

**Petition No. 25/2015 clubbed with**  
**Petition nos.32/2015, 39/2015,6/2015,19/2015**  
**40/2015,41/2015, 42/2015, 20/2015 and 45/2015**

**Sub: In the matter of petition under clause 9(O), 10(9) of the MP Vidyut Sudhar  
Adhiniyam, 2000 read with Section 86 for enforcement of provisions of various PPAs  
w.r.t. supply of wind electric energy to MPPMCL in terms of various tariff orders**

**ORDER**

(Date of order: 22<sup>nd</sup> September,2015)

- |  |     |                  |
|--|-----|------------------|
| M/s Medicell,<br>Shri Nidhi, 2236/7, Wright Town,<br>Near Prem Mandir,Jabalpur-482 002   | -   | Petitioner No.1  |
| M/s Giriraj Enterprises,<br>Malpani House, I.G. Road,<br>Sangamner, District Ahmednagar (M.S.)- 422605                                       | -   | Petitioner No.2  |
| M/s Eastman International Ltd.,<br>B-XXX-2185/C-203/1,<br>Phase-VIII, Focal Point,Ludhiana- 141 010  | -   | Petitioner No.3  |
| M/s Maxwell Inc.,<br>B-XXX-2185/C-203/1,<br>Phase-VIII, Focal Point,Ludhiana- 141010   | -   | Petitioner No.4  |
| M/s Rita International<br>B-XXX-2185/C-203/1,<br>Phase-VIII, Focal Point,Ludhiana - 141 010  | -   | Petitioner No.5  |
| M/s Eastman International<br>B-XXX-2185/C-203/1,<br>Phase-VIII, Focal Point,Ludhiana - 141 010   | -   | Petitioner No.6  |
| M/s Magma Fincorp Limited<br>Magma House,24, Park Street,Kolkata – 700016  | -   | Petitioner No.7  |
| M/s Sterling Agro Industries Ltd.,<br>11 <sup>th</sup> Floor, Aggarwal Cyber Plaza-II,<br>Netaji Subhash Place, Pitampura, New Delhi- 110034 | -   | Petitioner No.8  |
| M/s Ruchi Infrastructure Ltd.,<br>301, Mahakosh House, 7/5, South Tukoganj, Indore-452001  | -   | Petitioner No.9  |
| M/s Ruchi Soya Industries Ltd.,<br>301, Mahakosh House, 7/5, South Tukoganj, Indore-452001   | -   | Petitioner No.10 |
|  | V/s |                  |
| M.P. Power Management Co. Ltd.,<br>Shakti Bhawan, Rampur, Jabalpur- 482 008  | -   | Respondent No.1  |
| M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd.,<br>GPH Compound, Polo Ground,Indore- 452 003   | -   | Respondent No.2  |

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Shri B.K.Dubey, Advocate appeared on behalf of the petitioner no. 1 to 7.  
Shri Manoj Dubey, Advisor (Law) appeared on behalf of the respondent no. 1.  
None appeared on behalf of the respondent no. 2.

2. All these petitions have been filed by various Wind Energy Generators seeking directions from the Commission under clause 9(O), 10(9) of the MP Vidyut Sudhar Adhiniyam, 2000 read with Section 86 of the Electricity Act, 2003 for enforcement of the provisions of various PPAs w.r.t. the supply of wind electric energy to MPPMCL in terms of various tariff orders.

3. The petitioners have mainly prayed that the respondent no.1 may be directed to pay the:

- (i) outstanding dues of the petitioners' firm on account of the bills raised for the electricity supplied.
- (ii) interest on the outstanding amount on account of delay in making payment in terms of the various PPAs/tariff orders.
- (iii) penal interest for the interest on delayed payment.

4. The cases pertaining to the petitioner nos. 1 to 7 were last heard on 08.09.2015. During the hearing on 08.09.2015, the respondent no. 1 filed written submissions in all the cases separately and submitted that it is very difficult to give a time bound payment commitment. However, during the hearing he stated that by the end of this calendar year the payments to the petitioners shall be made with negligible balance. During the hearing, Counsel for the petitioners stated that as the respondent no.1 is agreed to make payment of bills along with surcharge, the Commission may pass appropriate orders. The petitioner nos. 8 was last heard on 23.06.2015 and the petitioner nos. 19/2015 & 20/2015 were last heard on 21.07.2015 and the orders were kept reserved.

5. In the written submissions, the respondent no.1 stated as under:

- (i) The bills raised by the petitioners were not disputed by the respondent no.1. The petitioners have approached the Commission without serving a clear 15 days' notice under DEFAULTS AND TERMINATION to the respondent no.1. Therefore, the petition is not maintainable under Section 86(1)(f) of the Electricity Act, 2003.
- (ii) The schedule of payments to be made in future is not submitted prior to final adjudication of the petitions, as it will amount to final disposal of the cases on admission of the respondent no.1 without considering the merit of the cases.

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- (iii) The issue of making payments is purely a contractual issue and not regulated in any manner.
- (iv) The quantum of supply of wind power is most uncertain and does not follow a pre-estimated pattern in the State and accordingly the amount of bills raised is uncertain. Even, the sale of power by the respondent, in the State, keeps varying and so is revenue collection. Thus, it is very difficult to give a time bound payment commitment.
- (v) The amount of Renewable Energy Power Purchase Cost admitted by the Commission in its tariff order for FY 2015-16 rests on liquidity of the respondent no.1.
- (vi) The respondent no.1 is sanguine that the outstanding amount may turn negligible or nil, hopefully, by the end of this calendar year.

6. Having heard the Counsels for the petitioners and the respondent no. 1 and on considering their written submissions, the Commission is of the view that:

- (i) The issues raised by all the ten petitioners are similar i.e. the payments are not being made by the respondent no.1 timely in terms of the provisions of the tariff order and the PPAs executed with the petitioners by the respondent no.1. It would, therefore, be appropriate to club the petitions nos. 6/2015, 19/2015 and 20/2015 with aforesaid seven petitions and a common order for all the ten petitions may be issued.
- (ii) In its order, in case of Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd.(2008) 4 SCC 755, Hon'ble Supreme Court held that *"all disputes, and not merely those pertaining to matters referred to in clauses (a) to (e) and (g) to (k) in Section 86(1), between the licensee and generating companies can only be resolved by the Commission or an arbitrator appointed by it. This is because there is no restriction in Section 86(1)(f) about the nature of dispute."*

In view of the aforesaid judgment of Hon'ble Supreme Court, the petition is maintainable under Section 86(1)(f) of the Electricity Act, 2003.

- (iii) The contents of the respondent no.1 are not tenable. The respondent no. 1 is not making payment of the bills submitted by the petitioner timely. Therefore, the cash flow of the generators shall be affected, which will ultimately

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deterrent to the promotion of generation of electricity from renewable sources of energy and thereby affects the discharge of functions by the Commission under Section 86 (1)(e) of the Electricity Act, 2003. The Commission has noted that the respondent no.1 is not disputing the bills raised by the petitioner which means the respondent no.1 is accepting the claims of the petitioner and on the other hand the legitimate payments are not being made to the petitioner timely as per the provisions of the tariff order/PPAs, which gives rise to a dispute between the petitioner and the respondent no.1. Therefore, the petition is maintainable simultaneously under Section 86(1)(e) and 86(1)(f) of the Electricity Act, 2003.

- (iv) The respondent no.1 is not disputing the bills but holding the payment of the outstanding bills of the petitioner for months together on the pretext of liquidity problem. This prompted the petitioner to file a petition. As already mentioned at para (a) above, the adjudication upon the matter by the Commission is lawful.
- (v) In the tariff order, the Commission incorporated the “default provisions for third party sale or sale to utility” which is not meant for use under the aforesaid circumstances of holding of legitimate dues of the WEGs who are not having any other arrangements of third party sale. The contention of the respondent no.1 is, therefore, misconceived. The Commission also noted that the respondent no.1 is not following the payment mechanism incorporated in the PPAs/tariff order in true sense.
- (vi) The respondent no.1 could not submit the details of pending bills and payment made in respect of various WEGs along with reasons of non-payment which can substantiate that the payments were being made to WEGs chronologically and on “First in-First out” basis. By resolving the aforesaid matter of these petitions, the onus of maintaining day-to-day liquidity of the respondent no.1 would not be shifted to the Commission, but the difficulties encountered by the WEGs in getting timely payment as per the provisions of the tariff order/PPAs would be removed. This would also generate confidence amongst the developers for installation of projects for generation of power from renewable sources of energy in Madhya Pradesh as envisaged under Section 86(1)(e) of the Electricity Act, 2003.
- (vii) Despite the directions issued by the Commission, the schedule of payment has not been filed by the respondent no.1.

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7. Under the aforesaid circumstances, the Commission directs the respondent no.1 to make payment to all the ten petitioners in terms of the provisions of the PPAs/tariff orders by 31.12.2015.

With the above direction, the petition nos. 25/2015, 32/2015, 39/2015, 6/2015, 19/2015, 40/2015, 41/2015, 42/2015, 20/2015 and 45/2015 stand disposed of.

Ordered accordingly.

**(Alok Gupta)**  
**Member**

**(A.B.Bajpai)**  
**Member**

**(Dr. Dev Raj Birdi)**  
**Chairman**