

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of Petition under Section 142 and Section 146 of the Electricity Act, 2003, seeking necessary directions qua M.P. Power Management Company Ltd. to comply with the directions passed by the Commission vide order dated 25.08.2022 in Petition No. 26 of 2022.

ORDER

(Date of Order: 8th June, 2023)

M/s Jaiprakash Power Ventures Ltd

(Jaypee Bina Thermal Power Plant)
JA House, 63, Basant Lok, Vasant Vihar,
New Delhi- 110057

- **Petitioner**

V/s

1. M.P. Power Management Company Ltd.,
Shakti Bhawan, Rampur,
Jabalpur – 482008

2. M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd.
Shakti Bhawan, Rampur,
Jabalpur – 482008

3. M.P Madhya Kshetra Vidyut Vitaran Co. Ltd.,
Bijli Nagar Colony, Nishtha Parisar,
Govindpura, Bhopal, M.P. – 462023

4. M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd,
G.P.H. Compound, Polo Ground,
Indore, M.P. – 452003

- **Respondents**

Shri Venkatesh, Advocate and Shri Ajeya Kumar Tripathi appeared on behalf of Petitioner. Shri Alok Shankar, Advocate and Shri Nitin Kumar Khatri appeared on behalf of the Respondents.

The present Petition is filed by M/s Jaiprakash Power Ventures Limited (hereinafter referred as the 'Petitioner' or 'JPVL') under Section 142 and Section 146 of the Electricity Act, 2003, seeking necessary directions to M.P Power Management Company Limited (hereinafter referred as 'Respondent No. 1' or 'MPPMCL') to comply with the directions passed by this Commission vide Order dated 25.08.2022 in Petition No. 26 of 2022.

2. The Petitioner M/s Jaiprakash Power Ventures Limited is a generating company and it has set up 2X250 MW (Phase-I) Coal Based Thermal Power Station at Bina, Madhya Pradesh. Date of Commercial Operation of both the Units was 31.08.2012 and 07.04.2013, respectively.
3. Respondent No. 1 (M.P. Power Management Company Ltd.) is a holding company for all the three Discoms of Madhya Pradesh and authorized for bulk power purchase and supply electricity to the distribution companies in MP. Respondent No. 2 to 4 are the distribution licensee in the State of Madhya Pradesh.
4. The petitioner executed long term Power Purchase Agreement (PPA) on 05.01.2011 with MPPMCL (Respondent No. 1) for supply of 65% power of the installed capacity of the Project at regulated tariff determined by the Commission. The petitioner has executed another Power Purchase Agreement on 20.07.2011 with the Government of Madhya Pradesh (GoMP) for supply of 5% of net power generated at variable charges determined by the Commission.

Background:

5. The Commission while exercising its powers under section 86 (1)(h) of the Act, notified Madhya Pradesh Electricity Grid Code, 2019 (MPEGC) on 21.06.2019, wherein certain provisions regarding Technical Minimum Scheduling and compensation thereof were envisaged. Regarding the part load compensation, clauses 8.8 (4) of the MPEGC provides that in case of generating stations other than SSGS, wherein the 100% installed capacity is not tied up with MPPMCL/ Discoms of MP through a long term PPA or whose tariff for only partial/contracted capacity is determined by the Commission, such generating station/company may have to appropriately factor in the provisions in the PPAs entered into by it with MPPMCL/ Discoms for sale of power, in order to claim compensation for operating at the technical minimum schedule.
6. Further, vide order dated 29.01.2020, the Commission approved Detailed Operating Procedure (DOP) in terms of Clause 8.8 (6) of the MPEGC, 2019 for taking unit(s) under Reserve Shut Down (RSD) and mechanism for compensation for degradation of operating parameters due to part load operation. DOP also provides that in case of Generating Stations, wherein 100% installed capacity is not tied up with MPPMCL through a long term PPA and whose tariff for only partial/contracted capacity is determined/adopted by this Commission, such Generating Station shall have to appropriately factor in such provisions in the PPAs, in order to claim such compensation.

7. Earlier, MPPMCL filed Petition No. 31 of 2020 before the Commission seeking approval of draft Supplementary Agreement to PPA dated 05.01.2011 executed between MPPMCL and Petitioner in this matter. The Commission vide Order dated 07.09.2020, dismissed the aforesaid Petition with the observations that the draft supplementary agreement was lacking of free will and consent of Respondent as per requirement under Article 16.2.1 of the PPA dated 05.01.2011 executed between the parties.
8. Further, the petitioner had filed petition No. 26 of 2022 seeking directions to MPPMCL to execute a Supplementary Power Purchase Agreement (SPPA) to the PPA dated 05.01.2011 executed between the Petitioner and MPPMCL as well as to compensate the Petitioner for losses caused due to erratic scheduling and delay in signing the SPPA. The proposed amendments to the PPA, were sought to factor in the provisions of Madhya Pradesh Electricity Grid Code (Revision-II), 2019 and the DOP approved by the Commission on 29.01.2020.
9. Vide order dated 25.08.2022, the Commission had observed that looking to the technical requirements and financial implications, the provision to claim compensation for part load operation as provided under Detailed Operating Procedure and MP Electricity Grid Code, 2019 are necessary to be incorporated in the PPA between both the parties. Therefore, MPPMCL was directed to draft an appropriate agreement in this regard thereby factoring in the provisions of MPEGC, 2019 and DOP issued by the Commission, and approach the Commission enabling the Petitioner to claim compensation on account of financial losses suffered by the Petitioner as a result of Part load operation of the Petitioner's Plant.
10. In the subject petition the Petitioner submitted that after issuance of order dated 25.08.2022, they approached MPPMCL on numerous occasions requesting to share the draft Supplementary PPA appropriately factoring in the provisions of the MPEGC, 2019 and DOP, in compliance with the directions of the Commission vide its order dated 25.08.2022. However, despite numerous reminders on part of the Petitioner, MPPMCL failed to comply with the said directions.
11. The petitioner in the subject petition has broadly submitted the following:
 - i. *On 06.04.2016, the Central Electricity Regulatory Commission (CERC) notified Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016. Regulation 6.3(B) of the IEGC Fourth Amendment Regulations, provides for Technical Minimum criteria for operating a Thermal Power*

Plant and also entrusted responsibilities upon National Load Dispatch Centre (Regulation 6.3(B) (6)) qua Reserve Shut Down of Thermal Generating Station in case the scheduling issued by the procurer is below the Technical Minimum Criteria. It is pertinent to mention herein that Regulation 6.3 (B) was kept in abeyance, as the Hon'ble Central Electricity Regulatory Commission was yet to approve the procedure regarding the same.

- ii. The Hon'ble CERC vide its order dated 05.05.2017 approved the DOP and the Compensation Mechanism in terms of sub-clause 6 of the Regulation 6.3B of the IEGC Fourth Amendment Regulations for operation of Central Generating Stations ("CGS") and Inter-State Generating Stations ("ISGS"), whose tariff is either determined or adopted by the CERC. The said compensation mechanism came into effect from 15.05.2017.*
- iii. Thereafter on 12.06.2019, this Commission while exercising its powers under section 86 (1)(h) of the Act, notified MPEGC 2019, wherein certain provisions regarding Technical Minimum Scheduling and compensation thereof were envisaged.*
- iv. On 25.09.2019, pursuant to the notification of MPEGC 2019, the Petitioner issued a letter to MPPMCL intimating as follows:*
 - (a) The Petitioner as per Clause 8.8(4) of the M.P Grid Code with partial tie up of 70% of regulated power is entitled to claim compensation for operating plant at Technical Minimum Schedule.*
 - (b) In order to claim compensation for operating at the technical minimum schedule, the generating stations have to incorporate this provision in the PPAs entered by it with Discoms for sale of power.*
 - (c) The Petitioner further requested MPPMCL to amend the PPA as per the provisions of the M.P Grid Code at the earliest.*
- v. On 04.11.2019, MPPMCL issued a letter to the Petitioner informing that as per Clause 8.8(6), DOP was to be formulated by SLDC and same was yet to be issued. Therefore, any further action by MPPMCL can only be taken once DOP is issued.*
- vi. Thereafter on 29.01.2020, this Commission vide its Order approved the DOP and the compensation mechanism in terms of Clause 8.8(6) of the MPEGC, 2019. Under the said provision, the Generating Stations, whose 100% installed capacity is not tied up with MPPMCL through a long term PPA and whose tariff for only partial/contracted*

capacity is determined/adopted by the Commission, such Generating Station are required to appropriately factor in such provisions in the PPAs, in order to claim compensations for part load operation and multiple start/stop under Reserve Shutdown.

- vii. *On 31.01.2020, the Petitioner issued a letter to MPPMCL thereby requesting to amend the PPA dated 05.01.2011 and send the draft amended PPA in line with the MPEGC, 2019 and the DOP at the earliest.*
- viii. *On 16.03.2020, MPPMCL filed Petition No. 31 of 2020 before the Commission seeking approval of Draft Supplementary Agreement to PPA dated 05.01.2011 executed between MPPMCL and the Petitioner for procurement of 65% power generated from 2x250 MW Bina TPP. Vide the said petition, MPPMCL has sought to add/supplement the following in the Supplementary Agreement to the PPA:*
- (a) Amend Article 16.23 and incorporate the directions given by Ministry of Coal, Government of India vide its letter dated 15.05.2018 as well as Coal India Limited ("CIL") directions in terms of letter dated 18.06.2019 wherein the Petitioner has to pass on the cost savings of Rs. 0.40/kWh to MPPMCL on account of the coal linkage being transferred from Central Coalfields Limited ("CCL") to National Coalfields Limited ("NCL").*
 - (b) Incorporation of the applicable provisions of the MPEGC 2019 and the DOP to claim compensation for degradation of Heat rate, Auxiliary Energy Consumption Secondary fuel oil consumption, Start-ups etc for operation of plant at lower than Normative levels due to non-scheduling/ less scheduling of power.*
 - (c) To use the linkage coal exclusively for supply of power to MPPMCL and no Linkage coal shall be used for merchant sale of power or to any other Procurer.*
 - (d) Amend Article 10.5 of the PPA and reduce the earlier specified Letter of Credit.*
- ix. *During the course of proceedings, MPPMCL also sought an adjournment/abeyance of the Petition on the ground that MPPMCL has challenged the IEGC Fourth Amendment Regulations before the Hon'ble High Court of Delhi to the extent of claiming compensation towards Technical Minimum.*
- x. *This Commission vide its Order dated 07.09.2020, dismissed the aforesaid Petition No. 31 of 2020 with the observation that the Petition in the present form lacks free*

will and consent of the Petitioner as per requirement under Article 16.2.1 of the PPA dated 05.01.2011, executed between the parties. Liberty was granted to MPPMCL to approach the Commission with afresh petition after fulfilling all provisions including Article 16.2.1 of PPA.

- xi. MPPMCL filed a Writ Petition with Delhi High Court challenging provision regarding compensation provided in the Regulation 6.3B of the IEGC Fourth Amendment Regulations was numbered as W.P(C) No. 4777 of 2021 bearing title MPPMCL v. Uol & Ors. On 04.05.2021, after more than 8 months of filing the Writ under defects, the same was finally listed and the Hon'ble High Court vide its order was pleased to issue notice in the matter. It is pertinent to mention here that there is no stay on the operation of the said Regulations even as on the date of filing of the present Petition.*
- xii. Due to the said erratic scheduling, the Petitioner was constrained to sell the Power in open market at un-remunerative prices to operate the plant at technical minimum and in order to comply with the schedule provided by MPPMCL. Since MPPMCL itself delayed the execution of SPPA, the same entitles JPVL to claim compensation as per the Compensation Mechanism notified on 29.01.2020 to the tune of Rs. 8.59 Crores plus LPS, as applicable, for FY 2019-20 only.*
- xiii. Being aggrieved by the inactions/omissions on part of MPPMCL in ignoring the requests of the Petitioner in relation to the signing of the SPPA while incorporating the provisions of MPEGC, 2019 and the DOP approved by this Commission, the Petitioner on 24.03.2022, filed the Petition bearing no. 26 of 2022 before this Commission, thereby seeking directions qua MPPMCL to appropriately factor in the provisions of MPEGC, 2019 and the DOP so as to claim adequate compensation for degradation of Heat rate, Auxiliary Energy Consumption, Secondary Fuel Oil Consumption due to non/erratic-scheduling of power on part of MPPMCL, which constrained the Petitioner to operate its plant at part load capacity.*
- xiv. Upon adjudication of the subject Petition, this Commission vide its Order dated 25.08.2022, was of the view that provisions in respect of Compensatory Mechanism as envisaged under MPEGC, 2019 and DOP are necessary to be incorporated in the PPA and further directed MPPMCL to draft a SPPA while factoring in the said provisions and approach this Commission for necessary approvals after the concurrence of both the parties.*
- xv. After the passage of the said order, on 31.08.2022, the Petitioner vide its letter*

approached MPPMCL, thereby requesting MPPMCL to draft a SPPA while factoring in the provisions of MPEGC, 2019 and DOP, in compliance with the directions of this Commission passed vide order dated 31.08.2022. In response to the aforesaid letter, on 26.09.2022, MPPMCL issued a letter to the Petitioner, thereby resisting the execution of SPPA on the grounds of pendency of a Writ Petition before the Hon'ble Delhi High Court wherein the provisions of Fourth Amendment to IEGC Regulations is a subject matter of challenge.

xvi. In furtherance thereto, on 11.10.2022, the Petitioner issued another letter thereby refuting the frivolous stand of MPPMCL on the following grounds:

- (a) The pretext on the basis of which the drafting of SPPA is being denied by MPPMCL, has been clearly brushed aside in Para No. 15 of the Order dated 25.08.2022 passed by this Commission on the grounds that the said petition is on the challenge to the provisions of IEGC Regulations (4th Amendment) and not MPEGC, 2019 and the DOP.*
- (b) Dehors the aforesaid, no stay whatsoever has been granted in favour of MPPMCL by the Hon'ble High Court of Delhi on the implementation of the IEGC Regulations.*
- (c) Moreover, in Para No. 17(v) and (vi), this Hon'ble Commission in very clear terms has recorded that there is no impediment upon MPPMCL in signing in SPPA thereby factoring in the provisions of MPEGC, 2019 and the DOP. Thus, there is no scope for any discretion being exercised by MPPMCL.*

In view of the above, the Petitioner implored MPPMCL to share the copy of the draft SPPA while factoring in the provisions of MPEGC, 2019 and DOP at the earliest, in order to comply with the directions of this Hon'ble Commission in true letter and spirit.

xvii. Since, the aforesaid request did not elicit any response on part of MPPMCL, on 03.12.2022, the Petitioner was constrained to issue another letter, thereby once again imploring MPPMCL to share the draft SPPA incorporating the provisions of MPEGC and DOP, so as to ensure compliance of the directions of this Hon'ble Commission.

xviii. Constraints by the inactions on part of MPPMCL in not sharing the draft SPPA, on 27.01.2023, the Petitioner issued another letter to MPPMCL, thereby once again requesting MPPMCL to comply with the directions of this Commission, failing which the same would invite penal consequences including initiation of contempt proceedings in terms of Section 142 read with Section 146 of the Act.

- xix. *Despite numerous reminders on part of the Petitioner and even as on date of filing of the present petition, MPPMCL has failed to sign/execute the draft SPPA while factoring in the provisions of MPEGC, 2019 and the DOP, which clearly amounts to willful disobedience and deliberate violation of the directions passed by this Commission vide its order dated 25.08.2022.*
- xx. *This Commission vide its Order dated 25.08.2022, while taking cognizance of the Regulation 8.8 of the MPEGC, 2019 has categorically held in Para 17(vi) of the said order that the said regulations mandates the Generating Stations (other than SSGS), whose 100% installed capacity is not tied up with MPPMCL or whose tariff is determined by Commission only for partial/contracted capacity, to appropriately factor in the provisions of the DOP in the PPA, which are in relation to Compensatory Mechanism.*
- xxi. *This Commission in its Order, has categorically directed MPPMCL to draft a SPPA thereby factoring in the provisions of MPEGC, 2019 and DOP which inter-alia provides for the Compensatory Mechanism to be adopted in case of part load operation of a generating station. It is quite evident that the directions passed by this Commission having sanctity in eyes of law are binding on all stakeholders which includes MPPMCL. However, despite numerous reminders viz. 31.08.2022, 11.10.2022, 03.12.2022 and 27.01.2023, on part of the Petitioner to share the draft SPPA while incorporating/factoring the provisions of MPEGC, 2019 and DOP which are in relation to the Compensatory Mechanism, MPPMCL has failed to comply with the said directions which clearly amounts to wilful disobedience and deliberate violation on part of MPPMCL.*
- xxii. *The petitioner submitted that, taking note of the deliberate and wilful violation of the directions issued by this Commission vide order dated 25.08.2022, it is respectfully submitted that in terms of Section 142 of the Act, this Commission is vested with the requisite powers to impose penalty in the event this Commission is of the prima-facie view that there is contravention of any provision of the Act, regulations framed thereunder or any specific direction issued by this Commission. Right from the inception MPPMCL has resisted the signing/execution of the SPPA on the pretext on pendency of Writ Petition bearing No. W.P(C) No. 4777 of 2021 titled as 'MPPMCL v. UoI & Ors.', wherein the provisions of 4th Amendment to IEGC Regulations is a subject matter of challenge before the Hon'ble High Court of Delhi.*
- xxiii. *As a matter of fact, the invariable stand taken by MPPMCL has also been negated*

by this Commission in a similar petition bearing No. 31 of 2021 preferred by 'Jhabua Power Limited' under Section 142 read with Section 146 of the Act seeking directions qua MPPMCL to execute the SPPA, vide its order dated 07.12.2021.

xxiv. Thus, keeping in view the fact the aforesaid stand has been brushed aside apart from the fact that the pretext on the basis of which the execution/signing of the SPPA has been denied by MPPMCL is frivolous and misconceived, the stand of MPPMCL having been completely brushed aside by the Commission time and again, MPPMCL was under a bounden obligation to comply with the categorical and unambiguous directions of the Commission by drafting SPPA while factoring in the provisions of MPEGC, 2019 and DOP. However, despite numerous reminders on part of the Petitioner and even as on date of filing of the present petition, MPPMCL is in blatant violation of the directions of this Commission.

12. With the above submissions, the Petitioner has prayed the following:

- a. Direct MPPMCL to draft SPPA while factoring in the provisions of MPEGC, 2019 and the DOP issued by this Commission, so as to comply with the directions of this Commission passed vide Order dated 25.08.2022 in Petition No. 26 of 2022 and*
- b. Initiate appropriate proceedings against MPPMCL in terms of Section 142 read with Section 146 of the Act, for deliberate and wilful contravention of the directions of this Commission vide order dated 25.08.2022 and*
- c. Levy penalty/appropriate punishment upon MPPMCL for not complying with the directions of this Commission.*

13. The subject petition was admitted at the motion hearing held on 11th April, 2023. Vide daily order 11th April, 2023 the petitioner was directed to serve copy of petition to all Respondents within seven days. The Respondents were directed to file their responses to the petition within 15 days, thereafter. The petitioner was asked file rejoinder within a week, thereafter. The case was fixed for hearing on the 23rd May, 2023.

14. At the next hearing in this matter held on 23.05.2023, wherein the parties completed their agreements. Having heard the parties, the case was reserved for order.

15. By affidavit dated 12.05.2023, MP Power Management Company Ltd. has jointly filed reply on behalf of Respondent No. 1 to 4, broadly submitted the following:

A. *There is no deliberate or wilful default of the Order dated 25.08.2022 as required under Section 142 and Section 146 of the Electricity Act*

- i. *The present petition has been filed invoking the jurisdiction of this Commission under Section 142 read with Section 146 of the Electricity Act. It is submitted that in order to invoke the jurisdiction of an Electricity Regulatory Commissions under Section 142 read with Section 146, it is necessary that the disobedience of any order, direction or law is intentional, deliberate, and wilful in nature.*
- ii. *It is submitted that the position with respect to invocation of jurisdiction of the Commissions under Section 142 and Section 146 of the Electricity Act has also been settled by the Hon'ble Appellate Tribunal for Electricity. In the case of Tata Power Delhi Distribution Limited vs. DERC and Ors. Appeal No. 22 of 2021, the Hon'ble APTEL observed that in order to invoke the jurisdiction under Section 142, it is imperative that the disobedience is wilful in nature. Therefore, mere disobedience does not tantamount to violation of Section 142 of the Electricity Act and that same has to be deliberate or wilful in nature. The relevant paragraph of the judgment has been extracted herein below for ease of reference of this Ld. Commission:*

11. The contravention which is to be dealt with under section 142 must be deliberate or intentional. After all, it is a penal provision for invocation of which not only actus reus but also mens rea must be shown to exist. Further, being a penal clause, it must be construed strictly. This is where the Commission seems to have fallen in serious error.

- iii. *Further, in the case of CLP Wind Farms India vs MP Power Management Company Limited and Ors., Appeal No. 184 of 2019 the Hon'ble APTEL once again observed that the Commissions must take actions under Section 142 and Section 146 of the Electricity Act if it is found that the non-compliance of an order or its direction is deliberate or wilful. The relevant paragraph of the judgment has been extracted herein below for ease of reference of this Ld. Commission:*

14. In our considered view, it is incumbent upon the State Commission to also adjudicate, upon such situation being brought to it, whether its order or direction has been complied with or not and if it is established that a case of deliberate or unjustified non-compliance is made out, then consequences inter alia as provided under Sections 142 and 146 of the Electricity Act must follow.

- iv. *It is submitted that this Commission in the Order dated 25.08.2022 had directed the Petitioner and Respondent No. 1 to enter into a supplementary agreement incorporating the provisions of MPEGC and the DOP thereunder. Immediately after*

issuance of that order, proceedings for amendment of DOP were initiated by this Commission and the answering respondent was constrained to wait for outcome of the proceeding before, taking steps in terms of the Regulations and the DOP. After the DOP amendment order was passed on 12.10.2022, the matter was holistically reviewed by the management of the answering respondent and legal rights and obligations qua the Grid Code Regulations and DOP were analysed.

v. *A review petition filed by the Petitioner against the order dated 12.10.2022 again caused the delay in the answering respondent's compliance with order dated 25.08.2022. Ld. Commission passed order in the review petition on dtd 21.04.2023.*

vi. *It is submitted that the Petitioner has wrongfully contended that the Respondent No. 1 despite repeated reminders from the Petitioner to execute a supplementary agreement has failed to enter into any such supplementary agreement contradicting the Order dated 25.08.2022 passed by this Ld. Commission. It is submitted that immediately upon disposal of the review petition on dtd 21.04.2023, the answering respondent has written to the Petitioner to discuss the heads of terms of the proposed supplementary agreement.*

vii. *It is submitted that the present petition has become infructuous in light of MPPMCL's Letter dated 10.05.2023. Further, the present petition has been filed seeking compliance of the Order dated 25.08.2022. It is pertinent to note that vide its Request Letter, Respondent No. 1 has requested the Petitioner herein to submit the proposed heads of the terms of the supplementary agreement to the PPA. The Respondent No. 1 has also proposed a meeting once the Petitioners submit the heads of the terms for the supplementary agreement.*

viii. *In view of the aforesaid submissions, it is submitted that the Petitioner has failed to establish and fulfil the grounds of Section 142 read with Section 146 of the Electricity Act and therefore, the present petition does not warrant any indulgence of this Commission. In any event, pursuant to the issuance of the Request Letter by Respondent No. 1, the present petition has become infructuous and is therefore liable to be dismissed.*

16. By affidavit dated 20.05.2023, the petitioner M/s Jaiprakash Power Ventures Limited in its rejoinder has broadly submitted the following:

i. *It is submitted that the averments made by the Respondents in their Reply are denied in toto. Nothing contained therein may be deemed to be admitted unless specifically admitted in the present Rejoinder.*

Issue-wise rejoinder:

Re: There is no deliberate or wilful non-compliance of the Order dated 25.08.2022 as required under Section 142 and Section 146 of the Act

- ii. *It is the contention of the Respondent that the Petitioner has failed to justify that there has been a deliberate or wilful disobedience/non-compliance of the order dated 25.08.2022 passed by this Hon'ble Commission. Under Section 142 of the Act, it is mandatory to prove that disobedience/non-compliance of a particular order passed by any appropriate commission is wilful and deliberate.*
- iii. *The Respondent has further contended that there is no wilful disobedience/non-compliance of the order on its part in as much as right after passing of the order dated 25.08.2022, the Respondent was awaiting the outcome of Petition No. 33 of 2022 preferred by Madhya Pradesh State Load Dispatch Centre ("MPSLDC") pertaining to amendment of DOP and thereafter of the Review Petition No. 86 of 2022, preferred by the Petitioner, thereby seeking review of the order dated 12.10.2022 passed in Petition No. 33 of 2022, to the extent that the amendments in the DOP ought to be made effective from the date of approval i.e. 29.01.2020. The Respondent has further contended that since the said Review Petition came to be decided only on 21.04.2023 wherein this Hon'ble Commission, finally held that the amendments to the DOP can only be made applicable w.e.f. 12.10.2022, there is no delay on the part of the Respondent in executing/signing the SPPA in compliance with directions passed by this Hon'ble Commission vide order dated 25.08.2022.*
- iv. *In this regard, it is respectfully submitted that undoubtedly, for the purposes of invoking the jurisdiction of an appropriate commission under Section 142 read with Section 146 of the Act, the aggrieved person must demonstrate that the disobedience and/or non-compliance of any order, is wilful and deliberate. However, in the facts of the present case, it can be easily ascertained that the Respondent has clearly caused deliberate and wilful violation of the directions passed by this Hon'ble Commission vide its order dated 25.08.2022, in as much as despite the passage of the said order, the Respondent has failed to comply with the directions contained thereunder viz. the execution of the SPPA appropriately factoring in the provisions of MPEGC, 2019 as well as the DOP, in respect of the compensatory mechanism for operating the plant at a part load capacity. Even as on the date of filing of the present Rejoinder, the Respondent has failed to comply with the directions of this Hon'ble Commission, which unequivocally amounts to "deliberate" and "wilful" non-compliance/disobedience of the order dated 25.08.2022.*

- v. *As a matter of fact, even prior to the filing of the Subject Petition on behalf of the Petitioner as also after the passage of the order dated 25.08.202, the Petitioner had approached the Respondent on multiple occasions, for the purposes of executing the SPPA appropriately factoring in the provisions of MPEGC, 2019 as well as DOP, in respect of the Compensatory Mechanism for operating the plant at a part load capacity. However, right from the inception, the execution of the SPPA was resisted by the Respondent on the pretext of pendency of Writ Petition bearing No. 4777 of 2021 titled as 'MPPMCL v. UoI & Ors.', wherein the provisions of Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 being subject matter of challenge before the Hon'ble High Court of Delhi. Even though the said stand was completely brushed aside by this Hon'ble Commission vide the order dated 25.08.2022, the Respondent continued to maintain the said frivolous stand even after the passage of the order dated 25.08.2022. This is evident from the letter dated 26.09.2022, whereby MPPMCL resisted the execution of the SPPA on the purported grounds of pendency of the aforesaid writ petition.*
- vi. *However, by way of the present Reply, the Respondent has once again made an adroit attempt to avoid the compliance of the directions passed by this Hon'ble Commission vide its order dated 25.08.2022, on the purported premise that the Review Petition bearing no. 86 of 2022, filed by the Petitioner, seeking certain amendments to the DOP as approved by this Hon'ble Commission, came to be decided only on 21.04.2023. In this regard, it is respectfully submitted that such an attempt on the part of Respondent in not executing the SPPA on one pretext or the other, amounts to dilatory tactics as well as an afterthought, so as to wriggle out of its obligations. Thus, it is evident that the Respondent has not only acted maliciously but its conduct also amounts to highhandedness to the extent of non-compliance of the order dated 25.08.2022*
- vii. *Even otherwise, the Respondent by placing overt reliance on the Review Petition preferred by the Petitioner is trying to digress from the subject matter of the present Petition and expanding the scope of the present petition, which is clearly impermissible under Section 142 of the Act. In fact, the Review Petition filed by the Petitioner, which ultimately came to be decided on 21.04.2023, has no bearing on the subject matter of the present petition, in as much as the said Review Petition was merely confined to seeking retrospective applicability of the certain amendments carried out in the DOP. Evidently, the subject matter of the Review Petition filed by the Petitioner is completely different and has no bearing on the subject matter of the present petition.*

viii. Thus, it is abundantly clear that right from the very beginning the Respondent has acted in deliberate and wilful violation of the directions passed by this Hon'ble Commission vide its order dated 25.08.2022, by not executing the SPPA. Hence, in view thereof, the actions prescribed under Section 142 of the Act, must follow. This position can be fortified from the judgment titled as 'BSEB vs. CERC' (2009) SCC Online APTEL 113, wherein the Hon'ble Appellate Tribunal of Electricity, clearly held that the penalty prescribed under Section 142 of the Act, is a natural consequence of non-compliance of directions issued by this Hon'ble Commission. The relevant extract of the said judgment is reproduced herein below for the ease of reference:

“19. The perusal of Section 142 of the Act as well as the ratio decided by the Supreme Court with reference to the violation of the directions or contravention of the rules would make it clear that once it is shown that the contravention or the violation of the directions of the Commission has taken place, the imposition of penalty by the Commission on such person is a natural consequence. In other words, the power to impose penalty gets invoked as soon as the contravention of rules and directions as contemplated under Section 142 of the Act is established.”

ix. Thus, for the reasons cited above, the overt reliance of the Respondent on the Review Petition is inconsequential and has no bearing with the subject matter of the present petition which is merely confined to the implementation of the order dated 25.08.2022. This Hon'ble Commission may reject the contentions of the Respondent as being devoid of any merits.

Re: In light of the issuance of the request letter dated 10.05.2023 by MPPMCL, the present petition has become infructuous

x. The Respondent by way of its reply has contended that the present Petition filed by the Petitioner has become infructuous in light of the letter dated 10.05.2023 issued by the Respondent, thereby calling upon the Petitioner to submit a proposal of heads of terms of the proposed SPPA, which is to be signed in compliance with the directions of this Hon'ble Commission vide order dated 25.08.2022

xi. It is respectfully submitted that the contentions raised by the Respondent in this regard, are malicious, misleading and hence denied, in as much as the purported letter dated 10.05.2023, which the Respondents seeks to place reliance upon, was never issued to the Petitioner as a separate correspondence before the receipt of the Reply. The Petitioner became aware of the existence of the said purported request Letter for the first time only through the present Reply, received through E-mail dated 12.05.2023. Interestingly, the said letter was received by the Petitioner as

a separate correspondence only on 13.05.2023. Thus, the issuance of such letter clearly seems to be an afterthought and is only a ploy to escape from any punitive action due to their wilful and deliberate non-compliance of the Order dated 25.08.2022 issued in the Subject Petition.

- xii. *In fact, on a bare perusal of the purported Request Letter dated 10.05.2023, it appears that the Respondent had requested the Petitioner to submit the heads of terms of the proposed SPPA, which is yet to be signed in compliance with the directions of this Hon'ble Commission vide its order dated 25.08.2022. In this regard, it is respectfully submitted that in all fairness, had the Respondent really intended to execute the SPPA with the Petitioner, thereby incorporating the provisions of the MPEGC Grid Code, 2019 and the DOP, the Respondent could have done that basis the SPPA already signed/executed by it with other Independent Power Producers i.e. MB Power (MP) Limited, instead of requesting the Petitioner to submit the heads of terms and conditions to be incorporated in the SPPA. As a matter of fact, the factum of signing/execution of the SPPA by the Respondent with the aforesaid IPPs was duly taken note of by this Hon'ble Commission, while passing the order dated 25.08.2022. Thus, the natural corollary that can be drawn from the above is that the execution/signing of the SPPA has never been the intention of the Respondent.*
- xiii. *It is also evident that the said farcical stand adopted by the Respondent vide the purported Request Letter dated 10.05.2023 is contrary to its earlier stand of pendency of Writ Petition bearing No. 4777 of 2021 challenging the provisions of Fourth Amendment to IEGC Regulations before the Hon'ble High Court of Delhi, even though the said stand was completely brushed aside by this Hon'ble Commission vide the order dated 25.08.2022, which the Respondent consistently maintained to resist the signing/execution of the SPPA. In fact, the stance adopted by the Respondent vide the purported Request Letter dated 10.05.2023, is to avoid the punitive actions which may befall the Respondent on account of the deliberate and wilful non-compliance of the directions passed by this Hon'ble Commission vide its order dated 25.08.2022.*
- xiv. *Thus, in light of the foregoing submissions, this Commission may kindly disregard the contents of the purported Request Letter and initiate appropriate actions qua the Respondent in respect of the deliberate and wilful non-compliance of the directions passed by this Commission vide its order dated 25.08.2022*

Commission's Observations and Findings

17. The subject petition has been filed by the petitioner M/s Jaiprakash Power Ventures Ltd. for its Bina thermal power station under Section 142 and Section 146 of the Electricity Act, 2003, seeking necessary directions to M.P Power Management Company Limited to comply with the directions issued by the Commission vide Order dated 25.08.2022 in Petition No. 26 of 2022.
18. Petition No. 26 of 2022 was filed by the petitioner seeking direction to MPPMCL to execute a Supplementary Power Purchase Agreement (SPPA) to the PPA dated 05.01.2011 executed between the petitioner and MPPMCL, to compensate the petitioner for losses caused due to erratic scheduling. The proposed amendments to the PPA, were sought to factor in the provisions of Madhya Pradesh Electricity Grid Code (Revision-II), 2019 (MPEGC, 2019) notified by the Commission on 21.06.2019 and the Detailed Operating Procedure approved by the Commission on 29.01.2020.
19. Vide order dated 25.08.2022 in petition No. 26 of 2022, the Commission had observed that looking to the technical requirement and financial implication, the provision to claim compensation for part load operation as provided under DOP and MPEGC, 2019 are necessary to be incorporated in the PPA through a supplementary agreement between both the parties. Therefore, the Respondent No. 1 (MPPMCL) was directed to draft an appropriate agreement in this regard in accordance to the provisions under MPEGC, 2019 and DOP issued by the Commission and approach the Commission for its approval after concurrence of both the parties. However, Supplementary PPA has not been executed till date.
20. The Petitioner has submitted that after issuance of order dated 25.08.2022, they have approached MPPMCL on numerous occasions viz. letters *dated* 31.08.2022, 11.10.2022, 03.12.2022, 27.01.2023, requesting MPPMCL to share the draft SPPA appropriately factoring in the provisions of the MPEGC, 2019 and DOP, in compliance with the directions of the Commission vide its order dated 25.08.2022. However, despite numerous reminders, MPPMCL failed to comply with the said directions. Due to delay in signing the SPPA causes financial loss to the petitioner on account of degradation of Station Heat Rate, Auxiliary Consumption and Secondary Fuel Oil Consumption due to multiple start-ups etc. for operation of plant at lower than Normative Plant Availability Factor (NAPAF) due to non/less scheduling of power.

21. By affidavit dated 12.05.2023, MP Power Management Company Limited on behalf of Respondent No. 1 to 4 has broadly submitted the following:
- i. The Commission vide Order dated 25.08.2022 had directed the Petitioner and Respondent No. 1 to enter into a supplementary agreement incorporating the provisions of MPEGC and the DOP thereunder. After issuance of that order, proceedings for amendment of DOP were initiated by this Commission and the answering respondent was constrained to wait for outcome of the proceeding before, taking steps in terms of the Regulations and the DOP.
 - ii. After the DOP amendment order was passed on 12.10.2022, the matter was holistically reviewed by the management of the answering respondent and legal rights and obligations qua the Grid Code and DOP were analysed.
 - iii. A review petition was also filed by the Petitioner against the order dated 12.10.2022 again caused the delay in the MPPMCL's compliance with order dated 25.08.2022. The Commission passed order in the review petition on 21.04.2023.
 - iv. Immediately upon disposal of the review petition on 21.04.2023, vide letter dated 10.05.2023. Respondent No. 1 has requested the Petitioner to submit the proposed heads of the terms of the supplementary agreement to the PPA. The Respondent No. 1 has also proposed a meeting once the Petitioner submits the heads of the terms for the supplementary agreement. The answering respondent has written to the Petitioner to discuss the heads of terms of the proposed supplementary agreement.
 - v. MPPMCL has also submitted that the Petitioner has failed to establish and fulfill the grounds of Section 142 read with Section 146 of the Electricity Act and therefore, the present petition does not warrant any indulgence of this Commission. In any event, pursuant to the issuance of the Request Letter dated 10.05.2023 by Respondent No. 1, the present petition has become infructuous and is therefore liable to be dismissed.
22. By affidavit dated 20.05.2023, the petitioner has filed rejoinder to the reply filed by the Respondents. With regard to issue of invoking the jurisdiction of the Commission under Section 142 read with Section 146 of the Electricity Act, 2003. the petitioner has submitted that it can be easily ascertained that the Respondent has clearly caused deliberate and wilful violation of the directions passed by this Commission vide its order dated 25.08.2022. Despite the passage of the said order, the Respondent has failed to comply with the directions contained thereunder, viz. the execution of the SPPA factoring in the provisions of MPEGC, as well as the DOP, in respect of the compensatory mechanism for operating the plant at a part load capacity, which unequivocally amounts to "deliberate" and "wilful" non-compliance/disobedience of the order dated 25.08.2022.

23. The petitioner further submitted that even prior to the filing of the Subject Petition and after the passage of the order dated 25.08.2022, the Petitioner had approached the Respondent No. 1 on multiple occasions, for the purposes of executing the SPPA. However, right from the inception, the execution of the SPPA was resisted by the Respondent No.1 on the pretext of pendency of Writ Petition bearing No. 4777 of 2021 wherein the provisions of CERC (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 challenged before the Hon'ble High Court of Delhi. The petitioner contended that even though the said stand was completely brushed aside by this Commission vide the order dated 25.08.2022, the Respondent continued to maintain the said frivolous stand even after the passage of the order dated 25.08.2022.
24. On perusal of the submissions of the parties, the Commission has observed the following:
- i. The Commission does not agree with the contention of the Respondents that the execution of SPPA was delayed due to proceedings for amendment of DOP being initiated by the Commission, thereafter a review petition was also filed by the Petitioner against the order dated 12.10.2022. The aforesaid amendment was made in DOP relaxing the condition of supplementary PPA in case of Reserved Shut Down (RSD) for generating stations, whose 100% installed capacity is not tied up with MPPMCL/Discoms of MP through a long term power purchase agreement and whose tariff for only partial/contracted capacity is determined/adopted by the Commission and thus aligned the provisions of the DOP issued under MPEGC with the DOP issued by the Central Commission under IEGC.
 - ii. In fact, the Review Petition filed by the Petitioner, which ultimately got decided on 21.04.2023, has no bearing on the subject matter of the present petition. The said Review Petition was filed seeking retrospective applicability of certain amendments related to RSD, carried out in the DOP.
 - iii. Further, the DOP for taking unit(s) under Reserved Shut Down (RSD) and Mechanism for Compensation for Degradation of Heat Rate, Aux. Compensation and Secondary Fuel Consumption, due to part load operation and Multiple Start/Stop of generating units was issued on 29.01.2020. After the issuance of DOP, parties were required to execute the SPPA for claiming compensation on part load operation. It is noted by the Commission that in spite continuous pursuance by the petitioner, the Respondent No. 1 even after lapse of more than four years' time is yet to execute SPPA.
 - iv. The Commission has also observed that during the proceeding of petition No. 26 of 2022, MPPMCL had submitted that the compensation mechanism provided by MPEGC and DOP share its genesis from the amendments of IEGC and the same

was challenged in the High Court of Delhi by them and is pending adjudication. On account of this MPPMCL expressed inability to execute SPPA during the proceeding in petition No. 26 of 2022. On the other hand, stand adopted by the MPPMCL vide the letter dated 10.05.2023 is contrary to its earlier stand of pendency of Writ Petition, challenging the provisions of Fourth Amendment to IEGC Regulations before the Hon'ble High Court of Delhi.

- v. The Commission has also taken a note that the Hon'ble Supreme Court in its judgement dated 20.04.2023 in Civil Appeal No. 11095 of 2018 in the matter of GMR Warora Energy Limited V/s CERC & Ors., asked the Union of India to evolve mechanism through Ministry of Power to avoid unnecessary and unwarranted litigations, the cost of which is also passed on to the ultimate consumer. In view of the aforesaid judgment, the Commission appreciates the need to curb penchant of Discoms for unwarranted litigations and would not hesitate in taking stringent measures in exercise of its powers.

25. Let us now look into the relevant provisions under Madhya Pradesh Electricity Grid Code, 2019 and corresponding Detailed Operating Procedures issued by the Commission and which are relevant to the subject matter:

- (i) This Commission notified Madhya Pradesh Electricity Grid Code (MPEGC) 2019 on 21.06.2019, Regarding the technical minimum schedule and claiming compensation, Regulation 8.8 (4) of the Madhya Pradesh Electricity Grid Code, 2019 provides as under:

*“ In case of generating stations other than SSGS, wherein the 100% installed capacity is not tied up with MPPMCL/ Discoms of MP through a long term power purchase agreement or whose tariff for only partial/contracted capacity is determined by the Commission, such generating station / company may have **to appropriately factor in the above provisions in the PPAs** entered into by it with M.P. Power Management Company/ Discoms for sale of power, in order to claim compensations for operating at the technical minimum schedule.”*

- (ii) Further, Regulation 8.8(6) of the MPEGC, 2019 provides as under:

“SLDC shall prepare a ‘Detailed Operating Procedure’ in consultation with the generators and beneficiaries at OCC forums within 3 months’ time and submit to the Commission for approval. The Detailed Operating Procedure shall contain the role of different agencies, data requirements, procedure for taking the units under reserve shut down and the methodology for identifying the

generating stations or units thereof to be backed down up to the technical minimum in specific Grid conditions such as low system demand, Regulation of Power Supply and incidence of high renewable etc., based on merit order stacking.

- (iii) Vide order dated 29.01. 2020, this Commission issued Detailed Operating Procedure (DOP) for taking unit(s) under Reserved Shut Down and Mechanism for Compensation for Degradation of Heat Rate, Aux. Compensation and Secondary Fuel Consumption, due to part load operation and Multiple Start/Stop of generating units. Regarding applicability for the aforesaid compensation, the following is mentioned in Appendix II of the aforesaid Detailed Operating Procedure:

*“This Compensation Mechanism is applicable to Coal based State Generating Stations, having 100% installed capacity tied up with MP Power Management Co. Ltd. whose tariff is determined or adopted by the MPERC. In case of generating stations other than SSGS, wherein 100% installed capacity is not tied up with MPPMCL through a long term power purchase agreement or whose tariff for only partial/contracted capacity is determined/adopted by the Commission, such generating station/ company **shall have to appropriately factor in the provisions in the PPAs entered into by it with MPPMCL for sale of power, in order to claim compensations for part load operation and multiple start/stop under RSD.**”*

26. The question that needs to be examined in this order is whether the execution supplementary PPA was to be done in the time bound manner or not. The Commission has noted that the provisions of executing supplementary PPA are provided in MP Electricity Grid Code and the DOP issued by the Commission and the same are in line with the IEGC and DOP issued by the Central Commission. No discretion is provided in respect of execution of supplementary PPA in MPEGC and the detailed operating procedure issued by the Commission. The compensation mechanism has been brought in to compensate a generator to cover financial loss on account of degradation in Station Heat Rate, Auxiliary Consumption and Secondary Fuel Oil Consumption due to partial load operation of plant resulting from schedule given by procurer.
27. Under Regulation 8.8 of MP Electricity Grid Code, 2019, there is no requirement of execution of such supplementary agreement for compensation to be claimed by State Sector Generating Station (SSGS) wherein 100% capacity tied up with MPPMCL. However, generating stations other than SSGS and wherein 100% installed capacity is not tied up with MPPMCL or whose tariff is determined by Commission only for partial/ contracted

capacity, have to appropriately factor in the provision in PPA for compensation mechanisms as per provision under Appendix II of DOP issued by this Commission. In the aforesaid provision, it is abundantly clear that there is no scope for not entering into such PPA without which this process cannot be agreed to. Even if original PPA did not have these provisions, such provisions have to be incorporated in accordance with the aforesaid provisions under MP Electricity Grid Code and DOP issued by this Commission.

28. While issuances of order dated 25.08.2022 in petition No. 26 of 2022, the Commission did not give time lines for execution of supplementary agreement, because already there was agreement between two parties. The Commission had therefore never envisaged a situation where the Respondent No. 1 will deny execution of SPPA and will not comply the provisions of the MPEGC and DOP issued by the Commission. Here it also pertinent to mention that the Judgement passed by Hon'ble Supreme Court dated 15.02.2010 in the matter of PTC India Ltd. V/s CERC has ruled as following:

59. ii. A regulation under section 178, as a part of Regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations.

29. Therefore, considering the technical requirements and financial implication, the Commission is of the view that this matter cannot be left open ended any more. It is hereby directed that this particular provision of Supplementary Agreement to PPA deserves to be implemented in a time bound manner. In view of the foregoing, the Commission is of the view that a definite time limit be given in this matter. Therefore, a time of 30 days from the date of issue of this order is hereby given to the Respondents to implement directives given by the Commission in Petition No. 26 of 2022 vide order dated 25.08.2022. Secretary of the Commission is hereby directed to get the compliance report from the Respondent and in case of non-compliance of this order, initiate the proceedings of issue of show cause notice under Section 142 of the Electricity Act, 2003.

With the aforesaid observations and directions, the subject petition is disposed of.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman