

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

BHOPAL

Sub: Petition under Section 86(1)(e) & (f) of the Electricity Act, 2003 for restitution of PPWA dated 23.02.2012 and for suitable compensation of damages.

ORDER

(Hearing through video conferencing)

(Date of Order: 20.06.2024)

K.N. Agri Resources Limited,
(Earlier know as Itarasi Oils and Flours Pvt. Ltd.)
Kheda Industrial Area,
Itarasi, 461111 (MP)

- **Petitioner**

Vs.

(1) Managing Director,
MP Power Management Co. Ltd.,
Shakti Bhawan, PO Vidyut Nagar,
Rampur, Jabalpur, 482008

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

(3) Managing Director,
MP Madhya Kshetra Vidyut Vitaran, Co. Ltd.,
Nishtha Parisar, Bijlee Nagar,
Govindpura, Bhopal, 462023 (MP)

(4) Managing Director,
MP Power Transmission Co. Ltd.,
Shakti Bhawan, PO Vidyut Nagar,
Rampur, Jabalpur, 482008

- **Respondents**

Shri Vallinayagam, Advocate, appeared on behalf of the petitioner.

Shri Manoj Dubey, Advocate, appeared on behalf of the respondent no. 1 & 3.

Shri Ashish Bernard, Advocate, appeared on behalf of respondent no. 2.

Shri Abhinav Anand, AE, appeared on behalf of respondent no. 4.

The subject petition is filed by K.N. Agri Resources Limited, Itarsi under Section 86(1)(e) & (f) of the Electricity Act, 2003 for restitution of PPWA dated 23.02.2012 and for suitable compensation of damages.

2. By affidavit dated 28 December' 2023, the petitioner broadly submitted the following in its petition:

i. Petitioner is a generator having its Wind Electricity Generating unit of installed

capacity of 1250 kW (1 .25 MW) at village Nagda, District Dewas (M. P.) for its cent-percent captive use at Itarsi. The Injection Point is at Dedicated 33KV Suzlon Feeder – 220KV/132KV/33KV sub-station at Dewas in the distribution area of M P Paschim Kshetra Vidyut Vitaran Company Ltd. (West Discom) and the Drawal Point at HT connection of the Petitioner through its 33KV dedicated feeder from 220KV/132KV/33KV Itarsi sub-station in the distribution area of M P Madhya Kshetra Vidyut Vitaran Company Ltd. (Central Discom). The Petitioner was earlier known as Itarsi Oil and Flours Private Limited.

- ii. Respondent No. 1, earlier known as M P Power Trading Company Ltd., is a fully owned company of the Government of Madhya Pradesh and is the holding company of Respondents No. 2 and 3. The Respondents No. 2 and 3 are the Distribution Licensees in the respective areas. The Respondent No. 4 is the Transmission Licensee for inter-transmission of power between the Respondent No. 2 and 3 and is responsible for granting Long Term Open Access and allied facilities to the Petitioner.
- iii. Petitioner challenges the impugned Termination Order No. CGVI (C-3) /Wind/Itarsi Oil/Termination Notice / 1699, Bhopal, Dated 12-11-2020, received by the Petitioner on 23-11 -2020, whereby the Respondent No. 1 has terminated the Power Purchase And Wheeling Agreement For Wind Electricity Generators For Captive Use (PPWA), dated 23-02-2012 for alleged want of installation of ABT Compliant 0.2S Accuracy Class meter installed at drawal point of the Petitioner, though before issuance of said notice the required meter was well installed as required much before on 12-10-2020.
- iv. Respondent No. 2 issued a Notice of Defaults intimating that 0.25 Accuracy Class AMR facility metering has not been installed on the drawal point of the Petitioner, which constitutes a default in terms of Clause 17.2 of the PPWA dated 23-02-2012 and noticed the Petitioner to take remedial measures to set right the said default within a period of 3 months from the date of issuance of the said notice, else the PPWA shall be terminated as per rules. In turn, the Petitioner, immediately, issued order for Supply and Installation of said meters to one M/s. Pioneer Power Project, vide its letter No. 10FPL/WC/059 dated 17-07-2020, In turn, said M/s. Pioneer Power Projects, on behalf of the Petitioner, successfully completed the said installation and informed of the same to the Respondent No. 3 vide its letter dated 24-09-2020, within the time period prescribed in the aforesaid notice of default dated 26- 06-2020.
- v. Respondent No. 1, overlooked that the requisites of the default notice dated 26-06-2020 stood well complied, before the period of time 3 months prescribed therein on 24-09-2020, in a most prejudice and arm-twisting manner to the Petitioner, terminated the PPWA vide the impugned notice dated 12-11-2020. The said impugned notice dated 12-11-2020 was received by the Petitioner on 23-11-2020. Pertinent to mention here that the Petitioner, invariably, was being pressurizing by the Respondent No. 1 to submit an irrevocable undertaking not to claim any payments towards inadvertent / unadjusted energy injected into the grid in a format provided by it. Would well demonstrate such mala fide intention of the Respondent No. 1 in its ulterior motive.
- vi. Petitioner vide its letter dated 10-12-2020, stating the reasons mentioned therein, requested the Respondent No. 1 to reinstate the PPW A. But the Respondent No. 1, vide

its letter No. CGM/C3/Wind/IOFL/Bhopal/1939 dated 29-12-2020, losing sight over the provisions of Section 65 of the Contract Act, refused to accede to the Petitioner's request abruptly stating that the PPWA does not contain any provision for reinstatement. The Respondent No. 1 further advised the Petitioner to obtain a new LTOA permission from Respondent No. 4 and then only a new PPW A can be executed. Being heavily arm-twisted in most unjust manner on the instance of the Respondent No. 1, the Petitioner, vide its letter dated 18-10-2021 was compelled to request the Respondent No. 4 to cancel the earlier granted LTOA vide letter No. 1330 dated 25-10-2010 of the Respondent No. 4.

- vii. *For the reasons that the requisites of the Default notice stood complied within the time-period prescribed therein, the impugned Termination Order and the consequences thereof are ab-initio void and illegal.*
- viii. *While considering the representation of the Petitioner, Respondent No. 1 lost sight over the provisions of Section 65 of the Contract Act. The PPWA ought to have been reinstated with consequential effects retrospectively.*
- ix. *In view of the provisions of Section 65 of the Contract Act, Petitioner is liable to be compensated for damages suffered by it. The Indian Contract Act. vide Section 65, provides for restitution as under;*

“65. Obligation of person who has received advantage under void agreement, or contract that becomes void.—When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.”

- x. *Petitioner had adopted arm-twisting tactics and in such ulterior motives has illegally terminated the PPW A to grave prejudice and hardships to the Petitioner.*
- xi. *Respondents is violative of the provisions of Section 86 (1) (e) of the Electricity Act, 2003 which, inter-alia, provides for promotion of co-generation and generation of electricity from renewable sources of energy by providing suitable measures of connectivity with the grid. The Petitioner is a renewable energy generator and therefore, needs to be protected and compensated adequately.*
- xii. *The impugned Termination Order was issued in most unjust, illegal manner, the same is bad in law.*
- xiii. *The instant petition is being filed within the limitation period prescribed along with required filing fees. The Hon'ble Commission has all jurisdictions to entertain this petition and adjudicate it finally.*

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

- i. *To set aside the impugned Termination Order of PPWA dt. 23.02.2012 issued by the Respondent No. 1 vide its letter No. CGM (C-3)/ Wind/ Itarsi Oil/ Termination Notice/ 1699, Bhopal, dt. 12.11.2020;*
 - ii. *To restitute/ reinstate the said PPWA and the earlier granted LTOA vide letter No. 1330 dt. 25.10.2010 of the Respondent No. 4 with effect from retrospective dates of their respective cancellation;*
 - iii. *To direct the Respondent No. 1 to pay a compensation amounting to Rs. 13,13,486.00 along with interest @ 2% above SBI prime lending rate to the Petitioner from the date of termination of the PPWA till date of actual payment;*
 - iv. *To award costs of instant proceedings in favour of the Petitioner; and*
 - v. *To grant any other suitable reliefs, as may be considered proper favour of the Petitioner.*
4. At the motion hearing held on 12.03.2024, petition was admitted. Petitioner was directed to serve copy of petition to the respondents within 3 days. Respondents were directed to file their response within 15 days thereafter. Petitioner was also directed to file specific comments on the issue of limitation at the next hearing.
5. By Affidavit, dated 05 April' 2024, Respondent No. 4 i.e. MP Power Transmission Co. Ltd., Jabalpur, submitted following in their response:
- i. *It is submitted that as per MPERC (Terms & Conditions for Intra State Open Access in Madhya Pradesh) Regulations 2005, Intra State Long Term Open Access was granted by MPPTCL vide letter No. 1330 dated 25.10.2010 to M/s Itarsi Oils & Flours Ltd., Kheda Industrial Area, Itarsi (now K.N. Agri Resources Ltd.) for injection of power through 33 KV Suzlon feeder at 220 KV S/s Dewas and its captive use from 1x1.25 MW Wind Turbine Generators installed at location No. 3, Nagda Hills, Distt. Dewas. The captive users were M/s Itarsi Oils & Flours Ltd., Itarsi connected through 33 KV dedicated feeder from 220 KV S/s Itarsi and M/s Khandwa Oils (Unit 1 & II) at Village-Siltiya, Pandhana Road, Khandwa connected through 33 KV dedicated feeder from 132 KV S/s Chhegaon Makhan.*
 - ii. *Subsequent to grant of LTOA, the PPWA dated 23.02.2012 was executed among MP Tradeco (now MP Power Management Co. Ltd.), M/s Itarsi Oil & Flours Pvt. Ltd., M/s Suzlon Energy Ltd. (Developer) and MPPKVVCL Indore.*
 - iii. *Due to non-compliance of terms of the PPWA, the CGM (Commercial-3), MPPMCL, Bhopal terminated the PPWA dated 23.02.2012 vide order No. 1699 dt. 12.11.2020.*
 - iv. *Subsequently, the petitioner had requested MPPTCL vide their letter dated 18.10.2021 for cancellation of the LTOA granted by MPPTCL vide letter No. 1330 dated 25.10.2010 mentioning that after cancellation of said LTOA, they will apply for a fresh LTOA application for their 1x1.25 MW WTG installed at Nagda Hills, Dewas for captive use and signing of fresh PPWA with MPPMCL.*

- v. *Conceding to the request of the petitioner, the MPPTCL cancelled the LTOA permission granted vide letter No. 1330 dated 25.10.2010 to M/s Itarsi Oil & Flours Pvt. Ltd. Itarsi.*
 - vi. *Thereafter, the request was made for grant of new LTOA by M/s Itarsi Oil & Flours Pvt. Ltd. vide their letter dated 13.12.2021 to MPPTCL.*
 - vii. *On the request of MPPTCL, the MPPKVVCL Indore examined the feasibility for injection of power through 33 KV Suzlon feeder at 220 KV S/s Dewas and intimated that the total load on the feeder including 1x1.25 MW is 15.55 MW which is beyond the permissible limit.*
 - viii. *Since the injection on the 33 KV Suzlon feeder at 220 KV S/s Dewas was exceeding the permissible limit and found technically unfeasible, the same was intimated to the petitioner vide MPPTCL letter No. 6714 dated 03.03.2022.*
 - ix. *It was further informed by SE (Com-HT), MPPKVVCL, Indore vide letter No. 11346 dated 16.08.2022 that on the request of applicant M/s Itarsi Oil & Flours Pvt. Ltd. for re-calculation of load on 33 KV Suzlon feeder at 220 KV S/s Dewas, the matter was re-examined and same is found technically unfeasible since the injection through this feeder exceeded the permissible limit and therefore found technically unfeasible. The same was intimated to M/s Itarsi Oil & Flours Pvt. Ltd. by MPPTCL vide letter No. 2724 dated 01.09.2022.*
 - x. *In view of the above, the prayer of the petitioner to reinstate the said PPWA dated 23.02.2012 and earlier granted LTOA (granted vide letter No. 1330 dated 25.10.2010 by MPPTCL) does not have any merit and deserved to be dismissed.*
 - xi. *The averments made by the petitioner except those which are matter of record and specifically admitted, are denied by MPPTCL (Respondent No. 4).*
6. By Affidavit, dated 08 April' 2024, Respondent No. 2 i.e. MP Paschim Vitran Vidyut Vitran Co. Ltd., Indore, submitted following in their response:

Preliminary objections: -

- i. *At the outset, the respondent no. 2 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.*
- ii. *That the present petition is bared by the Law of limitation, as per section 3 of the Limitation Act, 1963 any suit instituted after the prescribed period shall be dismissed. Article 113 of the Schedule of the Limitation Act, 1963 provides a limitation of **3 years***

from the date when right to sue accrues. In the instant petition, the right to initiate legal proceeding arose at the time when the respondent no. 1 issued the termination order of PPWA against the petitioner and the Hon'ble Commission is not the proper forum to decide the petition because according to PPWA clause 32 any dispute regarding the PPWA or arising out of or in connection with PPWA shall be settled only at Jabalpur or be triable only and exclusively in any competent court situated at Jabalpur. The petitioner has approached the Hon'ble Commission with concealed and misleading facts and the respondent humbly prays of the above petition be dismissed with cost.

- iii. That the petitioner has stated in his petition para no. 1 claimed that the wind electricity generated at village Nagda, Distt. Dewas MP was used at point of supply Itarsi only. But in reality the petitioner was using the wind electricity as a consumer for his point of supply **1. M/s Itarsi Oil & Flour Ltd Itarsi. (in Central Discom), 2. M/s Khandwa Oil Mills Unit-1, 161/3, Gram Siltia, Pandhana Road, Khandwa (in West Discom Regulated by Respondent No.-2), & 3. M/s Khandwa Oils Mills Unit-II, 164/3 Gram Siltia, Pandhana Road, Khandwa (in West Discom Regulated by Respondent No.-2)**
- iv. Contents of Para No 4 are only accepted that the respondent No.2 issued a default notice against the petitioner vide its letter **No. MD/WZ/05/COM/HT/7241 Indore Dated 26.06.2020**, it is pertinent to mentioned here that the notice was issued against the petitioner for installation of 0.2S accuracy class AMR facility metering at the drawal point by the petitioner which were under the jurisdiction of respondent no 2 i.e. **1. M/s Khandwa Oil Mills Unit-I, situated at 161/3 , Gram Siltia, Pandhana Road, Khandwa and 2. M/s Khandwa Oils Mills Unit-II, situated at 164/3 Gram Siltia, Pandhana Road, Khandwa.**
- a. **LTOA granted to the petitioner on 25.10.2010** clearly mentions that – The applicant shall install ABT compatible meters and metering equipment's at injection and drawal points as per the specification provided in the Transmission Metering Code Part-V Section- 16 of MP Electricity Grid Code. The open access customer has to comply with the regulations of CEA and notifications of MPERC for C).2S Class ABT meters and metering equipment.
- b. Also the PPWA which was executed on 23rd February 2012 clearly mentioned that, in which the petitioner was a signatory and was bound by all terms and conditions of PPWA which clearly mandates the installation of 0.2S accuracy meters.
- c. That the, terms and conditions in LTOA and PPWA in which the petitioner was the signatory and beneficiary was clearly aware and had proper knowledge that the 0.2S accuracy class AMR facility metering was to be installed at the drawal point by the petitioner at point of supply.
- d. That the, petitioner in spite of having the proper knowledge and information about the installation of 0.2S accuracy class AMR facility metering which was a necessary and essential part and equipment of LTOA and PPWA had Willfully neglected and disregarded the terms and conditions of LTOA and PPWA by not installing the meters.
- e. That the, Respondent no. 2 after serving many reminder notices finally issued final notice of default on 26.06.2020 which was to be complied with in 3 months from the date of issuance of notice, which is also validated in clause 17.2 of PPWA. Here

the defaulting party was petitioner must be rectified by the default within 3 months from the date of issuance of notice by Respondent No. 2.

f. That the, compliance of the notice of Respondent no. 2 must have been done on or before 25.09.2020 but the Respondent no. 2 who issued the notice of default to the petitioner never received any intimation / report from the petitioner against the installation of 0.2S accuracy class AMR facility metering which was to be installed at the drawal point by the petitioner at point of supply.

v. In Para No. 5 no relief claimed against the respondent no. 2 and needs no. reply from respondent no. 2 and to be proved by the petitioner.

vi. In Para No. 6 no relief claimed against the respondent no. 2 and needs no. reply from respondent no. 2 and to be proved by the petitioner.

vii. That the, default notice was never complied by the petitioner till the expiry of 3 months from the date of issuing of default notice and the respondent no. 2 the notice issuing authority never received any letter/ report / confirmation about the compliance of default notice from the petitioner.

viii. In Para No. 8 no relief claimed against the respondent no. 2 and needs no. reply from respondent no. 2 and is a matter of Law and to be proved by the petitioner and to be decided by the Hon'ble Commission.

ix. In Para No. 9 no relief claimed against the respondent no. 2 and needs no. reply from respondent no. 2 and to be proved by the petitioner.

x. In Para No. 10 no relief claimed against the respondent no. 2 and needs no. reply from respondent no. 2 and to be proved by the petitioner.

xi. That the act of respondents was never in violation of provisions of section 86 (1) (e) of the electricity act 2003 and the respondents only acted under the provisions of LTOA and PPWA agreements validated by Law.

xii. In Para No. 12 no relief claimed against the respondent no. 2 and needs no. reply from respondent no. 2 and to be proved by the petitioner.

xiii. In Para No. 13 no relief claimed against the respondent no. 2 and needs no. reply from respondent no. 2 and to be proved by the petitioner.

7. In additional submission dated 14.04.2024, petitioner broadly submitted the following:

i. During the last hearings of the present case, it was pointed out that there appears to be a delay in filing the present petition. it is respectfully submitted that the present petition is not barred by the limitation period prescribed and has well been filed within the limitation period prescribed.

ii. That! the impugned Termination Notice dated 12-11-2020 issued by the Respondent No. 1 was served upon the Petitioner for the first time on 23-11-2020. Therefore the cause of action for the

Petitioner to file the present petition. in ordinary course. lastly arose on 23-11-2020 and the Petition should have been filed within a prescribed period of three years therefrom, i.e., by 24-11-2023.

- iii. That, vide order dated 10-01-2022 passed in Misc. Application No. 21 of 2022 in Suo Motu Writ Petition no. (C) No. 3 of 2020. the Apex Court was pleased to extend the period of limitation prescribed under the general law of limitation or under any special laws (both Central and / or State) due to outbreak of the COVID- 19 pandemic. The Apex Court was pleased to direct as:

“Ill in cases where the limitation would have expired during the period between 15-03-2020 till 28-02-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have the limitation period of 90 days from 01-03-2022. In the event the actual balance period of limitation remaining, with effect from 01-03-2022 is greater than 90 days, that longer period shall apply.

IV it is further clarified that the period from 15-03-2020 till 28-02-2022 shall also stand excluded in computing the periods prescribed under Sections 232 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12 A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

- iv. That, for the reasons that the cause of action for the Petitioner to file present petition arose between the aforesaid period of 15-03-2020 till 28-02-2022, the Petitioner has a limitation period of three years with effect from 01-03-2022. to file the present petition. The present undisputedly has been filed on or about 28-12-2023 within the said limitation period of three years.
- v. That, in the facts and circumstances, it is submitted that the objection regarding apparent delay in filing the present petition be dropped, to meet the ends of justice.

8. At the hearing held on 16.04.2024, Commission directed respondent no. 2 & 4 to submit the information regarding status of connectivity of 1.25 MW CPP of petitioner and quantum of energy injected, if any, during the period from 12.11.2020 till date, within 10 days. Respondent no. 2, 3 and 4 were directed to submit date of installation of ABT meters by petitioner and sealing of meters by respondents in the premises of beneficiary consumers at Khandwa and Itarsi within 10 days.
9. By Letter dated 26 April' 2024, Respondent No. 3 i.e. MP Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal, filed the information regarding installation of ABT meter & its sealing in premises of consumer situated in Central Discom in Itarsi.
10. By Letter dated 03 May' 2024, Respondent No. 2 i.e. MP Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore submitted following in their response:

- i. *That the present petition is barred by the Law of limitation, as per section 3 of the Limitation Act, 1963 any suit instituted after the prescribed period shall be dismissed. Article 113 and article 137 of the Schedule of the Limitation Act, 1963 provides a limitation of 3 years from the date when right to sue accrues. In the instant petition, the right to initiate legal proceeding arose at the time when the respondent no. 1 issued the termination order of PPW&A against the petitioner.*
- ii. *It is further submitted that the petitioner has wrongly interpreted the judgment of Hon'ble Supreme Court and requested the Commission that the present petition is not barred by limitation. In reality the judgment of the Hon'ble Supreme Court states that only those petition will be excluded and will be given extension whose limitation is ending in the prescribed period. Here in the present petition the limitation is ending on 24.11.2023 which is well after the period prescribed by the Hon'ble Supreme Court. Therefore accordingly the claim of the petitioner against the respondents is barred by law of limitation and deserves to be rejected at threshold without going into the merits of the case.*

*Further, the petitioner deliberately delayed the filing of the petition to cover its short comings and to safeguard itself from any legal action initiated by the respondents. The petitioner has continuously from the signing of PPW&A evaded the terms and conditions which were mandatory and binding on the petitioner and when the respondents took cognizance of the malpractices and short comings done by the petitioner and cancelled its agreements the petitioner in return approached the Hon'ble Commission with concealed facts and concealed his short comings. **It is pertinent to mention here that the petitioner till date has not rectified its short comings and till date petitioner is in violation of the terms and conditions of PPW&A.** The present petition is only filed after the expiry of limitation by the petitioner to safeguard itself from recoveries and legal course of action taken by the respondents.*

- iii. *The respondent No.2 further submits that, the Apex Court in **Lanco Kondapalli Power Limited (2 supra)** held that the Law of limitation applies to a claim brought before the Commissions in a dispute under Section 86(1)(f) of the Electricity Act, 2003; and, therefore, all the considerations as applied by the Civil Court must be equally applied by the Commission as regards the aspect of limitation in money claims. The summary of the observations made by the Apex Court in paras 29 and 31 of the said decision is – “ there is nothing in the Electricity Act 2003 to create a right in a suitor before the Commission to seek claims which are barred by law of limitation merits a serious consideration.*

*There is no possibility of any difference of opinion in accepting that on account of judgement of this Court in **Gujrat Urja Vikas Nigam Limited Vs. Essar Power Limited – (2008) 4 SCC 755** - the Commission has been elevated to the status of a substitute for the Civil Court in respect of all disputes between the licensees and generating companies. Such disputed need not arise from the exercise of powers under the Electricity Act. Even claims or disputes arising purely out of contract like in the Commission itself has the discretion to refer the dispute for arbitration after exercising its power to nominate the arbitrator “. “In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) appears to be for*

speedy resolution so the a vital developmental factor – electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the Civil Court. Evidently, in absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence we held that a claim coming before the Commission con not be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court”
“We must hosted to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory”

In the view of aforementioned legal precedents cited supra, it is settled law that time barred claim cannot be entertained by this Commission for adjudication.

Status of Connectivity

- iv. *It is humbly submitted that 1.25 MW CPP Wind Generator of M/s K.N. Agri Resources Ltd, (Formerly Known as Itarsi Oils and Flours Pvt. Ltd) situated at location No.-3, Nagda Hills, Dewas is now disconnected on Dt. 23.04.2024 from the grid. The PPWA was cancelled on Dt. 12.11.2020 due to non-compliance of PPWA and LTOA clause of installing the 0.28 accuracy class AMR facility Metering at the petitioner premises and till date the petitioner has not installed the 0.2S accuracy class AMR facility.*
 - v. *Metering at the drawal point of the petitioner at its M/s Khandwa Oil Mills Unit-1, 161/3, Gram Siltia, Pandhana Road, Khandwa (in West Discom Regulated by Respondent No.-2), & M/s Khandwa Oil Mills Unit-I1, 164/3, Gram Siltia, Pandhana Road, Khandwa (in West Discom Regulated by Respondent No.-2).*
11. By Affidavit dated 20 May’ 2024, Respondent No. 1 i.e. MP Power Management Co. Ltd., Jabalpur submitted following in their response:
- i. *The Petitioner has mainly claimed reinstatement of the PPWA dated 23-02-2012 which was terminated by the answering respondent vide its letter dated 12- 11-2020 for want of installation of required 0.25 accuracy class AMR facility at the drawal point of supply from its WEG. The Petitioner alleges that on the date of termination of the PPWA, the required ABT meter with AMR facility was stood installed and therefore the termination is not good. The Petitioner alleges to have successfully completed the said installation and informed of the same to the Respondent No. 3 vide its letter dated 24-09-2020 within the time period of 3 months prescribed in the aforesaid notice of default dated 26-06-2020. Consequently, the Petitioner has claimed compensation to the tune of Rs. 13,13,486/- along with interest @ 2% above SBI Prime Lending rates.*
 - ii. *It is submitted that, the Petitioner had set up a 1.25 MW capacity WEG at Location No. 3 at Village Nagda, District Dewas and had entered into a PPWA dated 23-02-2012 for captive consumption of power generated from it at four (4) drawal points namely; (1) Itarsi Oils & Floors Ltd. at Itarsi 1st Point, (2) Itarsi Oils & Flours Limited at Itarsi 2nd Point, (3) Khandwa Oils Unit-1 at Khandwa and (4) Khandwa Oils Unit -11 at Khandwa on the ratio of 30% : 5 : 35% : 30% respectively. The requisite LTOA permission was*

- already sanctioned by Respondent No. 4 (M. P. Transmission Co. Ltd) vide their letter no. 1330 dated 25.10.2010. The LTOA permission was conditional and the applicant Petitioner was required to ensure installation of appropriate ABT compliant meters and metering equipment both at injection point and drawal points as per terms and conditions of open access.
- iii. as mentioned in the letter dated 12.11.2020 for termination of PPWA by answering Respondent, the Petitioner was already served with several notices by Respondent No. 2 (West Discom) for installation of requisite ABT compliant meters at drawal points but the Petitioner had failed to report compliance of the default notices by the date of issuance of final termination letter dated 12.11.2020 by the answering Respondent.
- iv. The Petitioner had responded vide letter dated 10.12.2020 to the letter of termination of PPWA dated 12.11.2020 of the answering Respondent.
- v. It is submitted that through its letter dated 10.12.2020 the Petitioner had inter-alia requested to reinstate the terminated PPWA dated 23.02.2012 along with some other proposals including request for modifications of terms and conditions of the PPWA itself The Petitioner had also requested the answering Respondent to condone the delay in reporting compliance of notice for default dated 26.06.2020 served by Respondent No. 2 (West Discom) and informed that it had installed an ABT meter **only at one of the drawal points** of the captive generation, namely; Itarsi Oils & Flours Pvt. Ltd., on 12.10.2020.
- vi. It is submitted that through letter dated 10.12.2020, the Petitioner had also proposed to change the complete allocation of captive generation from existing 30% to 100% at its Itarsi Unit-1 Point. In response to its letter dated 10.12.2020, the answering Respondent, vide letter no. 1939 dated 29.12.2020 informed the Petitioner that its request of reinstating the PPWA was not found tenable as there was no such provision. However, the answering Respondent had considered the request of the Petitioner for reallocation of captive generation consumption and accordingly advised the Petitioner to obtain a new LTOA permission for proposed reallocation.
- vii. It is submitted that vide another letter dated 02-02-2021 addressed to the answering Respondent, the Petitioner had requested to issue 'in principle consent' to allow re-allocation of captive generation units as demanded. In response, the answering Respondent had issued an 'in principle consent' vide its letter dated 26-02-2021 and had also assured the Petitioner to enter into fresh PPWA with revised allocation of captive generation as proposed by the Petitioner. It is submitted that after issue of the said 'in principle consent' by the answering Respondent, no further communication in this regard has taken place between the Petitioner with the answering Respondent.
- viii. It is submitted from the exchange of communications between Petitioner and the answering Respondent through letters dated 02.02.2021 and 26.02.2021, post termination of the PPWA dated 23.02.2012, it is evident that it was already settled between Petitioner and the answering Respondent that a fresh PPWA will be executed according to the proposal made by Petitioner. Any issue regarding compensation on account of wrong termination of PPWA did not arise between them. In case the Petitioner

was desirous of any compensation from answering Respondent towards termination of PPWA dated 23.02.2021 the same could have been raised through its letter dated 10.12.2020 itself or thereafter. In fact, no such demand was raised before the answering Respondent after 02.02.2021 till filing of the instant Petition. The instant demand of compensation due to termination of PPWA by the Petitioner is evidently an afterthought demand in an attempt to cover up its own default under the PPWA during execution and continuance of a prolonged default thereafter. It is accordingly submitted that the instant demand and Petition submitted by the Petitioner is not only time barred but has been filed with a mala-fide intentions by concealing facts and therefore the same is liable to be dismissed.

- ix. *It is further submitted that, the Petitioner had entered into the PPWA dated 23-02-2012 without actually being entitled, on false premises and in violation of the terms and conditions of the LTOA and Open Access Regulations by not installing the required meters and metering arrangements at its injection as well as on drawal points. The default on the part of the Petitioner continued since execution of the PPWA dated 23-02-2012. The letter of the termination of PPWA on default of Petitioner was issued on 10.12.2020, but the Petitioner has already enjoyed considerable undue benefits by raising claims of energy wheeling for captive use for nearly 8 years without proper entitlement. The Petitioner is not entitled for any compensation on account of termination of PPWA dated 23.02.2012 by the answering Respondent because such termination of PPWA was due to own defaults of the Petitioner. In fact, the Petitioner itself has become liable to compensate the respondents by claiming undue benefits of captive use facility.*
- x. *It is submitted that the records maintained by the answering Respondent do not reflect that the Petitioner has actually provided and installed the required ABT compliant meter and metering arrangement at its injection and drawal points. The factual position would need to be confirmed by the Respondents No. 2 to 4. As per energy apportionment statement for the month of December, 2023, prepared by the Project Developer – M/s. Suzlon Global Energy Ltd., it becomes evident that an independent and exclusive ABT compliant metering arrangement has still not been installed by the Petitioner at its injection point. Further, from the said apportionment statement, it is also evident that the Petitioner is still connected to the grid and is injecting energy into the grid even after termination of the PPWA dated 23.02.2012 by the answering Respondent. It is submitted that after termination of PPWA dated 23.02.2012, the Petitioner does not remain entitled to inject any energy into the grid and therefore any claim for commercial settlement of unauthorized injection of energy into the grid cannot be entertained by the answering Respondent.*
- xi. *That in the facts and circumstances, as stated above, the impugned termination notice issued by the answering Respondent holds good and the present petition is liable to be dismissed without any compensation and relief in favour of the Petitioner*

12. By affidavit dated 05 June' 2024, Respondent No. 3 i.e. MP Madhya Kshetra Vidyut Vitaran Co. Ltd., Bhopal, submitted following:

- i. *The Petitioner has claimed restitution of the relevant PPWA dated 23-02-2012 which has been terminated by the Respondent No. 1 for want of installation of ABT compliant 0.25 Accuracy Class Meter installed at the drawal point of the Petitioner within the three months' time specified in the notice dated 26-06-2020 issued to it by the Respondent no.*

2.

- ii. *The injection point of the Petitioner is situated in the territorial jurisdiction of the Respondent No. 2, whereas, two of the drawal points namely Itarsi Oils & Flours Limited at Itarsi 1st point and Itarsi Oils & Flours Limited at Itarsi 2nd point are situated in the territorial jurisdiction of the answering Respondent No. 3.*
- iii. *As per inspection done by the Additional General Manager (B. I. Cell) of the answering Respondent No. 3 on 12-10-2020, HT Meter and ME of the Petitioner were found to be replaced due to Standardisation of the connection.*
- iv. *The instructions of the Superintending Engineer (T&D), Dewas Circle of the Respondent No. 2, the connection of the Petitioner at Dewas injection point was disconnected on 23-04-2024 by the Executive Engineer (O&M) MPPKVVCL, Dewas.*
- v. *In counter to the averments made in the petition, save all that is stated hereinbefore, the answering Respondent relies upon the respective replies separately submitted by the Respondents No. 1 and 2.*

13. By Affidavit dated 06 June' 2024, Respondent No. 2 i.e. MP Paschim Kshetra Vidyut Vitaran Co. Ltd., Indore, & Others made following additional submissions:

- i. *In the present matter, the answering respondent had filed its reply/ written statement vide letter dated 8.4.2024, however, in order to clarify a few aspects. the present reply is being filed. This reply is in addition to and without prejudice to the averments made in the earlier reply dated 8.4.2024.*
- ii. *At the outset, the preliminary objection is reiterated that the present petition is barred by Limitation. The impugned order terminating the Power Purchase and Wheeling Agreement was issued on 12.11.2020 and the present petition has been filed on or after 28.12.2023 i.e. after more than 3 years of the cause of action arising. It is further submitted that as per Article 113 of the Limitation Act, 1963. the limitation for filing the present matter is 3 years from the date on which the right to sue accrues. In the instant case, the said period had already lapsed on 11.11.2023 and since the petition has been filed thereafter. the petition is barred by limitation.*
- iii. *Vide order dated 2.4.2024, the Hon'ble Commission had directed the petitioner to file specific comments on the issue of limitation at the next hearing. In compliance of the said order. the petitioner has filed Additional Submissions on the issue of Apparent Delay in tiling the petition and has alleged that the termination order dated 12.11.2020 was served upon the petitioner on 23.11.2020 and therefore, the limitation was available till 22.11.2023. It is further alleged that in view of the relaxation granted by the Hon'ble Supreme Court vide order dated 10.1.2022 in Suo Motu Writ Petition No. 3 of 2020 the petitioner has limitation of three years from 1.3.2022. It is submitted that the said averment is denied as it is a gross misinterpretation of the judgment of the Hon'ble Supreme Court. It is submitted that the Hon'ble Supreme Court had held that if the limitation period was expiring between 15.3.2020 and 28.2.2022. then 90 days time from 1.3.22 was granted and therefore, it can not be held that a further period of 3 years was granted.*

- iv. *That, the Hon'ble Supreme Court in the case of **Andhra Pradesh Power Coordination Committee v. Lanco Kondapalli Power Ltd.**, (2016) 3 SCC 468 has clearly held in para 28 of the judgment that for quasi judicial functions of the commission Section 175 of the Electricity Act adopts the limitation Act either explicitly or by necessary implication.*
- v. *It is most humbly submitted that the petitioner has not approached the Hon'ble Commission with clean hands and has deliberately concealed material facts and made various misleading averments.*
- vi. *Without prejudice to the aforesaid averments, it is submitted that the relevant sequence of events for proper adjudication of the case are that –*

S.no.	Date	Event
1.	23.02.2012	<i>A Power Purchase and Wheeling Agreement was executed between MP Power Trading Co. Ltd. and M/s Itarsi Oils & Flours Limited for wheeling of power generated from 1 No. WEG of capacity 1.25 MW located at Village Nagda, District Dewas the H.T Connection situated at Kheda Industrial Area. Itarsi and Village Siltia, District Khandwa</i>
2.	26.06.2020	<i>The respondent no.2 issued a Notice of Default stating that as per clause (ix)(c) of LTOA dated 25.10.2010 which is a part of the PPWA, the applicant was required to install ABT compatible meters and metering equipment at both injection and drawal points. Thus the Petitioner was required to install ABT compatible meters at Khandwa, Itari and Dewas.</i>
3.	17.07.2020	<i>Allegedly the petitioner placed an order with M/s Pioneer Project for supply and installation of Meters and it is alleged that the said work was completed on 24.09.2020. M/s Pioneer Power Projects has allegedly installed meters at Itarsi, however no meters have been installed at the injection point at Dewas nor at Khandwa. Thus, it is clear that the petitioner has never removed the default as pointed out by the respondent no.2.</i>
4.	12.11.2020	<i>That since the default was never removed by the petitioner. the respondent no. 1 has terminated the PPWA. Being aggrieved the present petition has been filed belatedly on 28.12.2023.</i>

- vii. *That, thus, at the outset, it is submitted that the petitioner has continuously evaded the terms and conditions of the PPW A and when the respondent took cognizance of the malpractices and short comings and cancelled the agreement, the petitioner has approached the Hon'ble Commission. **It is categorically submitted that the Petitioner has till date not rectified the defects as pointed out by default notice dated***

26.6.2020.

- viii. *That, the answering respondent specifically denies the averments made in para 4 of the petition that the default has been removed within the time period prescribed in the default notice dated 26.6.2020, it is specifically contended that as stated in the reply dated 8.4.2024, the petitioner was served many notices reminding the petitioner to install 0.2S accuracy class AMR facility metering at the drawal point and the injection point. Despite this, the petitioner never installed the same and therefore, the petitioner violated the terms of the LTOA and PPWA. It is specifically submitted that Article 10.1(a) of the PPWA clearly states that the petitioner is required to install meters at the interconnection points as per the scheme approved by the TRANSCO/ Discom as prescribed by the State Grid Code/ Distribution Code/ Open Access Regulation etc.*
- ix. *That, in view of the termination of the PPWA, the answering respondent has disconnected the connection on 23.4.2024. It is to be noted that the disconnection was only a consequential ministerial act as the LTOA granted in 2010 was already cancelled as of 12.11.2020 with the termination of PPWA. It is to be noted that the Petitioner has also accepted/admitted the validity of such termination in its letter dated 18.10.2021 issued to MPPTCL, wherein the Petitioner has inter-alia, requested MPPTCL to cancel the LTOA granted in 2010 and has then submitted that it shall apply afresh for LTOA and shall then execute a fresh PPWA. It is to be noted that this request of Petitioner to apply for fresh LTOA is given in the backdrop of the termination of PPWA and it admits that there were breaches.*
- x. *This letter dated 18.10.2021 is a clear admission on the part of the Petitioner that the termination of the PPWA was clearly For the breaches committed by it as mentioned in the termination letters and the Petitioner today cannot approbate and reprobate with respect to its explicit admissions on the breaches as mentioned in the termination letter. It is submitted that the entire petition seeking restitution/compensation is misconceived as the Petitioner has clearly admitted with MPPTCL. in its letter dated 18.10.2021 that it committed the breaches of PPWA dated 23.2.2021.*

14. By Affidavit dated 10 June' 2024, petitioner filed a rejoinder and submitted as under:

- i. *At the outset, it is submitted that, unnoticeably, the second page of the Termination Notice dated 12-11-2020 got skipped out from filing while preparing the sets of the petition and pagination of the same. The mistake was unintentional and not under any mala-fides.*
- ii. *The following issues may arise for consideration in instant matter:*
- i. *Whether the present petition is barred by the Limitation period prescribed?*
- ii. *Whether the impugned Notice for Defaults dated 26-06-2020 required installation of ABT compatible & compliant 0.2 S Accuracy Class meters both at injection and drawal points or only at Drawal point?*
- iii. *Whether, vide impugned termination notice dated 12-11-2020 which was received by the Petitioner on 23-11-2020, the PPWA was terminated in the grounds of non-installation of required meters at both ends or at Drawal Point only?*

- iv. Whether, the Petitioner had installed the required meter at Drawal point within the period of three months' time prescribed in the impugned Notice for Defaults dated 26-06-2020.
 - v. Whether the termination of the PPWA dated 23-02-2012 by the Respondent No. 1 and, the disconnection of the connection by the respondent No. 2 were illegal? if so, what are the consequences thereof?
 - vi. Whether the Petitioner is entitled to damages as claimed by him and damages and / or interest pendente lite?
- iii. for the purpose of limitation period, the Petitioner relies upon the judgment rendered by the larger Bench of Hon'ble Appellate Tribunal for Electricity, New Delhi in Appeal No. 127 / 2013 on 13th March, 2015.

"The Limitation Act, 1963 is inapplicable to the matters pending before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission."

- iv. paragraph no. 5.111 of the Order dated 10th January, 2022, passed by the learned Apex Court in Suo Motu Writ Petition (C) No. 3 of 2020, dealing with the situation where the limitation would have expired during the period 15-03-2020 till 28-02-2022, provides as under:

"In cases where the limitation would have expired during the period between 15-03-2020 till 28-02-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01-03-2022. In the event the actual balance period of limitation remaining, with effect from 01-03-2022 is greater than 90 days, that longer period shall apply."

- v. That, assuming that the Limitation Act, 1963 would apply in present case, it is not disputed that the period of limitation of three years from the date of cause of action would apply.
- vi. That, believing the petition to have been filed on **29-12-2023**, from the chronology of events in the present case, the limitation period, in view of the aforesaid judgment dated 13th March, 2015 and Order dated 10th January, 2022 may be deduced as:

S. No.	Date of Cause of Action	Limitation in view of the APTEL judgment dated 13 th March, 2015	Limitation in view of the APEX Court Order dated 10 th January, 2022
1.	Impugned Event of Default Notice dated 26-06-2020	No Limitation period	Three years from 01-03-2022 and which has not expired on date of filing as on 29-12-2023.
2.	Impugned Termination Notice dated 12-11-2020	No Limitation period	Three years from 01-03-2022 and which has not expired on date of filing as on 29-12-2023.

3.	Connection disconnected on 23-04-2024 during its pendency	No Limitation period	Petition stood filed on 29-12-2023
----	---	----------------------	------------------------------------

Hence, contrary to the submission of Respondent No. 2, the present petition is not barred by the Limitation period prescribed. The issue no. (i) may need to be considered in favour of the Petitioner.

- vii. That, as mentioned at para 10.1 (Annexure P/2, p.p. 16 of the petition) of the PPWA dated 23-02-2012, the Petitioner’s WE(J) was set up under the Incentive Policy notified on 17-10-2006 by the Energy Department, GoMP. The project was developed by M/s. Suzlon Energy Ltd. which, under the scheme, provided for a common metering for a group of WEGs at the injection point. The impugned Notice for Defaults dated 26-06-2020 required installation of ABT compatible & compliant 0.2 S Accuracy Class meters only at the Drawal point. The notice clearly mentions as “ Thus , despite of constant pursuance with HT consumers (**i.e. drawal point**) for **installing** 0.2 S Accuracy Class AMR facility metering, the same has yet not been installed.” [Emphasis supplied]. If at all the notice required installation of such meter at injection point also, it would not have used the expression “i.e. drawal point” in the same. Therefore, the submission of Respondents No. 1 and 2 that the notice required installation of required meters both at injection as well as drawal point is out of place and contrary to their own default notice dated 26-06-2024. Further, it is pertinent to mention that the said default notice did not require commissioning of the meter, but only its installation by the Petitioner. The Petitioner has installed the required meter at the drawal point on 24-09-2020 within the period of three months mentioned in the Default Notice dated 26-06-2020 in counting the period to begin from 27-06-2020. The said notice was sent vide speed post by the Respondent No. 2 to the Petitioner. If the operational period in dispatch of the said notice by the Respondent No. 2 and receipt of the same by the Petitioner is considered, the installation of the required meter at the drawal point would still be much before the time of three months required in the default notice. Furthermore, the Respondent No.3 has carried out successful commissioning of the said meter at the drawal point. The Petitioner has invested a huge amount on the installation of the required meter and his whole project cannot be thrown out in the middle alleging that there has been a default on his part which lead to termination of the PPWA and disconnection during pendency of the case before the Hon’ble Commission. If at all the meter was installed at a date beyond that mentioned in the default Notice, the commissioning would obviously have been denied and not carried out by the Respondent No. 3. By carrying out the commissioning) the Respondents No. 1 and 2 are estopped from alleging that the meter, as required, was not installed timely by the Petitioner. The adverse averments, in this context, made by Respondent No. 1 and 2 are denied. The issue no. 2 ought to be considered in favour of the Petitioner.
- viii. That, for the reasons mentioned in preceding paras, the issue no. (iii) ought to be considered in favour of the Petitioner. It may be appreciated that the Impugned termination order dated 12-11-2020 was issued by the respondent no. 1 in pursuance of the impugned default notice dated 26-06-2020 which required the meter to be installed at the drawal point only and which was done by the Petitioner well within

the time prescribed in the default notice. The impugned termination order dated 23-11-2020 is therefore bad in law.

- ix. *The Respondent No.1 has asserted that the Petitioner had requested for reallocation of entire power generated from its WEG to its consumption point at Itarsi and for which the Respondent No. 1 had given an in-principal approval and had instructed the Petitioner to obtain a fresh LTO A to the effect and then a fresh PPWA would be executed. But it cannot be assumed that the existing PPWA can be terminated prior to that for any reasons. It is submitted that inspite of obtaining such in-principle approval and pursuant to which if the Petitioner failed to obtain a fresh LTOA or abandoned the same, it cannot be a reason to terminate the already existing PPWA on the grounds of not having obtained a fresh LTOA.*
- x. *it may be further appreciated that u/s. 32 of the Electricity Act, 2003, it is the independent M P State Load Despatch Centre at Jabalpur, presently under administrative control only of the Respondent No. 4, which is responsible for maintaining Grid Discipline in view of the Grid Code. Had there been any default on the part of the Petitioner in not installing the required meters at any end) then the State Load Despatch Centre should have first noticed the Petitioner in the context and would have dealt accordingly, may be leading to cancellation / termination of the already granted LTO A. But the Load Despatch Centre has not taken any action. The LTOA has not been cancelled or terminated by it. For this reason, amongst others, the action on the part of respondent no. 1 and 2 is a glaring example of arbitrariness, high-handedness and misuse and colourable exercise of power and position held by them contrary to the spirit of Section 86.1 (f) of the Electricity Act, 2003 .*
- xi. *The Partitioner has been put to grave prejudice and hardship on the instance of the Respondents No. 1 and 2. It appears that the Respondents No. 1 and 2 have terminated the PPWA and disconnected the connection during pendency of the present case in most mala-fides. The Respondents have not denied the said damages. Further, the Petitioner is also entitled to damages and interest pendente lite.*
- xii. *The Petitioner had represented to the Respondent No. 2 vide his letter dated 23-04-2024, in relation to the disconnection of the connection. However, the Respondent No. 2 did not care to take note of the said letter and consider it. The said letter appears to be lying unconsidered on his desk and heaping dust on it.*

15. The last hearing in the subject matter was held on 12.06.2024 when parties completed the arguments. Respondent no. 2 argued that the petitioner was served a notice for installation of ABT compliant meter at drawal points of Khandwa Oil 1 &2 and termination of PP&WA was made only after expiry of notice period when ABT meters were not provided. Petitioner during arguments conceded that the ABT meters as required under notice served by respondent no. 2 could not be installed at the 2 no. HT connections located at Khandwa, as such petitioner is not making any claim for damages against respondent no. 2 but ABT meter was installed at the Unit 1 of Itarsi Oil Mill located at Itarsi under respondent no. 3 as such entire PP&WA should have not been terminated. Respondent no. 2 pointed out to the Commission that petitioner has relinquished its claims against respondent no. 2. Respondent no. 2 also pointed out that since a common PP&WA was executed for all the 3 HT connections

and regulatory compliance was not made in respect of 2 of the 3 connections, entire PP&WA was rightly terminated by respondent no. 1 after expiry of notice period and that petitioner himself requested the respondent no. 4 for withdrawal of LTOA accorded by respondent no.4 so that they can apply afresh for new LTOA for wheeling entire energy to Unit 1 of Itarsi Oil Mill. Respondent no. 2 stated that on the request of petitioner, the nodal agency for LTOA i.e. respondent no. 4 canceled the LTOA vide letter dated 17.11.2021. Commission allowed the parties 7 days for submission of written note and close the case for order.

16. Written submission from only respondent no. 2 received within the stipulated time of 7 days till 19.06.2024. Respondent no. 2 has submitted as under: -

- i. That, by the instant petition, the petitioner has assailed the termination order of PPWA dated 23.2.2012 issued by the respondent no.1 and has prayed for restitution of the PPWA.*
- ii. That, the respondent no.2 has filed its reply and further additional reply primarily raising the following objections –*
 - a. The petition is barred by limitation as the PPWA was terminated on 12.11.2020 and the petition has been filed on 28.12.2023 i.e. after more than 3 years.*
 - b. The respondent no.2 issued a Notice of Default stating that as per clause (ix)(c) of LTOA dated 25.10.2010 which is a part of the PPWA, the applicant was required to install ABT compatible meters and metering equipment at both injection and drawal points. The petitioner has admitted that no meters were installed at Khandwa and therefore the petitioner has never removed this default.*
 - c. That during the final arguments on 12.6.2024, the petitioner has fairly admitted that it has not rectified the defaults pointed out by respondent no.2 and therefore is not seeking to challenge the termination of PPWA against the respondent no.2 but rather seeks to limit his prayer for restitution of PPWA only with respect to the plant at Itarsi which falls within the domain of MP Madhya Kshetra Vidyut Vitaran Co. Ltd.*
 - d. Thus, it is clear that the petitioner has conceded its challenge against the action taken by the respondent no.2 and has admitted during the hearing that the termination notice dated 26.6.2020 of the Respondent no.2 is valid and there is no lis pending between the petitioner and respondent no.2 and therefore, the petition deserves to be dismissed against respondent no.2. It is further submitted that the termination notice dated 26.6.2020 is also not challenged by the Petitioner in its relief clause and therefore the Petitioner cannot claim any relief qua the Respondent no.2.*
 - e. Without prejudice to the aforesaid, it is submitted that the contention of the petitioner that the PPWA can be bifurcated and the petition can be allowed with respect to restitution of the PPWA for Itarsi plant is also incorrect as the PPWA has been terminated on account of failure on part of the petitioner in curing the defects pointed out. It is submitted that Article 10.1(a) of the PPWA clearly states that the petitioner is required to*

install meters at the interconnection points as per the scheme approved by the TRANSCO/ Discom as prescribed by the State Grid Code/ Distribution Code/ Open Access Regulation etc. Respondent no.1 has terminated the agreement on account of breach of the PPWA and therefore the petitioner is not even entitled to partial relief only on the basis that meters have been installed at Itarsi.

f. In sum and substance, the petitioner has not rectified the defects pointed out by default notice dated 26.6.2020 and therefore the petition deserves to be dismissed in toto.

Commission's observations:

17. The Commission has observed the following undisputed facts from the submissions of the petitioner and respondents in this matter:

- i. Petitioner is a captive generator having its Wind Electricity Generating unit of installed capacity of 1.25 MW) at village Nagda, District Dewas. The Injection Point 220KV/132KV/33KV sub-station at Dewas through Dedicated 33KV Suzlon Feeder under the distribution area of M P Paschim Kshetra Vidyut Vitaran Company Ltd. (West Discom) and the Drawal Points were the HT connections of the Petitioner located in Khandwa and Itarsi. Petitioner was earlier known as Itarsi Oil and Flours Private Limited.
- ii. A power purchase and wheeling agreement was executed on 23.02.2012 between the MP Tradeco (now MP Power Management Company Limited i.e. respondent no. 1), M/s Itarsi Oils & Flours Limited (now M/s KN Agree Resources Limited i.e. petitioner), Suzlon Energy Limited and MP Paschim Kshetra Vidyut Vitaran Company Limited (i.e. respondent no. 2) for wheeling of energy generated by 1.25 MW Wind Generating Plant of petitioner and adjusting the same in its 4 no. HT connections located at Itarsi and Khandwa as under:-

Itarsi Oil & Flours Limited (Unit 1)- 30%

Itarsi Oil & Flours Limited (Unit 2)- 5%

Khandwa Oil (Unit 1)-35%

Khandwa Oil (Unit 2)-30%

- iii. Respondent no. 2 was pursuing the petitioner for installation of ABT compliant meters at drawal points located in Khandwa as required under LTOA permission granted to them on 25.10.2010 and as required under metering code of CEA and regulations of MPERC. Finally, a notice of default for termination of PP&WA dated 23.02.2012 was served by respondent no. 2 to petitioner on 26.06.2020 under clause 17.2 of the PP&WA.
- iv. Notice period of 3 months expired on 26.09.2020 but petitioner could not install ABT compliant meter at 2 no. drawal points at Khandwa. As per response submitted by respondent no. 3, ABT meter was already installed at Unit 1 of Itarsi Oil Mills on 12.10.2020. No details regarding installation of ABT meter at Unit 2 of Itarsi Oil Mills have been submitted either by petitioner or by respondent no. 3.

- v. The PP&WA dated 23.02.2012 was terminated by respondent no. 1 on 12.11.2020 after expiry of notice period served by respondent no. 2 as the default was not cured by the petitioner.
- vi. Petitioner responded the letter dated 12.11.2020 of respondent no. 1 vide his letter dated 10.12.2020 to condone the delay in curing the default, to reconstitute the PP&WA and to allocate energy generated by 1.25 MW captive wind plant entirely to Unit 1 of Itarsi & Oil Mill in which ABT meter was installed on 12.10.2020. Respondent no. 1 refused to accept the request of the petitioner for restitution of PP&WA as there were no provisions in the PP&WA for restitution of PP&WA once the same had been terminated. Petitioner was however advised vide letter dated 29.12.2020 of respondent no.1 to apply for fresh LTOA and PP&WA for 100% allocation of energy generated by 1.25 MW Wind Power Plant in Unit 1 of Itarsi Oil & Mills at Itarsi.
- vii. Pursuant to letter dated 29.12.2020 of respondent no. 1, petitioner had requested respondent no. 4 vide its letter dated 18.10.2021 for cancellation of LTOA granted to it vide letter dated 25.10.2010 of respondent no.4 so that they can re-apply for a fresh LTOA for 100% allocation of energy generated from 1.25 MW captive plant to Unit 1 of Itarsi Oil & Mills. Respondent no. 4 accepted the request made by petitioner and cancelled the LTOA vide its letter 17.11.2021.
- viii. Petitioner submitted request for fresh LTOA on 13.12.2021 to respondent no.4 for 100% allocation of energy generated by 1.25 MW Wind Generating Plant to Unit 1 of Itarsi Oil & Mills. Respondent no.4 sought the technical feasibility of the proposed arrangement from respondent no.2. Respondent no. 2 however rejected the proposal of injection of energy by 1.25 MW Wind Generating Plant through the existing 33 kV Suzlon feeder vide its letter dated 31.01.2022 stating that the total injection on the feeder would be beyond the permissible capacity of feeder after connecting 1.25 MW Plant of petitioner. Respondent no. 4 accordingly intimated the non-feasibility of LTOA from the existing arrangement vide its letter dated 03.03.2022. Non feasibility of LTOA was again confirmed by respondent no. 2 vide letter dated 16.08.2022 after re-examining the proposal.
- ix. As per the records placed by the parties in the proceedings, no request for an alternate supply arrangement by the petitioner is available. The issue of non-feasibility of LTOA was also not challenged by the petitioner at any Forum.
- x. Despite termination of PP&WA on 12.11.2020 and cancellation of LTOA on 17.11.2021, 1.25 MW Wind Generating Plant was not disconnected from the grid and continued to inject energy into the grid till 23.04.2024 i.e. the date when the Wind Generating Plant was disconnected from the grid by respondent no. 2. The petitioner could have isolated his 1.25 MW Wind Plant from the grid upon cancellation of LTOA. In any case, after cancellation of LTOA, petitioner was not authorised to inject the power into the grid.

- xi. From the claim of petitioner, it is seen that respondent no. 1 stopped crediting allocated energy from the 1.25 MW Wind Generating Plant in Khandwa Oil Mill Unit 1 & 2 from 2018-19 itself while respondent no. 3 continued to credit the allocated energy from the 1.25 MW Wind Generating Plant in Unit 2 of Itarsi Oil Mill till 2019-20 and in Unit 1 (now KN Agri Resources Ltd) till 2022-23 despite termination of PP&WA on 12.11.2020 and cancellation of LTOA on 17.11.2021.

Commission's analysis and decisions

18. Commission has framed following issues to deal with the instant litigation: -

- i. Whether the dispute is time barred by limitation and whether Commission is proper Forum to adjudicate the issues?
- ii. Whether the PP&WA dated 23.02.2012 was terminated lawfully?
- iii. Whether the restoration of PP&WA permissible after its termination and cancellation of LTOA?
- iv. Whether the petitioner was entitled to inject energy from its 1.25 MW Wind Generating Plant into the grid even after termination of PP&WA dated 23.02.2012 on 12.11.2020 and cancellation of LTOA on 17.11.2021?
- v. Whether the petitioner is entitled to get adjustment of energy injected into the grid post termination of PP&WA?

19. Commission has dealt with the issues set forth above in the light of the submissions and documents on record as under: -

- i. **Issue No.1 (Whether the dispute is time barred by limitation and whether Commission is proper Forum to adjudicate the issues)**- In the instant case, dispute would be considered as running from the date of termination of PP&WA which is 12.11.2020. The Commission noted that dispute is covered under article 58 of the Limitation Act, 1963 where the limitation is provided of 3 years. It starts from the date when the right to sue first accrued i.e. from 12.11.2020. Petition has been filed on 29.12.2023. Hon'ble Supreme Court in its order dated 10.01.2022 passed in Suo-motu writ petition (C) No. 3 of 2020, has directed that the period from 15.03.2020 to 14.03.2021 (affected period due to outbreak of COVID-19) shall be excluded while computing the limitation periods. Considering the aforesaid order of Hon'ble Supreme Court, Commission is of the view that the instant litigation is within the limitation period. Further, the petition has been filed under section 86(1) (e) and (f) of the Electricity Act 2003 which empowers the SERCs to adjudicate disputes between a generating company and the licensee. The instant litigation is between a generating company and the licensees as such, Commission is the proper Forum to adjudicate upon the dispute.
- ii. **Issue No. 2 (Whether the PP&WA dated 23.02.2012 was terminated lawfully)**- Commission noted that as per the provisions of the MPERC ((Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005 as amended and as revised from time to time, petitioner was required to install ABT compliant meters at injection point as well as at

each of the drawal points. The requirement of installation of ABT meters was also conveyed to the petitioner in LTOA permission granted to it by respondent no. 4 vide letter dated 25.10.2010 which was part of PP&WA as annexure-V. Petitioner was being pursued by respondent no. 2 for installation of ABT meters at drawal points since 2018 and finally a notice of default under clause 17.2 of the PP&WA was served by respondent no. 2 on 26.06.2020. Clause 17.2 of the PP&WA dated 23.02.12 provides as under: -

“17 (Defaults and Termination)-

17.1 -----

17.2 In case of defaults, the non- defaulting party shall issue a default notice to the defaulting party. If the default is not fully set right within three months from the date of issue of the default notice, then, in case of default by the Company, the MP TRADECO may terminate the agreement and simultaneously refuse to wheel the power till the time default is corrected. In case of default by the MP TRADECO, the Company may in the same way terminate the agreement.”

Installation of ABT compliant meters at drawal points is essential for proper energy accounting as per the provisions of CEA (Installation and Operation of meters) Regulations 2006 as amended from time to time and MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005 as amended and revised from time to time. Non-compliance of CEA (Installation and Operation of meters) Regulations 2006 as amended from time to time and MPERC (Terms and Conditions for Intra-State Open Access in Madhya Pradesh) Regulations, 2005 would definitely construe as default. Commission noted that a proper notice of 3 months was served by respondent no. 2 which was received by petitioner but no action to cure the default was taken by petitioner within notice period which was also admitted by him during the hearing held on 12.06.2024. At this juncture, Commission would like to point out that on the date of termination of PP&WA i.e. on 12.11.2020, ABT meter on the Unit 1 of Itarsi Oil Mill was already installed by the petitioner but since a single PP&WA was executed for 4 no. drawal points with specific allocation of energy injected against each drawal points, compliance of regulatory requirement of installation of ABT meters was to be ensured for all of the drawal points , a condition that the petitioner failed to comply with. As the agreement would be terminated as a whole and it is not possible to terminate it partially. The PP&WA could have not been terminated only for 2 drawal points at Khandwa and be continued for drawal points at Itarsi. The Commission is therefore of the view that the PP&WA was terminated by respondent no.1 in accordance with the provisions of PP&WA dated 23.02.2012 and if the petitioner wanted to revise the energy allocation

other than agreed in PP&WA dated 23.02.2012, fresh LTOA should have been obtained and fresh PP&WA was required to be executed. The Commission thus concludes that the PP&WA was terminated lawfully.

- iii. **Issue no. 3 (Whether the restitution of PP&WA is permissible after its termination and cancellation of LTOA)**-Commission noted that the respondent no. 1 decided to consider the request of petitioner for restitution of PP&WA on the ground that there are no such provisions in the PP&WA. The Commission accepts the contention of respondent no. 1 that once the PP&WA was terminated lawfully, it cannot be restituted. The Commission is also of the view that since a common PP&WA was executed for all the 4 no. drawal points, the defaults had to be cured for all the connections failing which entire PP&WA was liable for termination as per default clause of PP&WA. The PP&WA could not have survived only for Unit 1 of Itarsi Oil Mill where ABT meter was installed by the petitioner. The Commission also noted that the petitioner himself got his LTOA cancelled on 17.11.2021 and thereafter does not have any LTOA permissions due to feasibility issues. The Commission is therefore not inclined to accede to the request for restitution of PP&WA dated 23.02.2012.
- iv. **Issue no. 4 (Whether the petitioner was entitled to inject energy from its 1.25 MW Wind Generating Plant into the grid even after termination of PP&WA dated 23.02.2012 on 12.11.2020 and cancellation of LTOA on 17.11.2021).**

The Commission is of the view that after termination of PP&WA dated 23.02.2012 on 12.11.2020, petitioner was not entitled to inject into the grid towards any of the 4 drawal points mentioned in the PP&WA.

- v. **Issue no. 5- (Whether the petitioner is entitled to get adjustment of energy injected into the grid post termination of PP&WA against the HT connections located in Khandwa and Itarsi.**

The PP&WA dated 23.02.2012 had provisions of specific allocation of total energy injected into the grid by 1.25 MW power plant of petitioner amongst 4 no. connections. After termination of PP&WA and cancellation of LTOA, the question for adjustment of energy injected into the grid in the HT connections does not arise. Moreover, the petitioner was fully aware that the PP&WA was terminated on 12.11.2020 and that petitioner himself got LTOA cancelled on 17.11.2021. As such he was not entitled to inject energy into the grid and he should have isolated his 1.25 MW power plant from the grid. Despite the said position, petitioner continued to inject energy into the grid from 12.11.2020 till 23.04.2024 unauthorizedly. The Commission is of the view that the petitioner is not entitled to any benefits/ compensation on account of his own defaults. The Commission therefore rejects the claim of petitioner for adjustment of energy injected into the grid in 4 no. HT

connections as per PP&WA dated 23.02.2012 as the said agreement had already been terminated on 12.11.2020.

With the aforesaid findings and decisions, instant petition stands disposed of.

(Prashant Chaturvedi)

Member

(Gopal Srivastava)

Member(Law)

(S.P.S. Parihar)

Chairman