

MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION

BHOPAL

Sub: In the matter of petition under section 86 of the Electricity Act, 2003 to quash the impugned demand notice dated 07/10/2016 issued by MPPTCL Jabalpur towards parallel operation charges for running Petitioner's 12 MW captive power plant parallel with grid.

ORDER

(Hearing through Video Conferencing)

(Date of Order: 4th October' 2022)

M/s. Kamal Sponge Steel & Power Ltd.,
Bandhavgarh Colony, Satna(MP)

- **Petitioner**

Vs

(1) M. P. Poorv Kshetra Vidyut Vitaran Co. Ltd.

Through its Director,
Block No. 7, Shakti Bhawan, Rampur, Jabalpur – 482008.

(2) M.P. Power Transmission Co. Ltd.,

Through its Director, Block No. 2,
Shakti Bhawan, Rampur, Jabalpur – 482 008

- **Respondents**

(3) Chief Engineer, M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd.,

Block No. 7, Shakti Bhawan, Rampur, Jabalpur – 482008

(4) Chief Engineer, M.P. Power Transmission Co. Ltd.,(MPPTCL)

Block No. 2, Shakti Bhawan, Rampur, Jabalpur – 482 008

(5) Superintending Engineer,

M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd., Distt. Satna

Ms. Bhavna Yadav, Advocate and Shri Siddharth Singh, Advocate appeared on behalf of the petitioner.

Shri Deepak Chandela appeared for Respondent No. 1, 3 & 5.

Shri Shubham Arya, Advocate appeared on behalf of Respondent No. 2 & 4

The subject petition has been filed under Section 86 of the Electricity Act, 2003 to quash the impugned demand notice dated 07/10/2016 issued by the Respondent No. 2, MPPTCL Jabalpur towards parallel operation charges for running petitioner's 12 MW captive power plant parallel with grid.

2. In the subject petition, the petitioner broadly submitted the following:

1) *That, the petitioner is a registered company involved in the business of production of sponge and steel and the plant is based in district Satna, Madhya Pradesh. The petitioner is being represented by its manager who has been authorized to be its authorized signatory.*

2) *That, the petitioner had established its sponge and steel plant in district Satna which started functioning since 2000-2001. The petitioner had taken a separate electricity connection for the said plant and has been paying the*

regular bills. The petitioner had also set up a captive power plant of 12 MW, to meet the electricity requirements, which is used for generating electricity for own use. Therefore, the petitioner was generating its own power requirement through the captive power plant. The captive power plant functioned from 2009 to June 2010 and thereafter had to be shut down due to shortage of water and other technical difficulties. It is submitted that, for the proper working and balancing of load of the captive power plant, which is also referred to as synchronization, the M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd., (hereinafter referred to as MPPKVV), facilitated parallel operations with captive power plants such as that of the petitioner, whereby, the electricity that was generated in excess at the captive power plant was exported to the grid of MPPKVV and when in deficit the load was adjusted from the grid by balancing the load. Meaning thereby, the parallel operations are basically a network of grid connected power plants synchronized together so as to meet the required electricity demands.

- 3) That, for the aforesaid purpose, the petitioner made a formal application to the MPPKVV seeking permission of parallel operations of its 12 MV captive power plant. It is submitted that, vide letter dated 24.04.2008, the said permission was granted by MPKVV to the petitioner. It is submitted that, the permission clearly stated that a one time connectivity charge amounting to rupees 1 lakh was payable and there was no any mention regarding parallel operation charges that were leviable.
- 4) That, it is submitted that, pursuant to the grant of aforesaid permission, the petitioner also gave an undertaking to the MPPKVV for temporary permission for parallel operations as the execution of the agreement was taking some administrative related delays on 16.02.2009.
- 5) That, it is submitted that the captive power plant of the petitioner functioned up till June 2010 and thereafter, it had to be shut down due to the shortage of water. Even through its last few months before shutting down the petitioner was running the power plant by purchasing water, however, since the same was not feasible anymore, the power plant had to be shut down. Accordingly, when there was no production of electricity, the power plant of the petitioner automatically went off the grid and therefore no longer stood connected to the grid of the respondent and hence there were no parallel operations existing after June 2010. It is also apposite to mention that, till the time when the power plant was functional there used to be no parallel operation charges, there were no such instructions from the MP Electricity Regulatory Commission (hereinafter referred to as MPERC) nor was there any such condition in the understandings between the respondents and the petitioner and therefore no parallel operation charges were leviable.
- 6) That, subsequently, the MP Power Transmission Co. Ltd., (hereinafter referred to as MPPTCL) which is the transmission company and

respondent no. 2 herein, approached the MPERC seeking determination of parallel operation charges in case of intra-state generating units. The MPERC in Suo-Motu Petition No. 73/2012, vide order dated 31.12.2012 decided the issue and gave certain observations as to how and when the parallel operation charges would be applicable and levied. It is submitted that, the said observations were to be made effective from January 2012 and it is still relevant to mention that, the power plant of the petitioner was not working and was not connected to the grid at that time. The MPERC in paragraph 5 of its order held that:-

5(a) The parallel operation charges shall not be applicable if the CPPs are not connected with the grid.

It is candid from the above that the Captive Power Plants that were not connected to the grid, no parallel operation charges were to be levied on them.

- 7) That, pursuant to the above mentioned order from MPERC, the respondents started raising bills towards parallel operation charges even from the petitioner, whose power plant was not even connected to the grid and was shut down since June 2010. The first such bill was dated 25.03.2013 and the reference was made to the order passed by the MPERC dated 31.12.2012 and accordingly parallel operation charges were levied for the first time to the petitioner without there being any parallel operations in existence. The respondent MPPTCL had clearly overlooked the observations made by the MPERC and had started generating bills mechanically. It is further submitted that, the petitioner after receiving the said bill wrote back to the respondents on 08.04.2013, stating that the charges were wrongly levied and also made mention of the observation made by the MPERC whereby, it had clearly stated that if the Captive Power Plants were not connected to the grid then the parallel operation charges were not to be levied.
- 8) That, despite the above correspondence, the respondent did not care to examine the observations of the MPERC and while referring to the MPERC order dated 31.12.2012, started raising bills for monthly charges. It is submitted that, to the said bills, the petitioner continuously wrote to the respondents that the said charges were not leviable and the bills were wrongly being raised.
- 9) That, despite several requests, the respondents kept on raising the illegal bills for parallel charges. Subsequently, it was verbally informed to the petitioners that if the power plant was not working then the permission for parallel charges may be withdrawn because till the permission is not withdrawn, the bills will be raised. Here it is pertinent to mention that, even now the respondents did not care to look at the order dated 31.12.2012 passed by the MPERC. In this regard, the Chief Engineer, MPPTCL wrote to the petitioner vide letter dated 01.01.2014 and asked for the withdrawal of permission from MPPKVCL. Accordingly, the petitioner made an application to the Chief Engineer, MPPKVCL for withdrawal of

the permission for parallel operations on 05.02.2014.

- 10) *That, it is submitted that, pursuant to the aforesaid letter dated 05.02.2014, the permission for parallel operations was withdrawn and intimated to the petitioner vide letter dated 28.11.2014, issued from MPPKVVCL.*
- 11) *That, after the withdrawal of the permission as aforesaid, the respondent stopped raising the bills for some time, but thereafter again started sending bills for the surcharge to the amount that was raised earlier. The first such bill was dated 02.11.2015 and such bills for the surcharge were raised and sent uptill 01.10.2016. It is further submitted that, after receiving the said bills the petitioner again wrote to the respondents clarifying the fact that the power plant is not running since June 2010 and therefore, the bills are wrongly being issued and are not payable in view of the order passed by the MPERC.*
- 12) *That, it is pertinent to mention that, in the mean while certain inspections were also conducted of the premises of the petitioner by the safety department of the respondents on various dates starting from 04.04.2013 uptill 07.05.2016. The reports that were prepared on various inspections that were held between the said period clearly stated that, the power plant is not functional since June 2010, and for restarting the plant, a fresh permission will have to be taken. The said fact also meant that the permission for the parallel operations stood withdrawn once the plant stopped working and generating electricity, as it did not remain connected to the grid. However, just for saving the faces, the futile exercise for withdrawal of permission was conducted which also took several months. Be that as it may, the said reports clearly establish that the plant of the petitioner was not working since June 2010. One more fact that needs to be noted is that, in all the reports, the readings of the meter are constant, which again establishes the fact that, the power plant was not functioning.*
- 13) *That, a joint inspection by the officials of the respondents was also conducted regarding the billing for the parallel operation charges and the Superintending Engineer, MPPKVVCL, Satna, vide his letter dated 20.06.2016 had submitted his report to the Executive Director, MPPKVVCL and had clearly stated that, the power plant was not working since June 2010. Further, in the attached report, it was also specifically stated that the power plant was not working and there has been no import advanced after 06.06.2010. Also, the readings mentioned of the meter were again constant and it was the readings from the meter installed at the grid and not at the petitioner's premises.*
- 14) *That, despite there being so many correspondences and inspections by respondents themselves, the Chief Engineer, MPPTCL has issued the impugned demand notice dated 07.10.2016 and has stated that in case of*

failure to pay by 21.10.2010, the connection of the steel plant will be disconnected. It is respectfully being submitted that, the sponge and steel plant is working since the year 2000-2001 and has a separate electricity connection for which the petitioner is regularly paying the bills. Furthermore, the captive power plant worked only from 2009 to June 2010 and the demand is of the parallel operation charges for this period, when at that point of time, no such charges existed. Therefore, the impugned notice is entirely arbitrary and has been issued to harass the petitioner, who is not liable to pay the illegal demand from the respondents.

- 15) *That, the Petitioner had challenged the said impugned demand notice before the Hon'ble High Court in Writ Petition No. 17553/2016. The Hon'ble High Court vide order dated 21.10.2016 was pleased to grant interim protection to the petitioner after a deposit of rupees Ten Lakhs.*
- 16) *That, the petition was finally decided by the High Court vide order dated 18.01.2022 and Hon'ble Court was pleased to grant liberty to the petitioner to approach this Hon'ble Commission for redressal of the grievance*

GROUND

- 1) *Because, the action of the respondent is highly arbitrary and unfair, and is totally contrary to the order dated 31.12.2012 passed by the MPERC, by referring to which, the impugned demand has been raised. It clearly establishes the fact that the respondents have not applied their mind and have acted mechanically and therefore are bent upon to bring great loss to the petitioner.*
- 2) *Because, the inspections conducted of the premises of the petitioner by the safety department of the respondents on various dates starting from 04.04.2013 uptill 07.05.2016 support the fact that the power plant was not working since June 2010. The reports that were prepared on various inspections that were held between the said period clearly stated that, the power plant is not functional since June 2010, and for restarting the plant, a fresh permission will have to be taken. The said fact also meant that the permission for the parallel operations stood withdrawn once the plant stopped working and generating electricity, as it did not remain connected to the grid. The same analogy has been drawn by the MPERC in the order dated 31.12.2012, that the parallel operation charges are not to be levied if the captive power plant is not connected to the grid. However, just for saving the faces, the futile exercise for withdrawal of permission was conducted which also took several months. Be that as it may, the said reports clearly establish that the plant of the petitioner was not working since June 2010. Also, in all the reports, the readings of the meter are constant, which again establishes the fact that, the power plant was not functioning.*
- 3) *Because, the MPERC in Suo-Motu Petition No. 73/2012, vide order dated*

31.12.2012 decided the issue and gave certain observations as to how and when the parallel operation charges would be applicable and levied. It is submitted that, the said observations were to be made effective from January 2012 and the power plant of the petitioner was not working and was not connected to the grid at that time. The MPERC in paragraph 5 of its order held that:-

5(a) *The parallel operation charges shall not be applicable if the CPPs are not connected with the grid.*

It is candid from the above that the Captive Power Plants that were not connected to the grid, no parallel operation charges were to be levied on them. But overlooking this observation, the respondents have issued the impugned notice which is illegal.

- 4) *Because, in the joint inspection reports, that were conducted by the respondents themselves, time and again this fact was mentioned that the power plant of the petitioner is closed and therefore is not connected to the grid. Further, the meter readings of both the meters, one installed at the petitioner's premises and the other at the grid, were constant after June 2010, as the import and export of electricity had not advanced after that period. This material fact has also been overlooked by the respondents.*
- 5) *Because, the captive power plant of the petitioner functioned uptill June 2010 and thereafter, it had to be shut down due to the shortage of water. Even through its last few months before shutting down the petitioner was running the power plant by purchasing water, however, since the same was not feasible anymore, the power plant had to be shut down. Accordingly, when there was no production of electricity, the power plant of the petitioner automatically went off the grid and therefore no longer stood connected to the grid of the respondent and hence there were no parallel operations existing after June 2010. It is also apposite to mention that, till the time when the power plant was functional there used to be no parallel operation charges, there were no such instructions from the MP Electricity Regulatory Commission (hereinafter referred to as MPERC) nor was there any such condition in the understandings between the respondents and the petitioner and therefore no parallel operation charges were leviable.*
- 6) *Because, the action of the respondents is highly uncalled for, as the sponge and steel plant of the petitioner is using a separate electric connection and the petitioner has regularly been paying the bills for the same. On the other hand, the captive power plant worked only from 2009 to 2010 and during that period, no parallel charges were leviable and it was only after the order of the MPERC in 2012 that the said charges became leviable. Therefore, firstly, the order for disconnection is totally misplaced and secondly, the charges itself have wrongly been levied. Therefore, it is submitted that, the respondents are going to disconnect the connection of the petitioner's steel plant itself, which would cause great hardship and loss to the petitioner and the said action would totally be based on the*

wrong premises and would be illegal and malafied.

7) *The Petitioner craves leave of this Hon'ble Commission to raise additional grounds at the time of hearing of the case."*

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

- (i) To quash the impugned demand notice dated 07.10.2016
- (ii) To direct the Respondents not to take any coercive steps against the petitioner pursuant to the impugned demand notice dated 07.10.2016 till the pendency of this petition.
- (iii) To direct the respondents to withdraw the bills wrongly issued for parallel operation charges.

4. At the motion hearing held on 14.06.2022, the petition was admitted and petitioner was directed to serve copy of the petition to the Respondents within seven days. The Respondents were directed to file their replies to the subject petition within two weeks, thereafter and serve a copy of aforesaid reply to petitioner simultaneously. The petitioner was directed to file rejoinder within two weeks, thereafter. Case was fixed for hearing on 26.07.2022.

5. At the hearing held on 26.07.2022, Respondents stated that they received copy of subject petition on 20th July' 2022, therefore, as requested, Respondents were allowed to file their replies to the subject petition within ten days. The petitioner was directed to file rejoinder within ten days, thereafter. Case was fixed for arguments on 30.08.2022.

6. Respondent No. 2, MPPTCL vide letter dated 19.07.2022 submitted the following preliminary reply:

"3. *At the outset, it is submitted that, till date, the copy of the petition has not been served upon to MPPTCL. The MPPTCL, however, wishes to place the following facts before this Hon'ble Commission for proper appreciation of the matter in issue involved in the present case:*

- (a) *The petitioner is having a 12 MW Captive Power Plant in District Satna, Madhya Pradesh.*
- (b) *On 24.04.2008, the petitioner was permitted to operate its 12MW Captive Power Plant in parallel with the grid.*
- (c) *On 31.12.2012, this Hon'ble Commission passed an order in Suo-Motu Petition No. 73 of 2012 whereby this Hon'ble Commission has determined the parallel operation charges (hereinafter referred to as 'POC Charges') at the rate of Rs. 20/- per KVA per month on the capacity of Captive Power Plant (after deducting load pertaining to auxiliary consumption) connected to the intra-state grid in the State of Madhya Pradesh.*

- (d) *The relevant part of the order dated 31.12.2012 reads as under:*
- “5. On considering the submissions of the respondents, the Commission is of the view that:
- (a) *The parallel operation charges shall not be applicable if the CPPs are not connected with the grid.*
- (b) *The purposes of levying supply affording charges and standby charges are different. These are not related to the parallel operation of the CPPs with the grid.*
- (c) *Parallel operation charges cannot be made a part of transmission charges as these charges cannot be levied on all consumers.*
- (d) *Auxiliary consumption of captive generating plants as a parameter may be deducted from the installed capacity of the plant for consumption of parallel operation charges.*
6. *The Commission also finds that the object of the Electricity Act, 2003 is to delicense generation and to freely permit CPPs. In order to promote CPPs and looking to the facility being availed by CPPs from the grid, the Commission has come to the conclusion that it would be appropriate that parallel operation charges be levied at the rate of Rs. 20/- per KVA per month on the capacity of CPP (after deducting load pertaining to auxiliary consumption) connected to the grid.”*
- (e) *In pursuance to the above order passed by this Hon’ble Commission, MPPTCL issued monthly invoices to the Petitioner for availing the facility of parallel operation. However, the petitioner continued to default and did not pay the parallel operation charges to MPPTCL.*
- (f) *On 28.11.2014, in pursuance to the request made by the petitioner, the permission for parallel operation of the petitioner’s Captive Power Plant was withdrawn by the Respondent No. 1 – M.P. Poorv Kshetra Vidyut Vitaran Nigam Company Ltd.*
- (g) *On 07.10.2016, MPPTCL issued a demand notice to the Petitioner directing the petitioner to pay an amount of Rs. 87,36,511/- outstanding towards the parallel operation charges.*
- (h) *On 16.10.2016, the petitioner filed a Writ Petition No. 17553 of 2016 before the Hon’ble High Court of Madhya Pradesh, Jabalpur, inter-alia, praying to quash the impugned demand notice dated 07.10.2016.*
- (i) *On 21.10.2016, the Hon’ble High Court passed an order in the above Writ Petition No. 17553 of 2016 directing MPPTCL to take no coercive steps on depositing an amount of Rs. 10 lac within one*

week of receipt of the certified copy of the order. The said amount was deposited by the petitioner in terms of the above order dated 21.10.2016.

(j) On 18.01.2022, the Hon'ble High Court dismissed the above Writ Petition No. 17553 of 2016 with liberty to petitioner to approach before Tribunal under Section 111 of Electricity Act, 2003. Stay granted in favour of petitioner stands vacated.

(k) On 01.02.2022, 04.03.2022 and 05.04.2022, MPPTCL issued notices/ letters to the petitioner calling upon the petitioner M/s. Kamal Sponge Steel & Power Ltd. Satna to pay the balance outstanding dues amounting to Rs. 77,36,511/-. M/s. Kamal Sponge Steel & Power Ltd. Satna did not respond to the aforesaid notices. The notice dated 08.06.2022 under Section-4 of the MP Electricity Undertakings (Due Recovery) Act, 1961 has also been served upon to M/s. Kamal Sponge Steel & Power Ltd. Satna.

4. *In view of the above factual background, MPPTCL submits that the liberty granted by the Hon'ble High Court in Writ Petition No. 17553 of 2016 is to approach the Hon'ble Appellate Tribunal for Electricity under Section 111 of the Electricity Act, 2003. The petitioner, however, has approached this Hon'ble Commission.*

5. *Further, upon being granted liberty by the Hon'ble High Court in similar matter arising out of the determination of parallel operation charges by this Hon'ble Commission vide order dated 31.12.2012, the Captive Power Plants, namely, M/s. Hindalco Industries Limited, Ultra Tech Cement Limited, M/s. Maral Overseas Limited, HEG Limited, Ultratech Cement Limited and M/s. Jaiprakash Associates Limited had approached the Hon'ble Appellate Tribunal seeking quashing of the order dated 31.12.2012 passed by this Hon'ble Commission and demand notices issued by MPPTCL subsequently to the passing of the above order dated 31.12.2012. The Appeals filed by the above Captive Power Plants, namely, Appeal No. 207 of 2016 and Batch have been dismissed by the Hon'ble Appellate Tribunal vide its judgment and order dated 02.07.2021. The Captive Power Plants have challenged the judgment and order dated 02.07.2021 passed by the Hon'ble Appellate Tribunal and the Appeals are pending before the Hon'ble Supreme Court for adjudication.*

6. *As the copy of the petition is not available to MPPTCL, at present, MPPTCL is not in a position to file a detailed reply to the petition. MPPTCL, however, submits that, subject to furnishing of the petition, prima-facie, it appears that the present petition is not maintainable before this Hon'ble Commission in view of the direction of the Hon'ble High Court vide order dated 18.01.2022 vide which Petition No. 17553/2016 in which all the connected issues including quashing of the demand was raised by the Petitioner M/s. Kamal Sponge Steel & Power Ltd. Satna has been dismissed*

granting liberty to petitioner to approach Tribunal under Section 111 of the Electricity Act, 2003.

7. *in view of the above, MPPTCL respectfully prays that this Hon'ble Commission may be pleased to dismiss the petition filed by the petitioner as not maintainable."*

7. Respondent No. 2, MPPTCL vide another letter dated 03.08.2022 submitted the following reply to the petition:

- "2. *The petitioner claims that the present petition has been filed in terms of the liberty granted by the Hon'ble High Court of Madhya Pradesh vide its Order dated 18.01.2022 in Writ Petition No. 17553 of 2016. In regard to the above, the Petitioner at Para 16 of the Petitioner has stated as under:*

"That, the petition, was finally decided by the High court vide order dated 18.01.2022 and the Hon'ble Court was pleased to grant liberty to the petitioner to approach this Hon'ble Commission for redressal of the grievance."

3. *The Hon'ble High Court, however vide its Order dated 18.01.2022 in Writ Petition No. 17553 of 2016, inter-alia, has held as under:*

"In view of judgment passed by Division Bench of this Court in case of M/s. National Steel & Agro Industries Limited (supra), writ petition filed by petitioner is disposed of with liberty to petitioner to approach before Tribunal under Section 111 of Electricity Act, 2003. Stay granted in favour of petitioner stands vacated.

Writ Petition is dismissed with the aforesaid liberty."

4. *In view of the above, the Hon'ble High Court has dismissed the Writ Petition No. 17553 of 2016 filed by the Petitioner granting liberty to the Petitioner to approach the Hon'ble Appellate Tribunal for Electricity under Section 111 of the Electricity Act, 2003.*

5. *Further, the above Writ Petition has been disposed-off in view of the Judgment dated 12.08.2016 passed by the Hon'ble High Court in Writ Appeal No. 356 of 2016 in the matter of M/s. National Steel & Agro Industries Limited -v- Madhya Pradesh Electricity Regulatory Commission & Ors. The Writ Appeal No. 356 of 2016 was filed by M/s. National Steel challenging the Order dated 23.05.2016 passed in Writ Petition No. 2041 of 2014. The Writ Petition No. 2041 of 2014 was filed by the Petitioner along with Writ Petitions filed by other Captive Power Developers, namely Jaiprakash Associates Limited, HEG Limited, M/s. Hindalco Industries Ltd., Ultratech Cement Ltd., M/s. Maral Overseas Limited and Malanpur Captive Power Limited.*

6. *In terms of the liberty granted by the Hon'ble High Court in the Order passed by the Hon'ble High Court in Writ Petition No. 2041 of 2014 &*

batch, the other Captive Power Developers approached the Hon'ble Appellate Tribunal under Section 111 of the Electricity Act, 2003 seeking quashing of the Order dated 31.12.2012 passed by this Hon'ble Commission and Demand Notices issued by MPPTCL subsequently to the passing of the above Order dated 31.12.2012. The Appeals filed by the above Captive Power Plants, namely, Appeal No. 207 of 2016 and Batch have been dismissed by the Hon'ble Appellate Tribunal vide its Judgment and Order dated 02.07.2021 upholding the legality and validity of the Order dated 31.12.2012 passed by this Hon'ble Commission. The Captive Power Developers have challenged the Judgment and Order dated 02.07.2021 passed by the Hon'ble Appellate Tribunal and the Appeals are pending before the Hon'ble Supreme Court for adjudication.

7. *In view of the above submissions, MPPTCL submits that the present petition is not maintainable before this Hon'ble Commission.*
8. *Without prejudice to the above, the submissions of MPPTCL on the issues raised by the petitioner are as under:*

Submissions:

9. *The petitioner operates a 12 MW Captive Power Plant in the District of Satna, Madhya Pradesh. The Petitioner has been permitted to operate its plant in parallel with the grid vide letter dated 24.04.2008 from Respondent No. 1 MPPKVCL to the petitioner.*
10. *On 31.12.2012, this Hon'ble Commission passed an order in Suo-Moto Petition No. 73 of 2012 whereby this Hon'ble Commission determined the parallel operation charges at the rate of Rs. 20/- per KVA per month on the capacity of Captive Power Plant (after deducting load pertaining to auxiliary consumption) connected to the intra-state grid in the State of Madhya Pradesh.*
11. *The relevant extract from the Order dated 31.12.2012, inter-alia, reads as under:*
 5. *On considering the submissions of the respondents, the Commission is of the view that:*
 - (a) *The parallel operation charges shall not be applicable if the CPPs are not connected with the grid.*
 - (b) *The purposes of levying supply affording charges and standby charges are different. These are not related to the parallel operation of the CPPs with the grid.*
 - (c) *Parallel operation charges cannot be made a part of the transmission charges as these charges cannot be levied on all consumers.*
 - (d) *Auxiliary consumption of captive generating plants as a parameter may be deducted from the installed capacity of the plant for computation of parallel operation charges.*
 6. *The Commission also finds that the object of the Electricity*

Act, 2003 is to delicense generation and to freely permit CPPs. In order to promote CPPs and looking to the facility being availed by CPPS from the grid, the Commission has come to the conclusion that it would be appropriate that parallel operation charges be levied at the rate of Rs. 20/- per KVA per month on the capacity of CPP (after deducting load pertaining to auxiliary consumption) connected to the grid."

12. *In pursuance to the above Order passed by this Hon'ble Commission, MPPTCL issued monthly invoices to the Petitioner for availing the facility of parallel operation. However, the petitioner continued to default and did not pay the parallel operation charges to MPPTCL.*
13. *On 05.02.2014, the petitioner sought for withdrawal of parallel operation approval of its 12 MW Captive Power Plant with the grid.*
14. *On 28.11.2014, in pursuance to the request made by the Petitioner, the permission for parallel operation of the Petitioner's Captive Power Plant was withdrawn by the Respondent No. 1 - M.P. Poorv Kshetra Vidyut Vitaran Nigam Company Limited (hereinafter 'MPPKVCL').*
15. *On 07.10.2016, MPPTCL issued a Demand Notice to the Petitioner directing the Petitioner to pay an amount of Rs. 87,36,511/- outstanding towards the parallel operation charges.*
16. *On 16.10.2016, the petitioner filed a Writ Petition No. 17553 of 2016 before the Hon'ble High Court of Madhya Pradesh Jabalpur, inter-alia, praying to "quash the impugned demand notice dated 07.10.2016 Annexure P-15".*
17. *On 21.10.2016, the Hon'ble High Court passed an Order in the above Writ Petition No. 17553 of 2016 directing MPPTCL to take no coercive steps on deposit of an amount of Rs. 10 Lacs within one week of receipt of the certified copy of the order. The said amount was deposited by the Petitioner in terms of the above order dated 21.10.2016.*
18. *On 18.01.2022, the Hon'ble High Court dismissed the above Writ Petition No. 17553 of 2016 with liberty to petitioner to approach before Tribunal under Section 111 of Electricity Act, 2003. Stay granted in favour of petitioner stands vacated.*
19. *On 01.02.2022, 04.03.2022 and 05.04.2022, MPPTCL issued notices/letters to the Petitioner calling upon the Petitioner to pay the balance outstanding dues amounting to Rs. 77,36,511/-. It is submitted that inspite of above, the petitioner did not pay any amount to MPPTCL.*
20. *On 08.06.2022, a Notice under Section 4 of the Madhya Pradesh Electrical Undertaking (Dues Recovery) Act, 1961 has been issued to the Petitioner to*

pay the balance outstanding dues amounting to Rs. 77,36,511/- within 3 months, failing which the recovery would be enforced under Section 6 as land revenue under Madhya Pradesh Land Revenue Code, 1959 through District Revenue Authorities.

21. *In view of the above, it is submitted that the levy of the parallel operation charges by MPPTCL is in accordance with the Order dated 31.12.2012 passed by this Hon'ble Commission, as upheld by the Hon'ble Appellate Tribunal vide its Order dated 02.07.2021.*
22. *The contention of the Petitioner that its Captive Power Plant was not connected to the grid at the time when the Order dated 31.12.2012 was passed, is wrong and specifically denied.*
23. *The Captive Power Plant of the Petitioner was duly connected with the Grid from February 2009 to 15.10.2014, which is evident from the Joint Inspection carried out at petitioner's premises in presence of the Petitioner representatives and the Officers of MPPTCL & MPPKVCL on 15.10.2014. Thereafter, the permission for parallel operation charges was withdrawn vide letter No. 1370 dated 28.11.2014 of MPPKVCL.*
24. *The Petitioner is confusing the issue of its Captive Power Plant not operating with the connectivity of Power plant with the grid for availing parallel operation facility. It is submitted that the levy of parallel operation charges is on the grid support taken by the petitioner for parallel operation of their Captive Power Plant, irrespective of Captive Power Plant in the state of shutdown or not. If the Captive Power Developer has availed the facility of parallel operation support for its Captive Power Plant, at its own volition, it is liable to pay the Parallel Operation Charges.*
25. *It is submitted that, in case the captive power plant was not operational, it was open to and incumbent upon the Petitioner to seek withdrawal of the parallel operation facility by MPPTCL, the request for which was made on 05.02.2014 and not any time before.*
26. *It is not the case of the Petitioner that the facility of Parallel Operation Charges was not available and that the Captive Power Plant was not connected with the grid System of MPPTCL. Once the Captive Power Plant was connected with the Grid System of MPPTCL, the Petitioner was free to avail the facilities as and when it required and the Petitioner's failure to avail the said facility on account of its own fault does not disentitle MPPTCL from levying and collecting the parallel operation charges.*
27. *In regard to the above, it is also relevant that the applicability of parallel operation charges was also specified in the permission for Parallel Operation with Grid granted to the Petitioner by MPPKVCL vide letter No. 604 dated 24.04.2008. Since the fixation of parallel operation charges was*

under consideration for a long time, the following condition was clearly mentioned in permission letter dated 24.04.2008:

"The other terms and conditions applicable for Parallel operation of Petitioner's Captive Power Plant shall be as per Annexure-I and Annexure-II"

In regard to the above, condition No. 5 of Annexure -1 provides that "The CPP Holders shall pay all charges as specified by the Commission from time to time."

Further, Condition No. 14 of Annexure II provides that "Generator shall have to agree for abiding all the terms and conditions and the charges applicable for parallel operation as decided by the Hon'ble MPERC."

28. *In addition to the above, the reliance placed by the petitioner and Para 5(a) of the Order dated 31.12.2012 to state that the petitioner was not connected to the grid is erroneous and misplaced. The Para 5(a) of the Order dated 31.12.2012, in fact, is applicable to the Petitioner, since it was connected to Grid at the relevant time and therefore, there is no justification on the part of the petitioner to contend that it did not avail the facility and consequently it is not liable to pay parallel operation charges.*
29. *In view of the above submissions, MPPTCL respectfully prays that this Hon'ble Commission may be pleased to dismiss the petition filed by the petitioner as not maintainable and impose an exemplary cost on the petitioner."*

8. The Respondent Nos. 1, 3 and 5 by affidavit dated 17.08.2022 broadly submitted the following common reply to the petition:

1. *M/s. Kamal Sponge Steel & Power Ltd., Village Sagma, Satna, MPPKVCL, Jabalpur having Service Connection No. S-56 with contract demand of 100 KVA and voltage of supply is 33 KV. It is pertinent to mention here that in the instant matter is related to bills of parallel operation charges raised by MPPTCL, Jabalpur.*
2. *It is submitted that any issues regarding monthly electricity bills and other charges payable to the MPPKVCL are is not at the instant matter and also the petitioner has not sought any relief from MPPKVCL, Jabalpur. Thus, submission of MPKVCL regarding bills of parallel operation charges raised by MPPTCL, Jabalpur to the petitioner is inappropriate.*
3. *Thus, Respondent humbly prays before the Hon'ble Commission to consider submission and pass necessary order."*

9. The petitioner by affidavit dated 05.09.2022, submitted the following in its rejoinder:

1. *That, the present petition has been filed taking exception to the Demand/Order dated 07-10-2016, whereby the respondent has issued a demand notice of Rs. 87,36,511 towards the payment of parallel operation*

charges.

2. *That, it is submitted that the respondents have filed their reply attacking the basis of the present petition on various grounds as well as a preliminary objection on its maintainability as pleaded by the respondent no. 2. The comprehensive response to the aforesaid contentions raised by the respondents is being submitted as hereunder.*
3. *That, it is submitted that, the respondent no. 2 has raised a preliminary objection upon the maintainability of this petition based upon a totally misconceived and misplaced ground. The respondent no. 2 is taking a completely contrary stand to what they had taken before the Hon'ble High Court in order to attack its maintainability there and get the petition disposed off without entering into merits. The same tactics is being followed here as well, when they say that this is not the appropriate forum, when their stand before the Hon'ble High Court in their pleadings was that the appropriate forum is the present Hon'ble Commission. On this first count alone the preliminary objection raised by the respondent no. 2 deserves to be discarded. Copies of the memo of reply as well as the application for vacating stay filed by the respondent no. 2 before the Hon'ble High Court making the aforesaid submission apparent are collectively filed and annexed herewith as ANNEXURE D-1*
4. *That, it is further submitted that, Section 86 of the Electricity Act, 2003 talks about the Functions of this Hon'ble Commissions. The relevant provisions are reproduced herewith for ready reference:*

"86. (1) The State Commission shall discharge the following functions, namely:-

(a) Determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale bulk or retail, as the case may be, within the State

(b) (f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration."

The aforesaid provision makes it amply clear that the dispute at hand has to be resolved and adjudicated by this Hon'ble Commission only. Therefore, the preliminary objection deserves to be ignored.

5. *That, it is submitted that, the liberty granted by the Hon'ble High Court was specific and undisputedly the plant of the petitioner was shut down in the year 2010 and until that time there used to be no parallel operation charges that were leviable from such operations. It is submitted that the petitioner has already substantiated the said fact in the petition which is supported by the inspection report of the respondent themselves. However, the respondent no 2 has contended that once the captive power plant was connected with the Grid System the petitioner was free to avail the*

facilities as and when required, which was fully operational and if the petitioner does not avail the said facility due to his own fault that does not disentitled the respondent from levying the parallel operation charges nor the petitioner can be allowed to say that due to the shutdown of their captive power plant on account of their own difficulties cannot entitle them from non-payment of parallel operation charges. It is submitted that the said contention is clearly contrary to the directions issued by this Hon'ble Commission vide order dated 31-12-12, whereby it was specifically held that the units that were not connected to the Grid will not be liable for payment of parallel operation charges. It is evident from the documents on record that the plant of the petitioner was such down much prior to the order dated 31-12-12 and since there was no import or export of the electricity that was taking place, the only valid and reasonable conclusion that could be drawn was that the plant of the petitioner went off Grid after its shutdown and was therefore not connected to the Grid. It is submitted that the aforesaid would have to be considered as valid, intended interpretation of the exemption specified under the paragraph 5(a) in order dated 31-12-12 passed by this Hon'ble Commission when it said that parallel operation charges were not leviable if the [C.P.Ps](#) are not connected with Grid. It is submitted that, the term "not connected with the Grid" would definitely include the plant of the petitioner in the given circumstances, meaning thereby, the order dated 31-12-12 passed by this Hon'ble Commission is unambiguous and is for the benefit of the petitioner.

6. *That, it is submitted that, the other contentions of the respondent no 2 is that as per the terms and conditions of the permission letter dated 24-04-08 issued to the petitioner, the petitioner was required to pay all charges as specified by the commission from time to time. It has further been contended that the levy of parallel operation charges has been directed by this Hon'ble Commission and therefore the action of the respondent is justified. It is submitted that, the petitioner does not dispute the fact that the levy of parallel operation charges has been directed by this Hon'ble Commission in its order dated 31-12-12, however the respondent are wrongly interpreting the said order so as to make it applicable on every captive power plant, when the same order dated 31-12-12 has specifically granted exemption to those CPPS that were not connected to the Grid and by saying "not connected to the Grid" it meant the plants that were shut down or were not in a working condition and there was, no import or export of electricity taking place. It is submitted that the respondents are wrongly applying the order dated 31-12-12, when they say that once the CPP was synchronized with the Grid System it became liable to pay parallel operation charges even if there was no active connectivity between the plant and the Grid.*

7. *That, it is submitted that, the respondent no. 2 has further contended that the permission of parallel operation charges was only withdrawn on 28-11-14 It is pertinent to mention that the petitioner had requested for withdrawal of permission because the respondent despites knowing about*

the shutdown were raising the demands of the parallel operation charges and when approached the petitioner was instructed that unless the permission was withdrawn the bills would be continuously raised, the respondent took several months which also shows there conduct in this matter.

8. *That, it is submitted that, the respondent no. 2 has also referred to certain orders passed by the Hon'ble High Court whereby the challenge to the validity of order dated 31-12-12 was rejected. It is relevant to mention that the petitioner is not at all aggrieved by the order dated 31-12-12 and in fact claims benefit from it and as already stated above it is the respondent who are wrongly interpreting and implementing the said order particularly in the case of petitioner. It is therefore submitted that, the said orders passed by the Hon'ble High Court will not be applicable to the case of the petitioner as petitioner is not challenging the validity of order dated 31.12.12 and the case of petitioner is not at all similar to the said batch of petitions as referred to by the respondent no. 2.*
9. *That, it is submitted that in view of the above mentioned submissions the preliminary objections and other contentions raised by the respondent no. 2 are clearly misconceived and therefore are not sustainable in the present case."*

Commission's Observations and Findings:

10. The Commission has observed the following from submissions of the petitioner and Respondents in this matter:

- i. The petitioner's company is involved in the business of production of sponge and steel and its plant is located at District Satna in Madhya Pradesh. The aforesaid plant started functioning since 2000-2001 and the petitioner is having electricity connection from the Respondent No. 1 for the said plant. The Petitioner has also set up a captive power plant of 12 MW for generating electricity for its own use. Therefore, the petitioner was availing its own power requirement through the captive power plant.
- ii. For getting grid support and balancing of load of the CPP (also referred to as synchronization), the petitioner made an application to the Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited, (MPPKVCL) seeking permission for parallel operation of its 12 MV captive power plant. The Respondent MPPKVCL facilitated the petitioner for parallel operations of its captive power plant with the grid and granted permission for the same on **24/04/2008**. As stated by the petitioner, the aforesaid captive power plant (CPP) functioned from 2009 to June 2010 and thereafter, this captive power plant remained shut down due to shortage of water and other technical difficulties.

- iii. The petitioner has contended that since the plant was shut down from June 2010 and there was no generation of electricity hence, the captive power plant was automatically out of the grid. Therefore, no parallel operations were existing after June 2010.
- iv. In its preliminary reply, the Respondent No. 2 (MPPTCL) raised question on maintainability. In view of the directions of Hon'ble High Court in order dated 18.01.2022 in Petition No. 17553/2016, Respondent No. 2, MPPTCL contended that the Hon'ble High Court has dismissed Writ Petition No. 17553 of 2016 filed by the petitioner granting liberty to the petitioner to approach the Hon'ble Appellate Tribunal for Electricity under Section 111 of the Electricity Act, 2003. With the aforesaid contention, the Respondent No. 2 requested that the subject petition be dismissed as not maintainable before this Commission.
- v. It would be apposite to quote the relevant provisions of the Electricity Act, 2003 for ready reference which runs as under -
- “Section 111. (Appeal to Appellate Tribunal): --- (1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity.”***
- “Section 86. (Functions of State Commission): --- (f) adjudicate upon the disputes an between the licensees and generating companies and to refer any dispute for arbitration.”***
- vi. Perusal of the above provision makes it clear that Hon'ble APTEL exercises Appellate jurisdiction in respect of orders passed by the appropriate Commission and there is no order of the Commission in this matter as yet. Moreover, adjudication of disputes between parties falls under Section 86(1)(f) and therefore, the subject petition being in the matter of dispute between parties, MPERC has sole jurisdiction to decide the matter.
- vii. It is well settled that question of jurisdiction is a realm of law. Court cannot create jurisdiction. In case of A.R. Antulay Vs. R.S. Nayak AIR 1988 SC 1531 the Apex Court observed as under:
- “38[40].....This Court, by its directions could not confer jurisdiction on the High court of Bombay to try any case which it did not possess such jurisdiction....
39[41]....The power to create or enlarge jurisdiction is legislative in character...
Parliament alone can do it by law and no court, whether superior or inferior or both combined can enlarge the jurisdiction of a court or divest a person of his rights of revision and appeal.....”***

Hence, Commission is of the view that it has sole jurisdiction to decide the matter.

viii. Vide order dated 31.12.2012 in a Suo-Motu Petition No. 73 of 2012, the Parallel Operation Charges were determined by the Commission. The petitioner is not challenging the aforesaid order but it is heavily relying on the following paras 5 of the aforesaid order:

"5. On considering the submissions of the Respondents, the Commission is of the view that:

*(a) The parallel operation charges shall not be applicable if the CPPs are **not connected** with the grid.*

(b) The purposes of levying supply affording charges and standby charges are different. These are not related to the parallel operation of the CPPs with the grid.

(c) Parallel operation charges cannot be made a part of transmission charges as these charges cannot be levied on all consumers.

(d) Auxiliary consumption of captive generating plants as a parameter may be deducted from the installed capacity of the plant for consumption of parallel operation charges.

*6. The Commission also finds that the object of the Electricity Act, 2003 is to delicense generation and to freely permit CPPs. In order to promote CPPs and looking to the facility being availed by CPPs from the grid, the Commission has come to the conclusion that it would be appropriate that **parallel operation charges be levied at the rate of Rs. 20/- per KVA per month on the capacity of CPP (after deducting load pertaining to auxiliary consumption) connected to the grid.**"*

(Emphasis Supplied)

ix. Pursuant to the aforesaid order, the Respondent No. 2 started raising bills towards Parallel Operation Charges (POC). The first such bill was issued on 25/03/2013. Against the said bill, the petitioner wrote a letter to Respondent on 08/04/2013, stating that the charges were wrongly levied and also mentioned the observation of the Commission in Para 5 (1) of above order whereby, it has been stated that if the CPPs are not connected to the grid then the POC shall not be applicable.

x. In response to the petitioner's above stated letter, the Respondent No. 2 MPPTCL vide letter dated 01/01/2014 asked the petitioner for withdrawal of POC permission from Respondent No. 1 (MPPKVCL). Accordingly, the petitioner made an application to the MPPKVCL on 05/02/2014 for withdrawal of permission of parallel operations. Consequently, the permission for parallel operations was withdrawn by MPPKVCL after carrying out a joint inspection of the captive power plant by the officers of Respondent No. 1 and 2 on 15.10.2014. The aforesaid permission was intimated to the petitioner on 28.11.2014. It is mentioned in the aforesaid joint inspection report placed on record at page Nos. 122-123 of the subject petition that the captive power

plant was not in running condition but the jumpers of 33 KV line at consumer end were not kept open which means that the petitioner was at liberty to operate its CPP in parallel with the grid at any time. It is further noted from the aforesaid permission granted by Respondent No. 1 and which is annexed at page 76 as Annexure P-10 of the petition, that the withdrawal permission was considered by Respondent No. 1 with the condition that *“Supply of CPP and that from Grid should not be mixed and the CPP shall only run in complete isolation as per provisions of Supply Code 2013”*.

- xi. The Respondent No. 2 (MPPTCL) placed the following arguments against the grounds submitted by petitioner for wrong levy of Parallel Operation Charges:
- a. *Levy of parallel operation charges is on the grid support availed by the petitioner for parallel operation of its Captive Power Plant and levy of these charges is irrespective of Captive Power Plant in the state of shutdown or not.*
 - b. *If the Captive Power Plant has availed the facility of parallel operation support for its Captive Power Plant, at its own volition, it is liable to pay the Parallel Operation Charges.*
 - c. *In case, the captive power plant was not operational, it was open to and incumbent upon the Petitioner to seek withdrawal of the parallel operation facility from MPPTCL, the request for which was made on 05.02.2014 and not any time before.*
 - d. *It is not the case of petitioner that the facility of Parallel Operation Charges was not available and that the Captive Power Plant was not connected with the grid System of MPPTCL. Once the Captive Power Plant was connected with the Grid System of MPPTCL, the Petitioner was free to avail the facilities as and when it required and the Petitioner's failure to avail the said facility on account of its own fault does not entitle the petitioner not to pay the parallel operation charges.*
 - e. *The applicability of parallel operation charges was also specified in the permission for Parallel Operation with Grid granted to the Petitioner by MPPKVVCL vide letter No. 604 dated 24.04.2008. Since the fixation of parallel operation charges was under consideration for a long time, the following condition was clearly mentioned by Respondent No/1 in permission letter dated 24.04.2008:*

“The other terms and conditions applicable for Parallel operation of Petitioner's Captive Power Plant shall be as per Annexure-I and Annexure-II”

*With regard to the above, condition No. 5 of Annexure -1 provides that “The CPP Holders shall pay all charges as specified by the Commission from time to time.” Further, Condition No. 14 of Annexure II provides that *“Generator shall have to agree for abiding all the terms and conditions and the charges applicable**

for parallel operation as decided by the Hon'ble MPERC."

- xii. As observed earlier in this order, the petitioner is not challenging the order dated 31.12.2012 in Suo-Motu Petition No. 73 of 2012, whereby the Parallel Operation Charges were determined by the Commission however, it is heavily relying on the following paras 5 of the aforesaid order:

"5. On considering the submissions of the Respondents, the Commission is of the view that:

*(a) The parallel operation charges shall not be applicable if the CPPs are **not connected** with the grid.*

- xiii. It has been recorded in the joint inspection report placed on record at page Nos. 122-123 of the subject petition that though the captive power plant was not in running condition but the jumpers of 33 KV line at consumer end were not kept open and the CPP was connected which means that the petitioner was at liberty to operate its CPP in parallel with the grid at any time. In the instant case, the **plant was still connected to the grid and the petitioner was at liberty to restart the plant at any time after June 2010**. Further, as mentioned in Commission's aforesaid order dated 31.12.2012 in SMP 73 of 2012, in order to promote CPPs and looking to the facility being availed by CPPs from the grid, the Commission found it appropriate that **parallel operation charges be levied at the rate of Rs. 20/- per KVA per month on the capacity of CPP** (after deducting load pertaining to auxiliary consumption) connected to the grid. Accordingly, the POC are applicable on capacity of CPP not the units supplied or drawn by CPP once the CPP has obtained and retained the permission for operation in parallel with the Grid.

(Emphasis Supplied)

- xiv. In this regard, let us look into the following relevant part of the order passed by Hon'ble APTEL in Appeal No. 207, 208, 219, 220 & 295 of 2016 and Appeal No. 239 of 2017:

"8. The relevant part of the impugned order dated 31.12.2012 reads as under:

"5. On considering the submissions of the respondents, the Commission is of the view that:

(a) The parallel operation charges shall not be applicable if the CPPs are not connected with the grid.

(b) The purposes of levying supply affording charges and standby charges are different. These are not related to the parallel operation of the CPPs with the grid.

(c) Parallel operation charges cannot be made a part of transmission charges as these charges cannot be levied on all consumers.

(d) Auxiliary consumption of captive generating plants as a parameter may be deducted from the installed capacity of the plant for computation of parallel

operation charges.”

89. *We are of the view that the State Commission, by its Order dated 31.12.2012, has duly considered such objections as were raised against the proposal of levy of POC, taking into account the report of ERDA. There is nothing discriminatory in the impugned order against the CPPs. As observed in previous ruling on the subject, the CPPs have chosen to have grid connectivity. Quite apparently, **the objective being such connectivity being sought and taken is to avail of the advantages it brings. It is not fair to be given such services by the transmission utility without being in readiness to correspondingly compensate.***

(Emphasis Supplied)

As observed by Hon'ble APTEL also, grid connectivity for a CPP brings an advantage to CPP and it would not be fair to be given such services by Respondent No. 2 MPPTCL without being compensated, who has to keep readiness of its system all the time to provide such services. Therefore, the Commission is of the view that parallel operation charges should be leviable on the petitioner till permission for parallel operation charges was withdrawn by MPPKVCL vide letter dated 28.11.2014.

- xv. In view of all foregoing observations, the Commission is of the considered view that the prayers of petitioner on the grounds placed in subject petition have no merit subject to aforesaid observation. Accordingly, the subject petition is dismissed and disposed of.

(Gopal Srivastava)
Member (Law)

(Mukul Dhariwal)
Member

(S.P.S. Parihar)
Chairman