by the consumer is continuously created but will not be due for payment unless the amount is raised through bill or a demand notice.

16. In H.D. Shourie vs. Municipal Corporation of Delhi, AIR 1987 Delhi 219, the Delhi High Court has ruled that electricity charges become first due after the bill is sent to the consumer and not earlier thereto. In this regard the High Court held as under:

"A bill for consumption of electricity can be sent even three years after the electricity has been consumed. The electricity charges become due after the bill is sent and not earlier. This being so, the proviso to S. 455 of Act (66 of 1957) will apply only when the bill has been sent and the remedy available with the licensee for filing a suit to recover the said amount would come to an end after three years elapse after the electricity charges have become due and payable. To put it differently, the provisions of S. 455 would come into play after the submission of the bill for electricity charges and not earlier".

The judgement further holds that,

"The amount of charges would become due and payable only with the submission of the bill and not earlier. It is the bill which stipulates the period within which the charges are to be paid. The period which is provided is not less than 15 days after the receipt of the bill. If the word "due" in S. 24 is to mean consumption of electricity, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued a notice of disconnection would be liable to be issued under S. 24. This certainly could not have been the intention of the Legislature. Section 24 gives a right to the licensee to issue not less than 7 days' notice if charges due to it are not paid. The word "due" in this context must mean due and payable after a valid bill has been sent to the consumer. It cannot mean 7 days notice after consumption of the electricity and without submission of the bill. Even though the liability to pay may arise when the electricity is consumed by the consumer, nevertheless it becomes due and payable only when the liability is quantified and a bill is raised. Till after the issue and receipt of the bill the authority has no power or jurisdiction to threaten disconnection of the electricity which has already been consumed but for which no bill has been sent".

The same judgement further provides that the arrear of charges in case of a defective meter cannot be more than six months irrespective of period of defect in the meter. It reads thus;

"The maximum period for which a bill can be raised in respect of a defective meter under S. 26 (6) is six months and no more. Therefore, even if a meter has been defective for, say, a period of five years, the revised charges can be for a period not exceeding six months. The reason for this is obvious. It is the duty and obligation of the licensee to maintain and check the meter. If there is a default committed in this behalf by the licensee and the defective meter is not replaced, then it is obvious that the consumer should not be unduly penalized at a later point of time and a large bill raised. The provision for a bill not to exceed six months would possibly ensure better checking and maintenance by the licensee".

17. Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running. ***In the instant case, the meter was tested on 03.03.2003*** *and it was allegedly found that the meter was recording energy consumption less than the actual by 27.63%. Joint inspection report was signed by the consumer and licensee and thereafter, the defective meter was replaced on 05.03.2003.* ***The revised notice of demand was raised for a sum of Rs. 4, 28,034/- on 19.03.2005****. Though the liability may have been created on 03.03.2003, when the error in recording of consumption was detected,* ***the amount become payable only on 19.03.2005, the day when the notice of demand was raised.*** *Time period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 19.03.2005. Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired."*

(xx) That, the aforesaid order of the Hon'ble APTEL has been challenged by the consumers before Hon'ble Supreme Court in Civil Appeal no. (D.No.13164/2007). Vide order dated 17/05/2007, Hon'ble Supreme Court has dismissed the civil appeal confirming the order of Hon'ble APTEL.

(xxi) That, in view of aforesaid judicial pronouncement, amount becomes first due only when the notice of demand was raised. If these principles apply in the instant case, the notice of demand for period from April 2017 to August 2017 issued on dated 16.01.2020. Time period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 16.01.2020. Thus, petitioner cannot plead that recovery is time bared under section 56(2). Even otherwise answering respondent can recover the amount due as per other available mode of recovery and law of limitation does not wipe off the dues of licensees."

10. The petitioner broadly submitted the following in its rejoinder filed on 24.06.2020:

"I. ***Power drawn continuously for more than two hours has to be billed at tariff applicable to temporary industrial consumers***

(i) It is submitted that Regulation 10 of RE Regulations provides that Generator from renewable energy sources can draw power from the Distribution Licensee's Network exclusively for three purposes only i.e. firstly, drawl for synchronization of plant; secondly, drawl during shutdown and thirdly, drawl for other emergencies.

The Regulation then provides how the power drawn for the three different purposes will be billed. It says that power availed, during synchronization of plant with the grid shall be billed at the rate under tariff schedule for synchronization. The Regulation then states that in other cases i.e. shut down and emergencies, it will be billed at the rate applicable to temporary connection. Thus, the Regulation does not allow a situation where power availed during synchronization after a period of two hours, can be considered as not availed during synchronization. If power availed during synchronization beyond the period of two hours is not considered as power availed during synchronization, then the Regulation does not allow that power drawn for synchronization be hypothetically assumed to be power drawn for shut down or for emergency – when there is no such shut down or emergency occurring in reality.

(ii) It is further pertinent to mention that Wind Turbine Generators (WTGs) need to draw power from the grid all the time to stay synchronized with the grid except when they are generating. Wind Generators do not control wind speed and cannot generate at will as they are dependent on wind speed. Thus, the Wind Power Projects, comprising of Wind Generators, internal transmission lines, transformers and substations, etc. have to draw from the grid, in order to remain synchronized with the grid, so that they can begin generating when the wind speed becomes adequate. Further, the WTG needs to draw power from the grid, so that during the cut-in time it will be able to push turbine RPM beyond synchronous RPM. Once the WTG reaches beyond synchronous RPM it begins generating and it stops importing from the grid and begins to export to the grid. It would be absurd to limit the aforesaid process of synchronization to 2 hours because a natural corollary of that would be that there can be only two hours in the day during which wind generators are allowed to not be generating, which would be simply impossible. If a WTG does not remain connected with the grid during the low Wind speed then the WTGs will have to begin the process of synchronization with the Grid afresh each time the wind speed becomes adequate to generate and such multiple fresh synchronizations are not only operationally impossible but would result in sudden inrush of current and lower voltage due to sudden start. The same would be detrimental to the grid. Frequent connection and disconnection of the WTGs from the grid can also cause other technical and operational problems.

(iii) Therefore, all power availed during synchronization, whether within two hours or beyond two hours, ought to be billed at the same rate i.e. rate prescribed for power availed during synchronization. It is submitted that current billing process, being followed by the Respondent, where it bills for power availed for synchronization beyond a period of two hours under temporary tariff category, is in teeth of Regulation 10 of RE Regulations. This is so since Regulation 10 does not even

contemplate drawl of power for purposes other than the 3 purposes specified therein. Further, it would be absurd to classify power availed during synchronization after a period of two hours as power availed for shut down or emergency, since that would be factually incorrect. It is submitted that wind generators are distinct from thermal generators in as much as the wind generators do not control their fuel source like thermal generators. Wind generators do not control wind speed and thus the Wind Power Project, comprising of Wind Generators, internal transmission lines, transformers, substations etc. may be forced to draw from the grid for longer than 2 hours, when the wind is not blowing, in order to remain synchronized with the grid. Thus, the billing for all power drawn during synchronization ought to occur as per the rate prescribed in Schedule HV-7 for power availed for synchronization.

(iv) Further, it is pertinent to mention that while HV-7 prescribes a limit of 2 hours for power drawn for synchronization, it does not state the consequence of generator exceeding the said limit.

II. <u>Adequate information has been provided for the bill raised for April, 2017 to May, 2019</u>

(i) It is the Respondent's contention that it has followed proper methodology while raising retrospective bills on the Petitioner for April, 2017 to August, 2019 vide its letter dated 16.01.2020. The Respondent has submitted that the Petitioner has access to the software developed by it through which it can view the complete details of the bills raised on the petitioner.

(ii) This contention of the Respondent is denied. It is submitted that the Respondent is twisting the facts to get out of application of Section 56(2). The Respondent has not raised supplementary demand for "escaped billing" but has raised fresh invoices by completely changing the billing methodology. In such a scenario the Respondent cannot claim that the bill raised for the past period first became due on 16.01.2020 when the letter was sent to the Petitioner. Further, while bills for the period of April, 2017 to May, 2019 have been raised by Respondent and paid by the petitioner, fresh supplementary bills have been now raised by changing the methodology of billing retrospectively. Further the sum billed in these supplementary bills has not been continuously shown as recoverable as arrear of charges for electricity supplied during the period of April, 2017 to May, 2019 and therefore these supplementary bills are barred by Section 56(2)."

Written Submissions on arguments:

11. The Respondent No. 1 broadly submitted the following in its note on arguments filed on 08.07.2020:

"RE: Billing of power drawn continuously above Two Hours

(i) Billing of power drawn by generator from the grid is to be billed in the following manner:

*(1) Synchronization power drawn **for the period** prescribed in the **tariff schedule for synchronization** (i.e HV-7 Category) is to be billed as per rate prescribed in that schedule. In other words, if power drawn for synchronization two things is to be taken from the HV-7 Tariff category **'period of billing'** and **'rate of billing'.***

(2) In all other cases excluding the cases covered in (1) above, power drawn shall be billed at the rate applicable to temporary connection under HT Industrial Category i.e HV 3.1 Tariff category. This may be treated as residuary billing mechanism and shall be applicable for all circumstances not covered under (1).

(ii) Hon'ble Commission vide Tariff Order has made provision for drawl of power by RE Generators for synchronization purpose under HV-7 tariff schedule. The relevant conditions of HV-7 Schedule of tariff order 2019-20 are reproduced as under:-

"This Tariff shall apply to those generators who are already connected to the grid and seek to avail power for synchronization with the grid.

(a) The supply for synchronization with the grid shall not exceed 15% of the capacity of unit of highest rating in the Power Plant.

(b) The condition for minimum consumption shall not be applicable to the generators including CPP. Billing shall be done for energy recorded on each occasion of availing supply during the billing month.

(c) _____

(d) _____

(e) For the synchronization with the grid, power shall be provided for a maximum period of 2 hours on each occasion."

*It may be seen that as per aforesaid clause (e) of the HV-7 Tariff Category generator can draw power for the purpose of synchronization for maximum **period** of 2 hours. Thus, it is clear that while framing the regulation Hon'ble Commission was conscious about the ceiling on the **period** of drawl, hence in the regulation it is specifically provided that **period and rate** shall be considered as per HV-7 tariff category.*

(iii) That, in compliance of the aforesaid provisions of the Regulation and Tariff order, respondent Discom is required to apply 2 different sets of billing methodology for drawl of power by Generators.

(iv) That, it is submitted that under the HV 7 tariff category any generator can draw power for the purpose of synchronization maximum up to 2 hours only. Thus, any energy drawn over and above two hours in any occasion would fall under the residuary billing mechanism provided under Regulation 10 and accordingly required to be billed as per rate prescribed for HT Temporary tariff under Schedule HV 3.1 (HT Industrial). It is stated that HT industrial tariff (Tariff Schedule HV 3.1) has provision for billing of Monthly Fixed Charges (based on billing demand), Energy Charges (as per units consumption).

(v) That, contention of the petitioner that the power drawn over and above the 2 hour should also be billed under HV-7 category is without any substance. On any such interpretation ***use of power above two hours*** *under HV-7 Tariff category would become* ***unauthorized use of power*** *because HV-7 tariff category doesn't permit use of power more than 2 hours in any occasion. Further if we consider the period of drawl as irrelevant for the purpose of billing, the provisions regarding* ***period*** *of drawl in the tariff order as well as in the regulation would become infructuous. Such course of interpretation is not permitted at all. Accordingly as per provision of the regulation read with the tariff order drawl of above 2 two hours need to be billed at the rate applicable to temporary connection under HT Industrial Category.*

*(vi) That, it is submitted that unless tariff order and regulation are amended after following the due procedure prescribed in the Act, respondent Discom is bound to charge as per terms and condition approved by the Hon'ble Commission under HV-7 Tariff Category of Tariff order. A question of permissibility of charging of tariff other than approved by the Regulatory Commission came under consideration of the Hon'ble Supreme Court in case of Shree Sidhbali Steels Limited v. State Uttar Pradesh (2011) 3 SCC 193 (**Annexure-1**). Rejecting the request of the petitioner in this regard, Hon'ble Apex Court held as under:*

> *62.This Court in Assn. Of Industrial Electricity Users v. State of A.P. as well as in W.B. Electricity Regulatory Commission v. CESC Ltd., and in BSES Ltd. V. Tata Power Co. Ltd., has held* ***that the licensee has no power to amend and/or modify the tariff determined by the Regulatory Commission.*** *Grant of reliefs claimed by the petitioners would amount to compelling them to act against the statute. Such a course is not permissible while exercising powers under Article 32 of the Constitution.* ***Thus Respondent 2 Corporation cannot be directed to amend or modify the tariffs determined by the Commission nor the petitioners would be entitled to seek any direction against the licensee to amend or modify the tariff determined by the Commission."***

In view of above it may be seen that Hon'ble Supreme Court has declined to grant relief of charging of tariff other than the approved tariff. The similar relief claimed by the petitioner in the instant case cannot be granted by this Hon'ble Commission exercising the adjudicatory jurisdiction under section 86(1) (f) of the Act.

RE: Bar of Limitation on recovery of legitimate dues of the licensee :

A. ***Sum become 'first due' only when supplementary bill raised for escaped billing not earlier:***

(vii) That, petitioner has raised the plea of bar under section 56(2) of the Electricity Act 2003. Section 56 of the Act is reproduced as under:

> *Section 56.* ***(Disconnection of supply in default of payment)****: -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:*
>
> *Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -*
>
> *(a) an amount equal to the sum claimed from him, or*
>
> *(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*
>
> *(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer,* ***under this section*** *shall be recoverable after the period of two years from the date* ***when such sum became first due*** *unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied* ***and the licensee shall not cut off the supply of the electricity.***

(viii) It may be seen that section 56 provides an additional right of recovery of dues through disconnection of supply of electricity apart from other rights available to the licensee i.e. suit e.t.c. In other words Section 56(2) only bars recovery of dues

*through disconnection. Further this bar is applicable only after two year from the date when the amount becomes '**first due**'. Section 56(2) has no applicability on supplementary billing of escaped billing as the said demand become first due only when demand notice/supplementary bill in this regard issued by the licensee. Unless any demand is raised specifying the time limit for payment no such demand can be said as **'due'** and person consuming electricity cannot be termed as neglectful of their responsibilities of payment. Thus, aforesaid section has no application in making supplementary demand for escaped billing. It is now a settled legal position through various judicial pronouncements that there is no limitation for making the demand by way of supplementary bill.*

(ix) *That, the issue of limitation on demand of earlier escaped billing came for consideration before Hon'ble Supreme Court in the case of M/S. Swastic Industries vs Maharashtra State Electricity (1997) 9 SCC 465 **(Annexure-2)**. The relevant part of the said judgment is reproduced as under:*

> *"The admitted position is that the respondent- Electricity Board had issued a supplementary bill to the petitioner on February 5, 1993 demanding payment of Rs. 3,17,659/-. The petitioner objected to the bill by his letter dated February 16, 1993, However, when letter was issued for payment of the said amount, the petitioner paid it under protest and filed the complaint paid it under protest and filed the complaint before the State Consumers Disputes Redressal Commission. The Commission by order dated May 24, 1995 allowed the complaint and held that the claim was barred by limitation of 3 years. Feeling aggrieved, the Electricity Board filed an appeal. **The National Commission relying upon the judgment of a Division Bench of the Bombay High Court in M/s. Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. Vs. The Municipal Corporation of Greater Bombay & Anr. (Air 1978 Bom. 369) has held that there is no limitation for making the demand by way of supplementary bill.** Section 24 of the Indian Electricity Act, 1910 gives power to the Board to issue such demand and to discontinue the supply to a consumer who neglects to pay the charges. It is contended by the learned counsel for the petitioner that Section 60-A of the Electricity (supply) Act, 1948 prescribes a limitation of 3 years for the Board to institute any suit, after its constitution , for recovery of the arrears. Thereby the limitation of 3 years is required to be observed. The Board in negation of Section 60A of Supply Act cannot be permitted to exercise the power under Section 24 of the Electricity Act, 1910. We find no force in the contention.*
>
> *……*
>
> *This is an enabling provision by way of suit. Despite the fact that Section 24 of the Indian Electricity Act clearly empowers the Board to demand and collect any*

charge from the Consumer and collect the same towards the electrical energy supplied by the Board in the following terms:

"Where any person neglect to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy, to him, the licensee may, after, giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge of other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but longer."

It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of its. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same. They have the power to discontinue the supply or cut-off the supply, as the case may be, when the consumer neglects to pay the charges. The intendment appears to be that the obligation are actual. The board would supply electrical energy and the consumer is under corresponding duty to pay the sum due toward the electricity consumed. Thus the Electricity Board, having exercised that power, since admittedly the petitioner had neglect to pay the bill for additional sum, was right in disconnecting the supply without recourse to filling of the suit to recover the same. The National Commission, therefore, was right in following the judgment of the Bombay High Court and allowing the appeal setting aside the order of the State Commission. Moreover, there is no deficiency of service in making supplementary demand for escaped billing. Therefore may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers. That would be deficiency of service under the Consumer Protection Act. We do not find any illegality warranting interference.

The Special Leave Petition is accordingly dismissed.

(x) From the bare perusal of the aforesaid judgment of the Hon'ble Supreme Court it is clear that :

x.1. There is no limitation for making the demand by way of supplementary bill.

x.2. Right of disconnection is an additional right provided to licensees apart from other option available for recovery i.e. filing of suit e.t.c.

(xi) That, issue of applicability of section 56(2) in case of escaped billing came under consideration of Hon'ble Appellate Tribunal of Electricity in Appeal Nos. 202 & 203 of 2006 in the case of Ajmer Vidyut Vitran Nigam Limited Vs M/s Sisodia Marble & Granites Pvt. Ltd. & Ors. Vide order dated 14/11/2006 ***(Annexure-3****) Hon'ble APTEL held as under:*

"14. We have heard the learned counsel for the parties. The basic question for determination is what is the meaning of the words 'first due' occurring in Section 56(2) of the Electricity Act 2003; Regulation 39(1) of the Regulations, 2004 and condition No. 49 of the Terms and Conditions for supply of Electricity, 2004. In case the words 'first due' is construed as meaning consumption, it would imply that the electricity charges would become due and payable, the moment electricity is consumed. In that case failure to pay charges will entail consequences leading to disconnection of electricity to consumers even though the consumer will only know the units consumed by him and will not know the exact amount payable by him as per the approved tariff as the actual computation depends upon different parameters such as peaking/non-peaking rates; HT/LT rates etc. The responsibility to determine the amount payable by the consumer is that of the licensee. The consumer cannot be expected to discharge the duties of the distributor or the supplier of electricity. Moreover, it will create an anomalous situation as it would be difficult to determine the last date by which the payment is to be made by the consumer and in case last date is not known, it will be difficult to levy surcharge for delayed payment. Besides there will be problem in issuing notice for disconnection for failure to pay the charges on consumption. It appears to us that it could never be the intention of the legislature to equate the words 'first due' with consumption. The consumption of electricity will certainly create a liability to pay but the amount will become due and payable only after a bill or demand is raised by the licensee for consumption of electricity by the consumer in accordance with the Tariff Order. Such a bill/ demand will notify a date by which the dues are to be paid without surcharge.

15. It is to be noted that a meter records the consumption of energy uninterruptedly on a continuous basis by the consumer and for such consumption the liability for payment of corresponding amount of charges by the consumer is continuously created but will not be due for payment unless the

amount is raised through bill or a demand notice.

16. In H.D. Shourie vs. Municipal Corporation of Delhi, AIR 1987 Delhi 219, the Delhi High Court has ruled that electricity charges become first due after the bill is sent to the consumer and not earlier thereto. In this regard the High Court held as under:

> *"A bill for consumption of electricity can be sent even three years after the electricity has been consumed. The electricity charges become due after the bill is sent and not earlier. This being so, the proviso to S. 455 of Act (66 of 1957) will apply only when the bill has been sent and the remedy available with the licensee for filing a suit to recover the said amount would come to an end after three years elapse after the electricity charges have become due and payable. To put it differently, the provisions of S. 455 would come into play after the submission of the bill for electricity charges and not earlier".*

The judgement further holds that,

"The amount of charges would become due and payable only with the submission of the bill and not earlier. It is the bill which stipulates the period within which the charges are to be paid. The period which is provided is not less than 15 days after the receipt of the bill. If the word "due" in S. 24 is to mean consumption of electricity, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued a notice of disconnection would be liable to be issued under S. 24. This certainly could not have been the intention of the Legislature. Section 24 gives a right to the licensee to issue not less than 7 days' notice if charges due to it are not paid. The word "due" in this context must mean due and payable after a valid bill has been sent to the consumer. It cannot mean 7 days notice after consumption of the electricity and without submission of the bill. Even though the liability to pay may arise when the electricity is consumed by the consumer, nevertheless it becomes due and payable only when the liability is quantified and a bill is raised. Till after the issue and receipt of the bill the authority has no power or jurisdiction to threaten disconnection of the electricity which has already been consumed but for which no bill has been sent".

The same judgement further provides that the arrear of charges in case of a defective meter cannot be more than six months irrespective of period of defect in the meter. It reads thus;

"The maximum period for which a bill can be raised in respect of a defective meter under S. 26 (6) is six months and no more. Therefore, even if a meter has been defective for, say, a period of five years, the revised charges can be for a period not exceeding six months. The reason for this is obvious. It is the duty and obligation of the licensee to maintain and check the meter. If there is a default committed in this behalf by the licensee and the defective meter is not replaced, then it is obvious that the consumer should not be unduly penalized at a later point of time and a large bill raised. The provision for a bill not to exceed six months would possibly ensure better checking and maintenance by the licensee".

17. Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/ demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running. ***In the instant case, the meter was tested on 03.03.2003*** *and it was allegedly found that the meter was recording energy consumption less than the actual by 27.63%. Joint inspection report was signed by the consumer and licensee and thereafter, the defective meter was replaced on 05.03.2003.* ***The revised notice of demand was raised for a sum of Rs. 4, 28,034/- on 19.03.2005****. Though the liability may have been created on 03.03.2003, when the error in recording of consumption was detected,* ***the amount become payable only on 19.03.2005, the day when the notice of demand was raised.*** *Time period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 19.03.2005. Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired."*

*(xii) That, the aforesaid order of the Hon'ble APTEL has been challenged by the consumers before Hon'ble Supreme Court in Civil Appeal no. (D.No.13164/2007). Vide order dated 17/05/2007 (**Annexure-4**), Hon'ble Supreme Court has dismissed the civil appeal confirming the order of Hon'ble APTEL.*

(xiii) Issue of applicability of section 56(2) of the Act in case of supplementary billing also came under consideration of Hon'ble High Court of Madhya Pradesh Bench at Gwalior in the case of Kapoor Saw Manufacturing Co. MPSEB and others (2006 SCC

Online MP 612). Vide judgment dated 13/07/2006 ***(Annexure-5)*** *Hon'ble High Court have upheld the supplementary bill raised on account of error in the matter of calculating tariff. The relevant para is reproduced as under:*

> *"(12.) AS far as bar contained in sub-section (2) of Section 56 for recovery of the entire amount of arrears for more than 4 years is concerned, Section 56 of the Indian Electricity Act contemplates a procedure for disconnection of electricity for default of payment where a consumer neglects to pay any electricity dues or charge to a Electric Company. The said provision and the bar created under sub-section (2) of Section 56 will apply to cases where recovery of amount is being made on the ground of negligence on the part of the consumer to pay the electricity dues. It is in such cases that recovery beyond the period of 2 years is prohibited. Present is not a case where action is taken due to default or negligence on the part of the consumer.* ***Present is a case where error in the matter of calculating tariff by the Board is being corrected when the error came to the notice of the Board on 18-9-00. The provision of Section 56 will not apply in the facts and circumstances of the present case."***

(xiv) That, in view of aforesaid judicial pronouncement, amount becomes first due only when the notice of demand/supplementary bill is raised. In the instant case supplementary bill is raised on dated 16.01.2020 hence amount become ***first due only on 16.01.2020.*** *Thus, petitioner cannot plead that recovery is time-bar under section 56(2) of the Act.*

B. Bar under Section 56(2) is applicable only in cases where dues are recoverable from consumers and not from any other person:

(xv) That, it may be seen that Sub Section (1) of Section 56 is talks about the dues recoverable from ***any 'person'*** *whereas Sub-Section (2) of Section 56, which provides the bar of two years, talks about dues recoverable from* ***'consumer'*** *only. Accordingly protection under Section 56(2) is not available to any person other than the* ***'consumer'****.*

(xvi) In the instant case petition has been filed by the petitioner in the capacity of generators invoking provisions of section 86(1) (f) of the Act. Therefore petitioner cannot raise plea of bar under Section 56(2). Further respondent distribution company is entitled to disconnect supply as per provision of sub-Section (1) of Section 56.

C. Statute of limitation only bars the remedy but does not extinguish the debt:

(xvii) That, it is now a settled legal position that the statute of limitation only bars the

*remedy but does not extinguish the debt. In this regard kind attention is drawn towards the judgment of the Hon'ble Supreme Court in the case of Khadi Gram Udyog Trust vs Shri Ram Chandraji Virajman 1978 AIR 287, 1978 SCR (2) 249 (**Annexure-6**):*

"……..The question that arises for consideration in this appeal is whether the entire amount of rent due would include even rent which cannot be recovered as having been time-barred. There is ample authority for the proposition that though a debt is time-barred, it will be a debt due though not recoverable, the relief being barred by limitation. In Halsbury's Laws of England (3rd Ed.) Vol. 24 at p. 205, Article 369, it is stated "except in the cases previously mentioned, the Limitation Act, 1939 only takes away the remedies by action or by set off; it leaves the right otherwise untouched and if a creditor whose debt is statute-barred has any means of enforcing his claim other than by-action or set-off, the Act does not prevent him from recovering by those means. The Court of Appeal in Curwen v. Milburn (1889) 42 Ch. D. 424 Cotton, L. J. said :

"Statute-barred debts are dues, though payment of them cannot be, enforced by action."

*The same view was expressed by the Supreme Court in Bombay Dyeing and Manufacturing Co. Ltd. v. The State of Bombay & Others(1) where it '**held that the statute of limitation only bars the remedy but does not extinguish the debt**, except in cases provided for by section 28 of the Limitation Act, which does not apply to a debt. Under section 25(3) of the Contract Act a barred debt is good consideration for a fresh promise to pay the amount. **Section 60 of the Contract Act provides that when a debtor makes a payment without any direction as to how it is to be appropriated, the creditor has the right to appropriate it towards a barred debt.** In a full Bench decision of the Patna High Court Ram Nandan Sharma and Anr. v. Mi. Maya Devi and Others(2), Untwalia, C. J. as he then was, has stated "There is a catena of decisions in support of what has been said by Tek Chand, p.330 paragraph 12) **that the Limitation Act with regard to personal actions, bars the remedy without extinguishing the right." The law is well-settled that though the remedy is barred the debt is not extinguished.** On consideration of the scheme of the Act, it is clear that the statute has conferred a benefit on the tenant to 'avoid a decree for eviction by complying with the requirement of section 20(4). If he fails to avail himself of the opportunity and has not paid the rent for not less than four months and within one month from the date of service upon him of a notice of demand, the landlord under section 20(2) would be entitled to an order of eviction. Still the tenant can avail himself of the protection by complying with the requirements of section 20(4). As he has not deposited the entire amount due the protection is no more available. **We agree with the view taken by the trial court and the High Court of Allahabad that the words "entire amount of rent due" would include rent which has become time-barred** In the result the appeal is dismissed. There will be no order as to costs."*

(xviii) In the present case although dues are not barred by limitation, as per aforesaid dictum of the Hon'ble Supreme Court there is no prohibition on the realization of time bar debt by available modes. These other modes may include adjustment from Security (if any), adjustment from any amount refundable/payable to user of electricity by distribution licensee on any account, appropriation of unearmarked amount paid by user of electricity to distribution licensee against time bar dues e.t.c. As per record amount of Rs. 14,26,458.00 payable by petitioner on account of supplementary bill dated 16.01.2020, has already been paid on dated 31.01.2020, hence after payment of dues any plea of limitation doesn't survive.

RE: Summary disposal of petition No. 29/2019 has no bearing on the instant petition:

(xix) That, petitioner is trying to establish that Hon'ble Commission in the Petition No. 29/2019 adjudicated the issue finally against the respondents. Hence, there cannot be any revision of billing in accordance with the tariff order/regulation.

(xx) That, proceeding before Hon'ble Commission in the petition No. 29/2019 was not the adjudicatory in nature. Petition No. 29/2019 had been filed by the distribution licensees invoking the regulatory power of the Hon'ble Commission under Regulation 16 & 17 of the MPERC (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010. Regulation 16 & 17 conferred discretionary power to this Hon'ble Commission to remove difficulties in appropriate cases. Res-judicata has no applicability on exercise or refusal to exercise the regulatory power by this Hon'ble Commission.

(xxi) That, Section 11 of the Code of civil procedure provides for the res-judicata as under:

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit ***between the same parties****, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised,* ***and has been heard and finally decided by such Court.***

……

Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

(xxii) That, from bare perusal of the aforesaid provision it is clear that for applicability of the res-judicata parties in the former and subsequent suit must be same. Further,

case must be heard on merit and should be decided finally. Explanation III clearly provides that there must be an allegation by one party and denial/admission by other party. In the instant case present petitioner was not the party to the petition No. 29/2019. Some generators were joined as intervener but no hearing granted to them on the merit of the case so as to construe any denial/admission of any matter on the part of them. Even the copy of the petition not served on them till the decision pronounced on dated 16/12/2019. It is a settled legal position that intervener cannot be considered as party to the suit. Hon'ble Bombay High Court in the case of Maria Emilia Barreto Mascarenhas vs Sushma Ruzar Fernandes and Ors. 2006 (5) BomCR 761 ***(Annexure-7)*** *explained the difference between intervener and party to the suit in the following manner:*

> *"4……There is certainly a difference between a person being joined as party defendant and a mere intervener. Once a person is joined as party defendant to the suit, he would be entitled to file his pleadings and contest the proceedings according to the defence sought to be raised by such person. However, in case of intervenor, he is not entitled to file any pleadings nor to lead any evidence as such. He can appear in the matter merely to assist the Court to arrive at the truth on the basis of whatever materials are placed on record by the parties to the proceedings."*

Similarly, Hon'ble Supreme Court in case of Saraswati Industrial Syndicate Ltd v. Commissioner of Income tax Haryana Rohtak [1999] 103 Taxman 395 (SC) ***(Annexure-8)*** *held that interveners are not entitled for similar relief as provided to the parties of the litigation:*

> *"12. Learned Counsel for the intervener submits that he is entitled for same order as we have just passed. We cannot pass such an order in an intervention application.* ***The only purpose of granting an intervention application is to entitle the intervener to address arguments in support of one or the other side.*** *Having heard the arguments, we have decided in assessee's favour. The interveners may take advantage of that order".*

(xxiii) Hon'ble High Court of Madhya Pradesh in case Jagdamba Prasad Soni V. State of MP and Others ***(Annexure-9)*** *held that if the matter has not adjudicated on merit in earlier litigation than res-judicata shall not be applicable. The relevant observations are reproduced as under:*

> *(11) For the applicability of the doctrine of res-judicata, the matter must have been adjudicated in "stricto sensu" in earlier litigation. The former order of the labour court was passed, dismissing the case of the petitioner in default. Admittedly, the matter was not adjudicated on merits. If the former case is dismissed for want of jurisdiction or for default or on the ground of technical*

mistake, the decision being not on merits would not be res-judicata in the subsequent proceeding. (see sheodan singh vs. Daryao kunwar, air 1966 sc 1332.)

In view of above, it is clear that present petitioner was not the party of the petition no. 29/2019. Further that decision was not on merit of the case. Thus question of applicability of res judicata doesn't arise.

RE: There can be no estoppel against the statute:

(xxiv) That, contention of the petitioner that till the Sep-19 respondent is doing billing as per HV-7 Tariff Category hence thereafter billing methodology cannot be changed. Though specifically not mentioned petitioner is trying to invoke doctrine of promissory estoppel. The reliance on this doctrine is without any substance as there can be no estoppel against the statute. In the instant case, the bill(s) have been raised in terms of the tariff order. Any demand, which is raised under legal provisions, cannot be said to be inequitable.

*(xxv) That, in the case of M/s. Mathra Prashad and Sons Vs State of Punjab 1962 AIR 745 (**Annexure-10**) five judge bench of Hon'ble Supreme Court held that there can be no estoppels against the statute. The relevant para of the said judgment is reproduced as under:*

> *"…….. The second argument is also without force. **There can be no estoppel against a statute.** If the law requires that a certain tax be collected, it cannot be given up, and any assurance that it would not be collected, would not bind the State Government, whenever it choose to collect it.*

*Further Hon'ble Supreme Court in the case of **Shree Sidhbali Steels Limited** supra held as under:*

> *"33…….**However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law.** There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the government or public authority cannot be compelled to make a provision which contrary to law."*

RE: Any hardship resulting from operation of Regulation/Tariff order cannot alter its meaning:

(xxvi) That, petitioner has submitted that the revised billing is creating hardship due to

*additional financial burden. In this regard kind attention is drawn towards the judgment of the Hon'ble Supreme Court in case of Commissioner of Agricultural Income Tax, West Bengal v. Keshab Chandra Mandal AIR 1950 SC 265(**Annexure-11**). The relevant part is reproduced as under:*

> *"……There is an argument based on hardship or inconvenience. Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute or the rules….."*

In view of above since HV-7 Tariff category clearly prohibits the drawl of power more than two hours. Therefore any plea of hardship or inconvenience cannot be raised.

RE: Power drawn under HV-7 exceeds 15% limit:

(xxvii) It is submitted that HV-7 Tariff category provides one more restriction upon drawl of power by generators. Clause (a) of HV-7 Tariff Category provides that the supply for synchronization with the grid shall not exceed 15% of the capacity of unit of highest rating in the Power Plant. However, it is noticed that Regulation 10 doesn't have any such stipulation. Regulation 10 only refers two factors which are to be taken from HV-7 tariff category i.e period and rate. Hence as per regulation there is no restriction regarding drawl of power upto 15% of capacity. Further Tariff order is also silent about the consequences if generator exceeds drawl limit of 15% . There is no mention about any action required to be taken in terms of penal billing or otherwise, if recorded MD of such generators exceeds the 15 % limit prescribed in tariff order.

(xxviii) That, clause 1.15 of the General Terms and Conditions for High Tension tariff provides for the penal billing in case drawl of power exceeds the contracted power. The said clause is reproduced as under:

"1.15 Additional Charges for Excess Demand

i. The consumer shall at all times restrict their actual maximum demand within the contract demand. In case the actual maximum demand in any month exceeds 120% of the contract demand, the tariffs given in various schedules shall apply to the extent of the 120% of the contract demand only. The consumer shall be charged for excess demand computed as difference of recorded maximum demand and 120% of contract demand on fixed charges and while doing so, the other terms and conditions of tariff, if any, shall also be applicable on the said excess demand. The excess demand so computed, if any, in any month shall be charged at the following rates from all consumers except Railway Traction.

ii. Energy charges for excess demand: No extra charges are applicable on the energy charges due to the excess demand or excess connected load.

iii. Fixed charges for Excess Demand: - These charges shall be billed as per following:

1. Fixed charges for Excess Demand when the recorded maximum demand is up to 130% of the contract demand: Fixed charges for Excess Demand over and above the 120 % of contract demand shall be charged at 1.3 times the normal fixed charges.

2. Fixed charges for Excess Demand when the recorded maximum demand exceeds 130% of contract demand: In addition to fixed charges in 1 above, recorded demand over and above 130 % of the contract demand shall be charged at 2 times the normal fixed charges.

Example for fixed charges billing for excess demand: If the contract demand of a consumer is 100 kVA and the maximum demand recorded in the billing month is 140 kVA, the consumer shall be billed towards fixed charges as under:-

a) Up to 120 kVA at normal tariff.

b) Above 120 kVA up to 130 kVA i.e. for 10 kVA at 1.3 times the normal tariff.

c) Above 130 kVA up to 140 kVA i.e. for 10 kVA at 2 times the normal tariff.

iv. The excess demand computed in any month will be charged along with the monthly bill and shall be payable by the consumer."

(xxix) That, the aforesaid clause 1.15 provides the penal billing of fixed charges only and no penal billing provided in respect of energy charges. Thus penal billing in case of Recorded MD exceeding permissible limit of 15% cannot be applied with respect to power consumed under HV -7 tariff schedule due to following reason:

xxix.1. HV-7 tariff Schedule doesn't provide for any billing of fixed charges. Only energy charges are being billed under HV-7 tariff Schedule. Since aforesaid clause 1.15 doesn't provide for any penal billing on energy charges, thus no penal billing can be done even if drawl of power exceeds prescribed limit of 15%.

xxix.2. HV -7 tariff schedule is applicable to generators, and generator do not have any specified contract demand with the Discom. Therefore comparison of contract demand with maximum demand cannot be done.

(xxx) In view of above, at present, considering the provision of the regulation 10 along with clause 1.15 of general terms and condition, billing is being done by the respondent Discom for the power drawn up to 2 hours under HV-7 Tariff Schedule without considering the condition of 15%. A factual statement in this regard

*enclosed as **Annexure 2 to the reply of the petition.** To avoid any future dispute in the matter Hon'ble Commission is requested to provided clarification whether any action is required to be taken in terms of penal billing or otherwise if drawl of power exceeds 15% of capacity.*

(xxxi) In view of above submission it is requested to the Hon'ble Commission to dismiss the petition and grant the relief sought by the respondent Discom in the reply dated 04/05/2020 to the petition."

12. The petitioner submitted the following in its written submission dated 16.07.2020:

"I. The new billing methodology is in contravention of Regulation 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Energy Sources) (Revision-I) Regulations, 2010

(i) The Petitioner is an independent power producer having a 94 MW (47 Wind Turbine Generators of 2 MW each) wind energy project in the State of Madhya Pradesh. The Petitioner is selling power to MPPMCL in terms of PPA dated 06.08.2014. The power drawn by the Petitioner's WTGs for the purposes of synchronization with the grid ought to be billed under Schedule HV-7 tariff category at the rate of INR 9.35/unit as per Regulation 10 of MPERC (Cogeneration and Generation of Electricity from Renewable Energy Sources) (Revision-I) Regulations, 2010 ("RE Regulations") read with the Tariff Order dated 08.08.2019.Regulation 10 stipulates 3 purposes for which renewable energy (RE) generators may draw power for their own use. It further prescribes how such drawl of power will be billed under the applicable tariff order. Regulation 10 reads as under:

> *"10. Drawing Power during shut down by Generator/ Co-generation from Renewable Sources*
>
> *The generator/Co-generation from Renewable Sources would be entitled to draw power exclusively for its own use from the Transmission/ Distribution Licensee network for synchronization of plant with the grid or during shutdown period of its plant or during such other emergencies. The power availed during synchronization of plant with the grid shall be billed for the period and at the rate as per the retail supply tariff order under tariff schedule for synchronization. In other case, it would be billed at the rate applicable to temporary connection under HT Industrial category." (Emphasis supplied)*

(ii) The Petitioner was billed for the first time, for drawl of power in July, 2015 when only energy charges were charged to the Petitioner. Thereafter, from the months of January, 2016 to June, 2016, the Respondent also added fixed charges in the bills

raised on the Petitioner. However, pursuant to this Hon'ble Commission's Orders dated 05.07.2016 and 08.07.2016, passed in Petitions Nos. 20/2016 and 22/2016, respectively the Respondent had to revise the said bills in August, 2016 and remove levy of fixed charges from the bills. The Respondent also refunded the excess amount billed and collected from the Petitioner. From then onwards until September 2019 the Respondent billed the power drawn by the Petitioner under HV-7 tariff category, which fixes the rate at which power drawn for synchronization, by renewable generators will be billed. The relevant extracts of HV-7 tariff category are as under:

"Tariff Schedule - HV - 7
SYNCHRONIZATION OF POWER FOR GENERATORS CONNECTED TO THE GRID

Applicability:

This Tariff shall apply to those generators who are already connected to the grid and seek to avail power for synchronization with the grid.
Tariff for all voltages:

Category	***Energy Charge (Paise/unit)***
Generators synchronization with Grid	*935*

Terms and Conditions:

(a) The supply for synchronization with the grid shall not exceed 15% of the capacity of unit of highest rating in the Power Plant.

(b) The condition for minimum consumption shall not be applicable to the generators including CPP. Billing shall be done for energy recorded on each occasion of availing supply during the billing month.

(c) The supply shall not be allowed to the CPP for production purpose for which they may avail stand-by support under the relevant Regulations.

(d) The synchronization with the grid shall only be made available after commissioning of plant.

(e) The synchronization with the grid, power shall be provided for a maximum period of 2 hours on each occasion.

(f) The generator including CPP shall execute an agreement with the Licensee for meeting the requirement of synchronization with the grid incorporating the above terms and conditions."

(iii) Suddenly for the first time in September, 2019,the Respondent began billing the power drawn by the Petitioner beyond a period of 2 hours in a day,at the rate applicable to temporary connection under HT industrial category, i.e. under HV-3.1 tariff category multiplied by 1.25 times. The Respondent in its reply before this

Hon'ble Commission has submitted that it is doing so under Regulation 10 of RE Regulations read with HV-7 tariff category of the Tariff Order which prescribes a limit of 2 hours on drawl of power for synchronization. (Please see paras 9-10 of Respondent's Reply dated 12.05.2020 at Pages 5-6) The relevant extracts of HV-3.1 tariff category are as under:

*"**Tariff Schedule - HV - 3***
INDUSTRIAL, NON-INDUSTRIAL AND SHOPPING MALLS
Applicability:
***The tariff HV-3.1(Industrial)** shall apply to all HT industrial consumers including mines (other than coal mines) for power, light and fan etc. which shall mean and include all energy consumed for factory and lighting in the offices, main factory building, stores, canteen, residential colonies of industries, compound lighting, common and ancillary facilities such as Banks, General purpose shops, Water supply, Sewage pumps, Police Stations etc. in the premises of the industrial units and Dairy units where milk is processed (other than chilling, pasteurization etc.) to produce other end products of milk. This tariff shall also apply to cold storages.*
****

Tariff:

S.No.	***Sub-Category of consumer***	***Monthly Fixed Charge (Rs./kVA of billing demand per month)***	***Energy Charge for consumption upto 50% load factor (paise/unit)***	***Energy Charge for consumption in excess of 50% load factor (paise/unit***
3.1	***Industrial***			
	11 kV supply	*340*	*700*	*600*
	33 kV supply	*560*	*690*	*590*
	132 kV supply	*650*	*650*	*550*
	220/400 kV supply	*650*	*610*	*510*

****

Specific Terms and Conditions:

(a) Guaranteed Minimum Consumption for all the above categories shall be on following basis:

Supply Voltage	***Sub-Category***	***Guaranteed annual minimum consumption in units (kWh)/ kVA of contract demand***
*******		
For supply at	*Educational Institutions*	*600*

33/11 kV	*Contract demand upto 100 kVA*	*600*
	Others	*1200*

(iv) Provision 1.19 of the General Terms and Conditions of HT Tariff in the tariff order states that if a consumer requires temporary supply then it shall be treated as separate service and charged 1.25 times the normal fixed and energy charges. The same is extracted below:

*"**1.19 Temporary supply at HT:** The character of temporary supply shall be as defined in the M.P. Electricity Supply Code, 2013. If any consumer requires temporary supply then it shall be treated as separate service and charged subject to the following conditions.*

(a) Fixed Charges and Energy Charges shall be charged at 1.25 times the normal tariff. The fixed charges shall be recovered for the number of days for which the connection is availed during the month by prorating the monthly fixed charges. Month shall be considered as the number of total days in that calendar month."

(v) Regulation 10 of RE Regulations, is an exhaustive provision, which provides that a RE generator can draw power from the Distribution Licensee's Network for three purposes only i.e., firstly, drawl for synchronization of the plant; secondly, drawl during shutdown and thirdly, drawl for other emergencies. The Regulation further states that power availed, during synchronization of plant with the grid, shall be billed at the rate under tariff schedule for synchronization. In other cases i.e. shut down and emergencies, the drawl of power, will be billed at the rate applicable to temporary connection under HT industrial category. Since there is no other regulation which permits drawl of power by a RE generator from a distribution licensee, a RE generator cannot draw power for any purpose other than the three purposes mentioned in Regulation 10 of RE Regulations. Regulation 10 does not contemplate any other purpose for which power can be drawn, other than those already specified. It is submitted that this is the only interpretation that can be given to Regulation 10 in terms of the Latin principle of interpretation of Statute, which is Expressio unius est exclusio alterius i.e. express mention of one thing excludes all others. This legal maxim has been affirmed to be valid principle of legal interpretation by the Supreme Court in several judgments including in the matter of Babu Verghese and Ors. v. Bar Council of Kerala and Ors, (1999) 3 SCC 422 wherein the Supreme Court held that when a statute prescribes to do a particular thing in a particular manner, the same shall not be done in any other manner than prescribed under the law. This principle of law has also been upheld by the Learned Appellate Tribunal for Electricity ("APTEL"), in Appeal No. 33 of 2012 as under:

"24. The settled legal position is when it is prescribed in a statute that a particular act is to be done in a particular manner, then requirement to the Act in that manner is mandatory and the specified Section of non -compliance have necessary to follow."

Copies of aforesaid Judgments of the Hon'ble Supreme Court and Hon'ble APTEL are annexed herewith as ***Annexure P-1 and P-2*** *respectively.*

(vi) Therefore, express mention of the three purposes for which power can be drawn, excludes any other purposes. A natural corollary of this principle is that if any kind of drawl of power cannot be categorised in any of the three prescribed categories then such drawl of power is neither permissible nor billable in terms of Regulation 10of RE Regulations. Since drawl of power for the purposes of synchronisation, whether under two hours or over two hours, cannot be classified as power drawn for either of the other two stipulated purposes i.e. shutdown or emergency, such power has to be billed as power drawn for synchronisation only, as provided for under in Regulation 10of RE Regulations.

(vii) Regulation 10 specifies how the power procured by the RE generator should be billed. The phrase "The power availed during synchronization of plant with the grid shall be billed for the period and at the rate as per the retail supply tariff order under tariff schedule for synchronization" in Regulation 10 of RE Regulations makes it clear that the power drawn for the purposes of synchronization will be billed under tariff schedule for synchronization i.e. HV-7 tariff category. The phrase "In other case, it would be billed at the rate applicable to temporary connection under HT Industrial category" in Regulation 10 refers to other cases of shut-down and/or emergency and no other case. Further, if the phrase "other case" in Regulation 10 included any other case other than the other two specified cases i.e. shut-down and emergency, then it would lead to absurdity since then why would Regulation 10 even make a mention of shutdown and emergency and not just mention two categories for drawl of power, i.e. synchronization and other cases. But instead it clearly specifies that there are three categories for drawl of power and no other category. Therefore, the phrase "other case" means only shutdown and emergency and no other case.

(viii) The Respondent seeks to make a case that the power drawn after a period of two hours by virtue of clause (e) in tariff schedule HV-7 of the tariff order, which states that "The synchronization with the grid, power shall be provided for a maximum period of 2 hours on each occasion", shall be assumed to be power drawn for shutdown or emergency and accordingly may be billed under Regulation 10 of RE

Regulations. It is respectfully submitted that such a submission of the Respondent besides being an erroneous interpretation of the provision is also absurd in so far it would be ludicrous to assume that there is a shutdown or emergency every day at the plant even when such hasn't been notified by the Petitioner to Respondent. The Petitioner is obligated to inform the Available Capacity daily to SLDC under the applicable the MPERC (Forecasting, Scheduling, Deviation Settlement Mechanism and related matters of Wind and Solar generating stations) Regulations, 2018 which takes into consideration if any machine is under shutdown. It can be seen very clearly that as long as Available Capacity is equal to Rated Installed Capacity it is certain that machines are neither under shutdown nor under emergency. The Respondent ought to have verified this before making any claim of billing at the rate of Shutdown or Emergency. Further the legal position that the power drawn for synchronization cannot be considered to be power drawn for shutdown or emergency has been concretized by this very Hon'ble Commission in several precedents, wherein the Hon'ble Commission has held that the power drawn by Wind energy generator for synchronization of WTGs frequently cannot be considered as drawl of power for shut down or emergency periods and the same shall be billed as per provisions of tariff schedule HV-7. These orders have attained finality and thus, the Respondent cannot now assert a position of law which is contrary to these orders. Relevant paras of aforementioned orders are extracted below:

Petition No. 20 of 2016

"7……..During the shut down or emergency periods, the plant shall not generate power and requires power for repairs and maintenance purposes, for which the petitioner shall have to avail power and would be billed at temporary supply tariff as specified in the aforesaid Regulations. However, the power is required by the petitioner for start up of WEGs frequently, which cannot be considered under drawl of power during shut down or emergency periods. The Commission has noted that the provisions of the aforesaid Regulations have been misinterpreted by the respondents. As such, this petition cannot be considered under Section 86(1)(f) of the Electricity Act, 2003. The Commission, therefore, directs the respondents to take action accordingly as mentioned above and revise the impugned bills from November, 2015 if found necessary."

Petition No. 22 of 2016

"6……. During the shut down or emergency periods, the plant shall not generate power and requires power for repairs and maintenance purposes, for which the petitioner shall have to avail power and would be billed at temporary supply tariff as specified in the aforesaid Regulations. However, the power is required

by the petitioner for start up of WEGs frequently, which cannot be considered under drawl of power during shut down or emergency periods. The Commission has noted that the provisions of the aforesaid Regulations have been misinterpreted by the respondent no.1 and 2."

Petition No 42 of 2016

"7…… During the shut down or emergency periods, the plant requires power for repairs and maintenance purposes, for which the petitioner shall have to avail power and would be billed at temporary supply tariff as specified in the aforesaid Regulations. If the power is required by the petitioner for synchronisation of WEGs frequently, the same cannot be considered under drawl of power during shut down or emergency periods and the provisions of the aforesaid Regulations shall not apply and, therefore, shall be billed as per the provisions of tariff schedule HV-7……"

Petition No. 50 of 2016

"6…. During the shut down or emergency periods, the plant requires power for repairs and maintenance purposes, for which the petitioner shall have to avail power and would be billed at temporary supply tariff as specified in the aforesaid Regulations. If the power is required by the petitioner for synchronisation of WEGs frequently, the same cannot be considered under drawl of power during shut down or emergency periods and the provisions of the aforesaid Regulations shall not apply and, therefore, shall be billed as per the provisions of tariff schedule HV-7. The Commission, therefore, directs the respondents to take action accordingly as mentioned above and revise the impugned bills from November, 2015 if found necessary…." (Emphasis supplied)

From a bare perusal of the above extracts it is obvious that power drawn for synchronization cannot be considered as power drawn for shutdown and/or emergency. Further, the Hon'ble Commission having passed these orders is now bound by the same as per the rules of precedent. Reliance in this regard may be placed on the Judgment of the Hon'ble Supreme Court of India in the matter of Sant Lal Gupta and Ors. v. Modern Co-operative Group Housing Society Ltd. and Ors. (2010) 13 SCC 336 at para 19, wherein the Hon'ble Supreme Court has held as under:

"The earlier decision of the coordinate bench is binding upon any latter coordinate bench deciding the same or similar issues. If the latter bench wants to take a different view than that taken by the earlier bench, the proper course is for it to refer the matter to a larger bench."

Copy of Orders passed in Petition Nos. 20/2016; 22/2016, 42/2016 and 50/2016 is annexed herein as ***Annexure P – 3 (Colly).*** *Copy of Hon'ble Supreme Court's judgment in Sant Lal Gupta and Ors. v. Modern Co-operative Group Housing Society Ltd. and Ors. is annexed herein as* ***Annexure P-4.***

(ix) It is pertinent to mention that the 2 hour drawl limit, as mentioned in HV- 7 tariff category, has been present in all the tariff orders passed since Tariff Order dated 24.05.2014 for FY 2014-15. Despite the limit of 2 hours being present in the tariff orders, the Hon'ble Commission in orders passed in Petition Nos. 20, 22, 42 and 50/2016, held that RE generators have to be billed as per HV-7 tariff category. Since, then billing has happened under HV-7 tariff category. Therefore, power drawn for the purposes of synchronization, whether it be for a period of two hours or for more than two hours, in order to be allowed to be procured/billed at all, has to be considered to have been drawn for the purposes of synchronization and ought to be billed at the rate specified in HV-7 tariff category as per Regulation 10 of RE Regulations.

(x) Without prejudice to the fact that there is no legal provision which would allow billing of the Petitioner as a temporary supply consumer for the power drawn for synchronization purpose, it is most respectfully submitted that a temporary supply consumer is defined in Madhya Pradesh Electricity Supply Code as follows:

> *"4.43 Any person requiring power supply for the purpose that is temporary in nature, may apply for temporary power supply for a period of less than two years in the Form as required by the Licensee. The period of temporary connection can be extended up to five years for construction of buildings/power plants and for the purpose of setting up of industrial units. Requisition for temporary supply shall normally be given 7 days before the day when supply is required for loads up to 10kW and 30 days before for higher the said loads. Under no circumstances, permanent connection be allowed for construction purposes".*

(xi) From a bare reading of the provision above, the Petitioner is evidently not a temporary consumer and requires power to synchronize everyday for the whole life of its plant, as contra-distinct from a temporary consumer which requires power for a period of less than 2 years. Regulation 10 provides that power drawn for the purposes of shut down and emergency can be billed as if drawn by a temporary consumer, the reasoning behind the same is obvious i.e. shut down and emergency are rare events and thus it is acceptable to bill the power drawn for such rare events as if being drawn by temporary consumer. However the interpretation sought to be

given by the Respondent to bill power drawn for synchronization for more than 2 hours as if drawn by a temporary consumer is completely illogical since as distinct from shut down and emergency, power for synchronization, is drawn nearly every day for a period of more than 2 hours for whole life of the plant and thus cannot be considered to be for a temporary purpose. It would be grossly unfair if the power being drawn everyday by a RE generator for the whole life of the project was to be billed as if it were being drawn by a temporary consumer. Therefore, the Petitioner not only has a good case in law but also in equity.

(xii) It is germane to mention that Electricity Act, 2003 specifically provides for promotion of renewable energy. The Preamble of the Act clearly states that it is for "promotion of efficient and environmentally benign policies". While, under Section 61(h), the Commissions while specifying the terms and conditions for determination of tariff have to be guided by principle of "promotion of co-generation and generation of electricity from renewable sources of energy". The Hon'ble Commission, under Section 86(1)(e), is obligated to, "promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee." Thus, promotion of renewable energy is a basic principle of the Electricity Act, 2003.

(xiii) It is submitted that power drawn after 2 hours of synchronization, will still be power drawn for synchronization, and if by virtue of HV-7 tariff category, it is wrongly construed as power not drawn for synchronization then there would be no prescribed tariff for such power i.e. there would be a tariff gap because Regulation 10 of RE Regulations does not permit drawl or billing of power which is neither for synchronization nor for shutdown or emergency. Any interpretation of Clause (e) of HV-7 tariff category, which leads to a tariff gap ought not to be taken i.e. clause (e) cannot be interpreted to mean that billing for power drawn after a period of 2 hours cannot be under HV-7 tariff category since the purpose for which the power drawn beyond 2 hours remain same i.e. Synchronization. Further nothing in HV-7 tariff category provides for power drawn for synchronization beyond period of 2 hours to be billed at the rate applicable to temporary connection under HT Industrial category. Therefore, billing power drawn for synchronization at the rate applicable to temporary connection does not have any backing of law and is completely arbitrary.

(xiv) The Respondent is seeking to give a perverse interpretation to Clause (e) of the HV-7 tariff category. While Clause (e) states that the synchronization with the grid, power shall be provided for a maximum period of 2 hours on each occasion, the Respondent seeks to not implement the phrase "each occasion". Assuming though not admitting that the Clause (e) limits drawl of power for synchronization to 2 hours, it is respectfully submitted that such a limitation is only on "each occasion" of synchronization. Therefore, the Respondent cannot bill the Petitioner for power drawn for shut down/emergency beyond 12 seconds. This is because after every 2 hours the Respondent will (erroneously) assume that power is being drawn for shut down/emergencies, however as soon as 1 second (by virtue of the phrase "each occasion") is completed over and above the 2 hours, again another 2-hour cycle will start for drawl of power for synchronization. Since the Respondent, admittedly, cannot identify the purpose for which power is being drawn it ought to assume that the same is being drawn for synchronization because that would be the factually accurate situation given that available capacity provided to SLDC by the Petitioner would easily reveal if the plant was under shutdown. This is the only harmonious interpretation that can be given to Clause (e) without ignoring either part of the provision. It would be wholly unfair towards the Petitioner, if the Respondent chooses to implement only the "two hours" limitation, without implementing the phrase "each occasion" alongside. The Hon'ble Commission ought not to permit such selective reading of the provisions of the Tariff Order particularly when such a selective reading will also be in the teeth of Regulation 10 of RE Regulations.

(xv) It is further pertinent to mention that WTGs need to draw power from the grid all the time to stay synchronized with the grid except when they're generating. Further Wind Generators do not control wind speed and cannot generate at will and depend on wind speed to begin generation. Thus, the Wind Power Project, comprising of Wind Generators, internal transmission lines, transformers, substations etc. have to draw from the grid, in order to remain synchronized with the grid, so that they can begin generating when the wind speed becomes adequate. The WTG needs to draw power so that during the cut-in time it will be able to push turbine RPM beyond synchronous RPM. Once the WTG reaches beyond synchronous RPM it begins generating and it stops importing from the grid and begins to export to the grid. If a WTG does not remain connected with the grid during the low Wind speed then the WTGs will have to begin the process of synchronization with the Grid afresh each time the wind speed becomes adequate to generate and such multiple fresh synchronizations are not only operationally impossible but are also detrimental to grid as it would result in sudden inrush of current and lower voltage due to sudden start. Further frequent connection and disconnection of the WTGs from the Grid can

cause other technical and operational problems as well. It is submitted that wind generators are distinct from thermal generators as they cannot control their fuel source like thermal generators. The Wind Power Project may be forced to draw power beyond 2 hours, due to inadequate wind speed, to remain synchronized with the grid. Therefore, the billing for all power drawn during synchronization ought to occur as per the rate prescribed in HV-7 tariff category for power availed for synchronization.

(xvi) Further, while HV-7 tariff category prescribes a limit of 2 hours for power drawn for synchronization, it does not state the consequence of a generator exceeding the said limit. It nowhere mentions that drawl beyond 2 hours would be treated as drawl for shut-down/emergencies and billed at the rate applicable to temporary connection under HT industrial category. Regulation 10 of RE Regulations states that only power drawn for shut down or other such emergencies can be billed at the rate applicable to temporary connection under HT industrial category. The said regulation makes no difference between power drawn under 2 hours and power drawn beyond 2 hours when such drawl is for synchronization. As per Regulation 10 drawl of power for synchronization has to be billed as per the tariff schedule for synchronization i.e. HV-7 tariff category. Thus, there is no legal provision on the basis of which power availed during synchronization beyond two hours can be considered as power availed for shut down and/or emergencies and billed under HV-3.1 industrial category. Neither the tariff order nor the Regulation creates such a legal fiction for treating power drawn for synchronization to be treated as power drawn for shutdown or emergency. Besides the fact that the law does not provide for such a legal fiction, it is further submitted that this Hon'ble Commission has also prohibited the Distribution licensee to bill power drawn for synchronization as power drawn for shut down or emergency in its previous orders as quoted above and thus barred any such legal fiction as well.

(xvii) It is submitted that billing the power drawn by the Petitioner under any other Schedule other than HV-7 tariff category would amount to amendment of Regulation 10 of RE Regulation. It is a settled principle of law that provisions of regulations cannot be amended or substituted by way of a judicial order and in absence of public hearing. Regulations can only be amended through a legislative process after giving adequate opportunity to the stakeholders to make their representation. The orders of the Hon'ble Commission have to be in accordance with the provisions of the applicable regulations. Thus, the Respondent cannot read provisions of Tariff Order in a manner inconsistent with the regulations, notified by the Hon'ble Commission.

(xviii) Assuming though not admitting that there is a conflict between the provisions of the Tariff Order and the Regulations, it is the Regulations that will prevail over the provisions of the Tariff Order. The 2 hour limit in the Tariff Order, that the Respondent is seeking to impose, is meaningless since it is in teeth of the applicable regulation i.e. Regulation 10 of RE Regulations. Regulation 10 restricts drawl for 3 purposes only and power drawn for synchronization, whether under 2 hours or over 2 hours, can never be considered as power drawl for shutdown or emergency. Thus, even if a limit of 2 hours on power availed for synchronization is assumed to be correct, the billing for power drawn after 2 hours cannot be done under HV-3.1 tariff category since there is no provision to bill for power drawn for the purposes of synchronization beyond 2 hours as temporary connection under HT Industrial category. It is submitted that unless the provisions of the Tariff Order can be given harmonious interpretation with the provisions of the regulations the same must be ignored completely. In this regard reliance is placed on the Judgment of the High Court in the matter of Dhanalakshmi Iron Industries Limited and Ors. vs. A.P. Electricity Regulatory Commission and Ors. MANU/AP/3650/2013 (06.12.2013 - APHC), the relevant extract of which order is as below:

> *"60. Notably, except for placing the proposed change of methodology in the public domain and called for objections, the APERC did not choose to amend the other regulations or provisions, framed or approved, which spoke to the contrary in so far as the base component for billing, expressed in terms of kilowatt-hours, was concerned. As Section 61(d) of the Act of 2003 requires the APERC to consider consumers' interest also, it is expected to project a uniform and consistent signal to them as to the billing methodology. As the existing regulations conflict with the impugned Tariff Orders in this regard, this Court necessarily has to hold that the new billing methodology adopted by the APERC, which is inconsistent with the existing statutory regulations, is invalid. The APERC went about effecting and implementing a change in the billing methodology losing sight of the fact that the same was inconsistent with the regulations already put in place, be it by itself or by the Central Regulatory Commission. Wisdom having dawned of late, the APERC set in motion Regulation No. 7 of 2013, but the same has not been notified as yet and would therefore not come into effect. In the absence of an amendment to Regulation No. 5 of 2004 and without effecting similar amendments in the other regulations and the General Terms and Conditions of Supply, it is not open to the APERC to give effect to the changed methodology of billing."*

Copy of aforementioned High Court Order is annexed herein as ***Annexure P-5***

(xix) Finally, the Respondent has itself admitted, in Petition No. 29 of 2019, that it is impossible for distribution licensees to segregate energy drawn by RE generators from the grid on each occasion and to identify the purpose for which such energy is being drawn. The Respondent has also submitted that distribution companies are finding it difficult to apply the provisions of Regulations related to billing of energy drawn by RE generators for purposes other than synchronization as the energy drawn has to be clubbed over a period of billing month.(Please see paras 14 to 16 and 21 at pages 6 and 8 of Petition No.29 of 2019). In such a scenario where the Respondent is unable to identify why the power is being drawn by the Petitioner it cannot assume that power is being drawn for shut down/emergency. Thus, the new billing methodology adopted by the Respondent is clearly incorrect and merits to be discontinued.

II. Order dated 16.12.2019 passed in Petition No. 29 of 2019

(xx) It is pertinent to mention that the Hon'ble Commission in its Order dated 16.12.2019 passed in Petition No. 29 of 2019 has already held that the bills raised on the consumers were as per the provisions of the Tariff Order and the RE Regulations. The said petition was filed by the Respondent and other distribution companies seeking amendment in RE Regulations and HV-7 tariff schedule. In this petition the distribution licensees sought the following amendments:

"28. In view of the above following amendment is proposed in the regulation and Tariff Order:

******

Proposed provision of regulation

10. Drawing Power by Generator/ Cogeneration from renewable Sources

The Grid connected Generator/ Co-generators of Renewable Sources would be entitled to draw power exclusively for its own use from the Transmission/ Distribution Licensees' network. The power awaited shall be billed at the rate prescribed in the retail supply tariff orders issued from time to time for this purpose.

******

Proposed Tariff Conditions of HV-7 Tariff Schedule:

DRAWAL OF POWER BY GENERATORS CONNECTED TO THE GRID

Applicability:

This Tariff shall apply to those girls who are already connected to the grid.

Tariff for all voltages:

Energy Charge (Paise/unit) -Generators synchronization with Grid_____

Terms and Conditions:

(a) The Generators shall not exceed Grid Drawl above 15% of the capacity of the Power Plant.

(b) In case of drawl of power above 15% of the capacity of the Power Plant on any occasion, entire energy drawn during the billing month shall be billed payable at twice the energy charge.

(c) Reactive energy charges for reactive energy drawn shall be billed at the rate as may be prescribed Commission from time to time.

(d) The condition for minimum consumption shall not be applicable to the generators including CPP. Billing shall be done for the total energy recorded on all occasions of availing supply during the billing month.

(e) The supply shall not be allowed to the CPP for production purpose for which they may anal stand-by support under the relevant Regulations.

(f) The Grid draw skull only be made available after commissioning of the plant.

(g) The generator including CPP small execute an agreement with the Licensee for drawl of power from the grid incorporating the above terms and conditions."

(xxi) The distribution licensees submitted that they are unable to apply the provisions of Regulations related to billing of energy drawn by RE generators for purposes other than synchronization as the energy drawn has to be clubbed over a period of billing month. The distribution licensees submitted that they are unable to decipher the reason for which the power is being withdrawn by RE generators. Consequently, the distribution licensees sought to do away with the demarcation made between different forms of drawl of power under Regulation 10 of RE Regulations. Thus, it is obvious that the distribution licensees sought to amend Regulation 10 since the same does not allow them to bill the Petitioner and other RE generators, as temporary consumers under HT tariff category.

(xxii) Petitioner No. 29/2019 culminated into Order dated 16.12.2019. The Hon'ble Commission in its Order noted that the consumers had been billed as per the applicable legal provisions. It is pertinent to mention that Petition No. 29/2019 was filed prior to implementation of new billing methodology on RE generators thus, the Hon'ble Commission has clearly held that the Respondent's prior billing methodology i.e. billing under HV-7 tariff category was correct. The relevant extract of Order dated 16.12.2019 is as under:

"5. During the course of hearing held on 6th December'2019, the Commission has noted that the petitioners are seeking revision/clarification in retail supply tariff order for FY 2018-19 issued on 3rd May' 2018. The subject petition has

been filed after a period of more than a year and ***the billing to respective category of consumers have been done based on the provisions in the tariff order and the Regulations mentioned in the subject petition.*** *Further, no reference has come before the Commission either from the petitioners or the consumers by way of any petition during applicability of said tariff order. Besides, the next retail tariff supply order for FY 2019-20 was issued on 8th August' 2019. Further, process for next year's tariff order has already been started as a petition (Petition No. 49 of 2019) for determination of ARR and retail supply tariff for FY 2020-21 has been filed by the petitioners on 29th November' 2019 and the same is fixed for motion hearing on 11.12.2019." (Emphasis supplied)*

From a bare perusal of the above extract it is evident that the Hon'ble Commission has already held that the Respondent's prior billing methodology i.e. billing RE generators only underHV-7 tariff category was in accordance with the Tariff Order and the Regulations. Consequently, the Respondent should have discontinued the billing the Petitioner under HV-3.1 tariff category and should have also revised bills already raised under HV-3.1 tariff category.

(xxiii) Instead of complying with the aforementioned Order dated 16.12.2019, the Respondent sent Letter dated 16.01.2020, to the Petitioner, retrospectively revising the bills raised from April, 2017 to August, 2019. Through this letter, the Respondent, applied rate applicable to temporary consumers under industrial category on the bills which have already been cleared by the Petitioner. The Respondent retrospectively raised a new claim of INR 33,17,403 (Rupees Thirty three lakhs seventeen thousand four hundred and three) on the Petitioner for the power drawn during the aforementioned period. Out of this amount the Respondent subtracted the amount it owed the Petitioner and directed the Petitioner to deposit INR 14,26,458 (Rupees Fourteen lakhs twenty six thousand four hundred fifty eight) by 31.01.2020, failing which action will be taken against the Petitioner.

(xxiv) Accordingly, the Petitioner approached the Hon'ble High Court of Madhya Pradesh seeking quashing of Letter dated 16.01.2020 vide Writ Petition No. 2430 of 2020. The Hon'ble High Court vide its Order dated 06.02.2020 gave the Petitioner liberty to file appropriate application for grant of interim relief and also granted protection of 45 days to the Petitioner, directing the Respondent to not take any coercive action against the Petitioner. It is pertinent to mention that the Petitioner made requisite payment, under protest, on 31.01.2020 to avoid any adverse consequence since Respondent in its letter had given deadline of 31.01.2020 for making payments. It is prayed that since this amount has clearly been raised

illegally on the Petitioner, the Respondent be directed to refund the said amount or adjust it in future bills of the Petitioner.

(xxv) The Hon'ble Commission must take note of the malafide conduct of the Respondent. The Respondent filed the Petition No. 29/2019 in the year 2019 and prayed for amendment to Regulation 10. After the filing of the Petition, wherein the Respondent admitted that it was impossible for the Respondent to implement the 2 hours limitation on synchronization of power since it could not even tell the purpose for which the power was being drawn, and there procedural difficulties in implementation of such limitation, the Respondent then without any direction or order from the Hon'ble Commission, on its own, changed the billing methodology in September 2019, despite having billed under a different methodology since 2016 onwards. Therefore, it is clear that the Respondent knew that in terms of the established law it wasn't permitted to bill power availed by the renewable generators as temporary consumer for HT tariff category. Despite having known that the law did not permit billing power drawn by the renewable generators under the HV-3.1 tariff category, the Respondent after filing the Petition No. 29/2019 and without getting any order or permission from this Hon'ble Commission in the aforesaid petition, began to bill the power drawn by the RE generators under HV-3.1 tariff category as a temporary consumer. Subsequently despite the order passed by the Hon'ble Commission in Petition No. 29/2019, wherein the Hon'ble Commission recognized that the billing had already occurred for the past period in terms of the tariff order, and thus, whatever amendments or changes are sought by the licensees of the State will be considered in the next tariff order, the Respondent showed complete disregard towards the Order of this Hon'ble Commission and revised all bills retrospectively from 2017 onwards. Therefore, despite the Hon'ble Commission directing the Respondent to pursue whatever changes it sought in the next tariff order, the Respondent decided to implement the changes nonetheless by itself without any order from the Hon'ble Commission. If the Respondent was allowed to bill RE generators as temporary consumers under the HV-3.1 tariff category, then there would no reason for the Respondent to approach the Hon'ble Commission seeking amendment to the tariff order and the Regulation 10. The very fact that the Respondent approached the Commission by Petition No. 29/2019 praying for amendment to Regulation 10 i.e. doing away with the distinction between three categories of drawl, is an admission and conclusive proof of the fact that even the Respondent agreed that RE generators ought to be billed under HV-7 tariff category only. The Hon'ble Commission took the view that the billing had already happened in terms of the tariff order and the regulation and that settled position ought not to be changed until the next tariff order. The Hon'ble

Commission's whole reasoning of disposing Petition No. 29/2019 was that whatever billing has occurred since 2017 had already occurred and was not to be tinkered with by retrospective amendments in the regulations or the tariff order. It is submitted once the Hon'ble Commission had taken this position there was no occasion for the Respondent to bill under any new methodology or to brazenly revise bills retrospectively.

III. <u>The new billing methodology, of the Respondent, amounts to double billing</u>

It is submitted that the Petitioner was already paying high charges of INR 9.35/unit under HV-7 tariff category. Such charges were calculated after considering the fixed cost so that no loss is caused to distribution licensee by drawl of power by generators. The Respondent is now however also billing the Petitioner at the rate applicable to temporary consumer under HV-3.1 industrial tariff category which is 1.25 times the energy charges and fixed charges i.e. INR 7.625/unit and INR 8.125/kVA, respectively. The Petitioner has to pay INR 18.67/unit under, the rate applicable to temporary consumer under HT industrial category, which is double of what it is already paying under HV-7 tariff category i.e. INR 9.35/unit. Thus, the new billing methodology adopted by the Respondent amounts to double billing and the same is not legally tenable and should be set aside.

Further, under Section 45 of the Electricity Act, 2003 the distribution licensee can recover charges only in accordance with the tariff fixed from time to time. Thus, the Respondent is obligated to bill the Petitioner as per the schedule mentioned in the Tariff Order i.e. only under HV-7 tariff category.

IV. <u>Letter dated 16.01.2020 is contrary to Section 56 of Electricity Act, 2003:</u>

(xxvi) It is submitted that under Section 56(2) of Electricity Act, 2003, no sum can be recovered from a consumer two year after the due date unless such sum was shown as recoverable as arrear. The Respondent through Letter, dated 16.01.2020, has raised additional charges for the time period of April, 2017 to August, 2019 when recovery of bills for April, 2017 to January, 2018 is already time barred by law. Section 56(2) reads as under:

> *"Section 56: disconnection of supply in default of payment:*
> ********
> *(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of*

charges for The electricity supplied and the licensee shall not cut off the supply of the electricity."

(xxvii) The Respondent has erroneously contended that Section 56 (2) is not applicable in the instant case by giving an erroneous interpretation to the term 'first due' with respect to charges levied upon the Petitioner and by erroneously relying on the judgment of the Hon'ble Supreme Court in the case of SLP (C) No. 765 of 1997, Swastic Industries v. Maharashtra State Electricity Board ("Swastic case") and the judgment of the Hon'ble APTEL in Appeal Nos. 202 & 203 of 2006, Ajmer Vidyut Vitran Nigam Ltd. v. M/s Sisodia Marble & Granite Pvt. Ltd. & Ors. ("Ajmer case"). The aforementioned judgments deal with cases of incorrect reading of meter and the supplementary bills raised pursuant to the same. The judgments relied upon by the Respondents are not applicable in the instant matter as the case of the Petitioner is not one of defective meter but is a case involving the Respondent raising supplementary bills on account of its arbitrary and illegal decision of billing, the Petitioner, under a different Tariff Schedule. Thus, the Hon'ble Commission may not place any reliance on the aforementioned judgments.

(xxviii) The Respondent's contention that 'unless any demand is raised specifying the time limit for payment of the same no such demand can be said as 'due' and consumers cannot be termed as neglectful of their responsibilities of payment' is inapplicable in the instant case, since the aforementioned reasoning is applicable only in cases where there was no billing done on 'x' amount of consumption or the billing done was calculated erroneously on account of some fault in the consumer's meter. This was also the issue in the Ajmer case, wherein supplementary bills were raised because 'x' consumption was never billed as the meter was recording energy consumption less than the actual by 27.63%. The relevant para is extracted below for reference:

"17. In the instant case, the meter was tested on 03.03.2003 and it was allegedly found that the meter was recording energy consumption less than the actual by 27.63%. Joint inspection report was signed by the consumer and licensee and thereafter, the defective meter was replaced on 05.03.2003. The revised notice of demand was raised for a sum of Rs. 4, 28,034/- on 19.03.2005. Though the liability may have been created on 03.03.2003, when the error in recording of consumption was detected, the amount become payable only on 19.03.2005, the day when the notice of demand was raised. Time period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 19.03.2005.

Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired."

(xxix) Similarly, the Hon'ble Supreme Court's remarks in the Swastic case makes it evident that the issue of escaped billing therein pertained to improper meter recording. The relevant para is quoted for reference:

"5…..Moreover, there is no deficiency of service in making supplementary demand for escaped billing. There may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers. That would be deficiency of service under the Consumer Protection Act."

Thus, the instant case, wherein the issue pertains to revised bills on account of changed methodology, attracts the bar under Section 56 (2).

(xxx) Contrary to the submissions of the Respondent that the supplementary invoices may be issued on any day and the date on which the invoices are issued shall be considered as the date on which the amount becomes 'first due' for the purposes of the restrictions under Section 56 (2), the phrase 'first due' is to be read with respect to 'first billing' of the energy, which in the instant case was done in 2017. It is submitted that the only exception provided under Section 56 (2) is if the licensee has been continuously showing such unpaid sum as recoverable as arrear of charges for electricity supplied. The interpretation given by the Respondent that it can raise the supplementary bill at any point of time and that day ought to be considered as the date the charges became 'first due' renders the provisions pertaining to "shown continuously as recoverable as arrear of charges' as redundant. If the Respondent's contention is accepted then by treating the words "first due" to mean the date of detection of mistake, the mandate of the two-year limitation period provided by Section 56(2)would be diluted, since a mistake may be detected at any point of time. Furthermore, the words "recoverable as arrears of charges" would be rendered completely otiose and nugatory. The period of limitation Under Section 56(2) cannot be extended by raising a supplementary bill. The "sum due" raised in the original bill, and not paid by the consumer, must be continuously shown as arrears of charges in subsequent bills, for it to become recoverable by taking recourse to the coercive mode of disconnection of electricity supply.

*(xxxi) It is submitted that the Hon'ble APTEL vide its Order dated 04.11.2015, in Appeal Nos. 49 of 2015, 93 and 94 of 2014 ("**Chhattisgarh Case**"), has clearly held that retrospective levy wherein the licensee revised the previous bill by changing the*

*billing methodology is barred under Section 56 (2) by upholding the quashing of such bills by the Ld. Chhattisgarh State Electricity Regulatory Commission ("**Ld. Chhattisgarh Commission**").*

(xxxii) In the Chhattisgarh Case, the Hon'ble APTEL dismissed the Chhattisgarh Discom's appeal against the Order of the Ld. Chhattisgarh Commission, which had set aside the belatedly raised supplementary bills on the Respondent Generators by the Appellant Chhattisgarh Discom. As per the Chhattisgarh Discom, it had raised supplementary bill dated 02.04.2013 towards the difference of Parallel Operation Charges (POC) from January 2009 to February 2013 and that the supplementary bills had to be issues for recovery of dues on account of suppression of material information from the power generator. The Ld. Chhattisgarh Commission, relying on Hon'ble APTEL's judgment in Appeal No. 74 of 200, set aside the supplementary bill raised by the Chhattisgarh case to the extent of claim for the period prior to three years from the date of issuance of bill. In para 13 of the appeal, which is dedicated to discussion and conclusion, the Hon'ble APTEL makes the following observations which are relevant and applicable in the instant case:

> *"13.7. The appellant, a State distribution licensee could have been more vigilant and prompt in identifying these variations and rectify it in a timely and reasonable manner. The appellants negligently followed the incorrect methodology for a very long time during that period and it was only through the aforementioned respective supplementary bills that the appellant had belatedly tried to rectify itself, this belated action of the appellants had rightly been found by the State Commission as not in the commercial interest and public interest.*
>
> *13.8. A perusal of the respective Impugned Order of the State Commission makes it evident that the State Commission had not found the present cases to be that of suppression of facts but the cases of incorrect methodology applied negligently by the appellants during the relevant period with regard to each CPP/CGP, respondent herein."*

*Copy of Appeal Nos. 49 of 2015, 93 and 94 of 2014 is annexed herein as **Annexure P-6.***

(xxxiii) Thus, the Chhattisgarh Case upholds the quashing of supplementary bills which were raised retrospectively on the power generators on account of incorrect methodology applied negligently by the Chhattisgarh Discoms. It is relevant to mention that, in fact, in the Chhattisgarh Case also, the Appellant Discom therein had relied on the Ajmer case to contend that the charges become due when the first bill/ demand notice for payment was issued but the said assertion was rejected. The

Hon'ble Commission ought to place reliance on the Chhattisgarh Case and quash the Impugned Bills.

(xxxiv) The Respondent has erroneously contended that bar of Section 56(2) is applicable only after two years from the date when the amount becomes first due and that there is no bar on raising supplementary demand of escaped billing. Thus, Respondent erroneously contends that it has merely raised supplementary demand for April, 2017 to May, 2019 vide its Letter dated 16.01.2020. It is submitted that the Respondent is twisting the facts to get out of application of Section 56(2). The Respondent has not raised supplementary demand for "escaped billing" but has raised fresh invoices by completely changing the billing methodology. In such a scenario the Respondent cannot claim that the bill raised for the past period first became due on 16.01.2020 when the letter was sent to the Petitioner. Further, while bills for the period of April, 2017 to May, 2019 have been raised by Respondent and paid by the Petitioner, fresh supplementary bills have been now raised by changing the methodology of billing retrospectively. Further the sum billed in these supplementary bills has not been continuously shown as recoverable as arrear of charges for electricity supplied during the period of April, 2017 to May 2019 and therefore these supplementary bills are barred by Section 56(2).

(xxxv) The Hon'ble High Court of Bombay in judgment, dated 12.03.2019, has also held that even in cases of supplementary bills no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable. The relevant paragraph from the Judgment of Bombay High Court in the matter of MSEDCL v. The Electricity Ombudsman, W.P. No. 10764 of 2011 is extracted below:

> *"78…. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable."*

Copy of W.P. No. 10764 of 2011 is annexed herein as ***Annexure P-7.***

(xxxvi) It is also relevant to mention that Hon'ble APTEL has deprecated the practice of Discoms raising belated bills on account of its own negligent behavior and has held that such practice is against the public interest and commercial interest of the Discoms. In the Ajmer case, which has been relied upon by the Respondent itself, the Hon'ble APTEL says that, "18….Notwithstanding the fact that the demand is not

barred by limitations, the fact of considerable delay in raising the demand was against the commercial principles. The licensee ought to have realized that when such large sums of money are allowed to remain unrecovered from the consumers for long periods of time, it not only affects the investment opportunities but also erodes the value of the principal on account of inflation. The action of the licensee is not in public interest. It woefully demonstrates the lack of commercial sense." Also, in the Chhattisgarh case, the Hon'ble APTEL held that the Chhattisgarh Discom had acted negligently and its actions were neither in its own commercial interest not in public interest. The Hon'ble APTEL notes that "16…. The learned State Commission while passing the Impugned Orders had already granted a concession to the appellant, a distribution licensee by holding not to initiate any penal action under section 142 and 146 of the Electricity Act, 2003 in spite of giving clear finding that the said action of the appellant cannot be held to be in commercial interest of the appellant as well as in the public interest. Consequently, these appeals merit dismissal."

(xxxvii) It is submitted that the Respondent by arbitrarily revising methodology for billing have created a dispute between itself and Power Generator. Such negligent and casual approach is against the interest of the entire industry and acts to demotivate investments by creating uncertainty. The above submissions may be taken into account while deciding the matter.

13. Observations and Findings:

The Commission's observations on the petition and submissions made by the Petitioner & Respondents in this matter are as under: -

(i) The petitioner has mainly raised the following issues in the subject petition: -

a) Billing methodology for power drawn for synchronization of the generator with the grid upto a period of 2 hours and after 2 hours in each instance/occasion.
b) Billing methodology for power availed by the generator from the grid for the purpose other than synchronization.
c) Supplementary demand raised by the Respondent No.1 (M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd. Indore) for the past period.

(ii) Generation of power through Solar and Wind projects is possible only when natural resource i.e. sunlight/wind is available. If the sunlight/wind is not available though the

project is operational, it cannot generate power. During such time, it draws power from the grid for auxiliary consumption and for synchronization with the grid when generation starts again. Sometimes, power is also required during the shutdown or other emergencies in the plant. The Commission has observed that for billing the generators, who avail power from the Distribution Licensees under such circumstances, appropriate provisions have been made in the Regulations and the Retail Supply Tariff Order. The Commission vide Notification No. 3042/MPERC-2010, dated 09.11.2010, had issued the "Madhya Pradesh Electricity Regulatory Commission (MPERC) (Cogeneration and Generation of Electricity from Renewable Sources of Energy) Regulations, 2010 (Revision-I) (RG-33 (I) of 2010)". Subsequently, several amendments have been made in the Regulations from time to time. The 7th amendment in the Regulations was made on 17.11.2017, wherein Clause 10 of the said Regulations provides as under:

> **10. *Drawing power during shut down by Generator/Co-generation from Renewable Sources***
>
> *The Generator/Co-generator would be entitled to draw power exclusively for its own use from the Transmission/Distribution Licensees' network for synchronization of plant with the grid or during shutdown period of its plant or during such other emergencies. The power availed during synchronization of plant with the grid shall be billed for the period and at the rate as per the retail supply tariff order under tariff schedule for synchronization. In other cases, it would be billed at the rate applicable to temporary connection under HT Industry category.*

(iii) The annual Retail Supply Tariff orders provide a Tariff Schedule HV-7, which is applicable for synchronization of power for generators connected to the Grid. The Retail Supply Tariff order for FY 2019-20, is having a special tariff schedule HV-7 for the generators connected to the grid and availing power for synchronization with the grid from time to time. As per the terms and conditions under schedule HV-7, synchronization with the grid shall only be made available after commissioning of such generating plants. For synchronization with the grid, power shall be provided for a maximum period of 2 hours on each occasion. It has also been provided that the supply for synchronization with the grid shall not exceed 15% of the capacity of unit of highest rating in power plant. This tariff is a single part tariff provides for billing only on per unit energy charge basis and the condition of minimum consumption shall not be applicable to the generators. Billing has to be done for energy recorded on each occasion of availing supply for synchronization purpose during the billing month.

(iv) Earlier vide petition No.29/2019, MPPMCL and all the three state Discoms approached the Commission submitting that because of two types of billing methodology for power drawn for synchronization purpose and "other-than –synchronization" purposes, they were facing difficulty to implement the same. They stated that it becomes difficult to ascertain the purpose of drawl of power by a Generator in each occasion. During the initial period of two hours also the power being drawn by a generator may or may not be utilized for synchronization purposes. They further stated that only way to implement the provisions of the Regulations and the Retail Supply Tariff Order is to assume that in first two hours power drawn is for synchronization purpose. They further stated that while carrying out billing at the rate applicable to temporary connection under HT Industrial category, it is not clear whether all terms and conditions prescribed in the Tariff Order for temporary consumer shall be applicable or tariff order shall be referred only to ascertain the rate of billing. Citing the difficulties being faced, they had prayed for amendment in the Regulations as well as in the Tariff Schedule HV-7.

(v) The Commission disposed of the aforesaid petition No. 29/2019 vide order dated 16th December 2019 with the observation that the petitioners were seeking revision/ clarification in retail supply tariff order for FY 2018-19 issued on the 3rd May 2018. The Commission observed that the petition was filed after a period of more than a year. It was mentioned in the aforesaid order that the process for determination of ARR and retail tariff order for FY 2020-21 have already been started. In view of the background mentioned in the subject petition and developments, the Commission directed the petitioners that with regard to their contention for HV-tariff, they may approach by way of appropriate proposal in their tariff petition for FY 2020-21. With regard to their other prayer seeking amendment in MPERC (Co-generation and Generation of Electricity for Renewable Source of Energy) (Revision-I) Regulations 2010, it was mentioned in the aforesaid order that the Commission shall examine the prayer of the petitioners and may come up with an appropriate draft amendment, if required, providing opportunity to all stakeholders to offer their comments/objections on the draft Regulations through the process of public hearing. The above-mentioned process for amendment in MPERC (Co-generation and Generation of Electricity for Renewable Source of Energy) (Revision-I) Regulations 2010 was taken up and has already been completed and further course of

action is under consideration of the Commission. However, revision if any, in the Regulations shall be applicable prospectively only.

(vi) With regard to the present and past period billing dispute about applicability of schedule HV-7 and HV-3.1, the Commission has examined the views and submissions made by the Petitioner and Respondents in light of the provisions under existing Retail Supply Tariff order and the applicable Regulations.

(vii) Regulation 10 of Madhya Pradesh Electricity Regulatory Commission (Cogeneration and Generation of Electricity from Renewable Source of Energy) Regulations 2010 (Revision-I) (RG-33(I) of 2010) has specific provision for drawing power by Generator /Cogeneration from Renewable Sources. It entitles the Generator/Co-generation from Renewable Sources to draw power exclusively for its own use from the Transmission/Distribution Licensees' network for synchronization of plant with the grid or during shutdown period of its plant or during such other emergencies. Regarding billing for that period, it has clearly been specified that the power availed during synchronization of plant with the grid shall be billed for the period and at the rate as per Retail Supply Tariff order under tariff schedule for synchronization. Accordingly, for the previous years' Retail Supply Tariff orders including the Retail Supply Tariff order for FY 2019-20, a specific tariff schedule HV-7 is incorporated in these tariff orders.

(viii) The Regulations provide that the power availed during synchronization of plant with the grid shall be billed for the period and at the rate as per retail supply tariff order under tariff schedule for synchronization. Accordingly, the Commission has fixed the maximum time period for billing the generator for synchronization purpose alongwith the applicable unit rate. Hence, the Respondent Distribution Companies are required to bill the generators for power drawl for synchronization purposes accordingly. The drawl of power by the generators during shutdown period of its plant or during such other emergencies, would be billed at the rate applicable to temporary connection under HT Industrial Category.

(ix) In the matter of M/s Malwa Solar Power Generation Private Limited in Appeal no. 112/2017 against MPERC order dated 1/2/2017, Hon'ble APTEL upheld the order of the Commission. It has been held that the billing of the solar generator for power drawl from the Distribution Companies exclusively for its own use, at the rate applicable to

temporary connection under HT Industrial Category under Regulation 10, is in order. Based on the prevailing Regulations and the order dated 12/2/2020 passed by the Hon'ble Appellate Tribunal for Electricity in aforesaid Appeal, the Commission reiterates that the maximum two hours' time limit for synchronization of power specified in HV-7 Schedule of Retail Supply Tariff order is much more than normally the actual time required for synchronization of power by the generators. On conjoint reading of the provisions under aforesaid MPERC Regulations and HV-7 Schedule, the continuous drawl of power in every instance for over and above two hours shall be considered for the purposes other than synchronization. Therefore, the billing for such continuous drawl of power for over and above two hours in every instance has to be done at the rate applicable for temporary connection under HT Industrial Category which is HV 3.1 schedule in the existing Retail Supply Tariff order. Therefore, for every instance of power drawl for synchronization, upto two hours, tariff as per HV-7 schedule is applicable but thereafter for the period of continuous power drawl over and above two hours, temporary tariff at the rate of HV-3.1 (H.T. Industrial Category) would be applicable.

(x) However, billing under tariff category HV-3.1 requires computation of Fixed as well as Energy charges. Fixed charges are billed based on billing demand during the month. As per clause 1.5 under "General Terms and Conditions of High-Tension Tariff" of the Retail Supply Tariff Order for FY- 2019-20, the billing demand for the month shall be the actual maximum KVA demand recorded during the month or 90% of the contract demand, whichever is higher. In the present case, the generator does not have any specified contract demand with the Respondents. Therefore, the actual Maximum Demand recorded during the month, when power was drawn (excluding for synchronization), shall be considered on billing demand for computation of fixed charges for the purpose of billing under HV-3.1 Tariff Schedule applying temporary supply basis. It is also provided in the aforesaid Retail supply tariff order under clause 1.19(a) of "General Terms and Conditions of High-Tension Tariff" that the fixed charges in the case of temporary connection shall be recovered for the number of days for which the connection is availed during the month by prorating the monthly fixed charges. Accordingly, in the subject matter, the fixed charges on temporary supply basis, under

HV 3.1 Tariff Schedule shall be pro-rated on the number of days during the month when the power is drawn for other than synchronization as mentioned above.

(xi) For Computation of Energy Charges, rates for consumption up to 50% load factor under Tariff Schedule HV 3.1 would be applicable, as the power drawn by the generator from the grid is for a limited period as per its requirement. Further, the specific terms and conditions defined under the Tariff Schedule HV 3.1 and other terms and conditions for temporary supply in Retail Supply Tariff orders would not be applicable.

(xii) Regarding the billing for previous years, the Commission has observed that the Respondent Distribution Company had wrongly billed at the rate applicable under HV-7 schedule for the power continuously drawn over and above two hours in contravention with the provisions under MPERC (Cogeneration and Generation of Electricity from Renewable Source of Energy) Regulations 2010 (Revision-I) (RG-33(I) of 2010) as amended and the applicable Retail Supply Tariff orders. This is a serious lapse committed by the Respondent Discom and later on, it has issued supplementary bills for difference of HV-3.1 (Temporary Supply) and HV-7 billing with regard to the usage by the generator. The Commission in the Retail Supply Tariff Orders has categorically directed the Respondent Discoms that they can't change in the tariff or the tariff structure. Clause 1.26 of the General Terms and Conditions of High-Tension Tariff is reproduced below:

"No charges in the tariff or the tariff structure including minimum charges for any category of consumer are permitted except with prior written permission of the Commission. Any order without such written permission of the Commission will be treated as null and void and also shall be liable for action under relevant provisions of the Electricity Act, 2003".

(xiii) Ld. Counsel for the petitioner in his arguments and subsequent written submission stated that the Respondent No.1 vide letter dated 16.01.2020 raised additional charges for the period of April'2017 to August' 2019 wherein the recovery of bills for April'2017 to January'2018 is time barred in terms of Section 56(2) of the Electricity Act'2003. The

Respondent No. 2 in its written note placed counter arguments along with several citations on this issue. The submissions of both the parties on this issue are mentioned in paras 11 and 12 of this order. Section 56 (2) of the Electricity Act'2003 provides as under:

"Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

In terms of the above provision under Section 56 (2), the sum due from any consumer is not recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied by the licensee. The Hon'ble Appellate Tribunal for Electricity in Judgment dated 14th November'2006 in Appeal Nos. 202 and 203 of 2006 held in para 14 that *"the consumption of electricity will certainly create a liability to pay but the amount will become due and payable only after a bill or demand is raised by the licensee in accordance with the Tariff Order. Such a bill/demand will notify a date by which the dues are to be paid without surcharge".* In para 17 of aforesaid Judgment, Hon'ble Tribunal mentioned that " *In our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected <u>but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer</u>. The date of the first bill/ demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running."*

Similarly, in another case, Hon'ble High Court of Madhya Pradesh, Bench at Gwalior in the matter of Kapoor Saw Manufacturing Co. V/s MPSEB and Others- (2006 SCC online MP 612), vide Judgment dated 13.07.2006 have upheld that the provisions of Section 56 of the Electricity Act 2003 will not be applicable when error in the matter of calculating

tariff is being corrected when the error came to the notice. The relevant para of the aforesaid Judgment is mentioned by the Respondent No. 1 (Para 11 (xiii) of this order)

From the above, the disputed amount in the subject matter was first due on 16.01.2020 when billing for additional charges was raised by the Respondent No.1. Hence, the contention of petitioner that the recovery of bills from April'2017 to January'2018 is time barred has no merit.

14. In view of the observations and findings in the foregoing paragraphs, the Respondent Discom is directed to bill the generators in the subject matter, in accordance with the provisions under MPERC (Cogeneration and Generation of Electricity from Renewable Source of Energy) Regulations 2010 (Revision-I) (RG-33(I) of 2010) as amended and the applicable Retail Supply Tariff orders issued by this Commission from time to time as clarified above. The Respondent Discom shall not be entitled to recover any carrying cost prior to the period when the supplementary demand was issued for the first time.

With the aforesaid directions, the subject petition is disposed of. The Interlocutory Application IA No. 08 of 2020 is also disposed of.

Shashi Bhushan Pathak)
Member

(Mukul Dhariwal)
Member