

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 101 of 2018**

**In the matter of**

**Petition of M/s Shalimar Hotel Pvt. Ltd under Section 86(1) (f) of Electricity Act 2003  
for adjudication of dispute on the issue of payment of interest on delayed payment by  
MSEDCL.**

**Coram**

**Shri. Anand B. Kulkarni, Chairperson  
Shri. Mukesh Khullar, Member**

M/s Shalimar Hotel Pvt. Ltd ..... Petitioner  
V/s  
Maharashtra State Electricity Distribution Company Limited (MSEDCL)..... Respondents

**Appearance**

For the Petitioner : Shri. N. M. Kumar, (Rep.)  
For MSEDCL : Shri. Ashish Singh, (Adv.)  
  
For Authorized Consumer Representative : None

**ORDER**

**Date: 28 September, 2018**

1. M/s Shalimar Hotel Pvt. Ltd (SHPL) is a Private Limited company incorporated under the provisions of the Companies Act, 1956 having its registered office at August Kranti Marg, Mumbai 400036. and is a generating company as defined in Section 2(28) of the Electricity Act, 2003, having established and operating one Wind generating unit of capacity of 0.80 MW (1x 0.8 MW machine) at Bardewadi, Gudhe Panchgani, Taluka-Shirala, Dist- Sangli in the State of Maharashtra. SHPL has filed its Petition on 15 March, 2018 under Section 86 (1) (f) of Electricity Act, 2003 ( EA, 2003)
2. The prayers of SHPL are as under-
  - i. *Direct the Respondent to pay the principal and delayed payment surcharge payable to the Petitioner in terms of the PPA and remit an amount of Rs.6,136,582 towards bills raised and submitted for generation up to January*

*2018 and Rs.1,093,627 towards the delayed payment surcharge for the payments received up to March 2017 billings from SE Sangli as per the Statements attached in Annexure "C" to the Petition;*

- ii. Direct the Respondents to pay carrying cost at the rate of 15% per annum of the delay in payment of the late payment surcharge by the Respondent;*
- iii. Direct the Respondents to remit the amounts due and payable on time in terms of the PPA;*
- iv. Direct the Respondent to pay the costs of the present petition; and*
- v. Pass such other further order(s) as the Hon'ble Commission may deem just in the facts of the present case.*

**3. SHPL in its Petition has stated as follows:**

- i) SHPL has filed present petition for adjudication of disputes by the Commission for payment of interest on the delayed payment of Power Purchase cost on the Wind Power supplied it to MSEDCL.
  - ii) It is a Private Limited company incorporated under the provisions of the Companies Act, 1956 having its registered office at August Kranti Marg, Mumbai 400036.
  - iii) It is a generating company as defined in Section 2(28) of the Electricity Act, 2003, having established and operating one Wind generating unit of capacity of 0.80 MW(1x0.8MW) at Bardewadi, GudhePanchgani, Tq.Shirala, Distt Sangli, Maharashtra. The Wind turbine generator is connected to Bambarwadi feeder I of 33 – 132 KV substation of MSEDCL and joint meter readings are taken monthly & it raise consolidated monthly invoices on the Paying authority SE, Sangli.
  - iv) From the above generating station, SHPL is supplying electricity to MSEDCL. For the said purpose, SHPL and MSEDCL have entered into a Power Purchase Agreement (PPA) providing for the terms and conditions for supply of electricity. The tariff for such supply is as determined by the Commission.
- 4. The PPA, inter-alia, provided for the terms under Article 12 on which the invoices are to be raised, the tariff applicable, the period within which the invoices are to be cleared and the consequences of delay in payment by MSEDCL. The PPA, inter-alia, provides as under with regard to the payments of invoices raised and late payment surcharge:**

*ARTICLE – 12:- BILLING AND ENERGY ACCOUNTING*  
*Section 12.01 Monthly Energy Bills:*

*The Seller shall raise a monthly energy bill based on the Joint meter readings no later than 15 days after the end of each calendar month. The Seller will send to MSEDCL by hand delivery / courier, the monthly energy bill showing all billing parameters, rates and factors, and any other data reasonable pertinent to the calculation of monthly payments to the Seller in the format set out in Exhibit "G"*

#### *Section 12.02 Payments*

*The due date of payment shall be 45 days from receipt of the Seller's monthly energy bills by the MSEDCL and will be paid by account payee's cheque in the name of Seller or authorized representative, in whose name power of attorney is given by the Seller. In case of delay in payment beyond the due date, the Seller shall be entitled to charge interest on such delayed payment at the rate of 2% per annum above the State Bank of India short term lending rates. The MSEDCL, however, shall be entitled to make adjustments in the Seller's Invoices for any charges/ costs incurred on behalf of the Seller and payable by the Seller under this agreement. This shall be shown in the audited statement issued by the MSEDCL*

#### *Section 12.03 Billing and Payment Records:*

*The Billing and Payment records shall be maintained by the Seller for the reconciliation by the Corporate Office of MSEDCL bi annually.*

5. In terms of the above, the payments were required to be made by MSEDCL within 45 days from receipt of the Seller's monthly energy bills, failing which the Seller shall be entitled to charge late payment surcharge at the rate of 2% per annum above the State Bank of India's short-term lending rates.
6. The electricity was supplied by SHPL to MSEDCL in terms of the Agreements between the parties. Bills were raised by it for the electricity supplied at the tariff rate as provided for in the Agreement. However, there have been substantial delays in the payments to be made by MSEDCL on the invoices raised by SHPL. The delays are varying from 3 days to up to 300 days and beyond the due date for payments. Thus, MSEDCL was liable to pay overdue interest at the rate of 2% per annum above the State Bank of India's short-term lending rates for the delay in the payment, as per the terms of the Agreement between the parties.
7. There are substantial amounts of interest on account of delayed payment are due. Principal amount pending is Rs. 6,136,582 (bills raised and submitted for generation up to January 2018) and Rs.1,093,627 towards the delayed payment surcharge for the payments received up to March 2017 billings (except the payment for the month of February 2017 amounting to Rs.2,12,738) from MSEDCL. The last payment received by SHPL in January 2018 for the billing month of March 2017. Since it has not received payments for the bills raised post March 2017 and February 2017, the late payment interest and interest on delayed payment of overdue interest have not been calculated on those bills. In addition, on many occasions there are delays in the issue of JMRs and added /contributed to the delayed raising of the invoices by SHPL.

8. SHPL has been continuously following up with MSEDCL in relation to the amounts due and payable. There are seven reminder letters written by it reminding for the payment of overdue interest to MSEDCL starting from dated 13 April, 2016 till dated 22 December, 2017 and on 3 March, 2018 but there is no response.
9. There has however been no response on behalf of MSEDCL to the above communications sent by SHPL. Superintending Engineer (SE) Sangli vide letters dated 1 March, 2016 and dated 28, September, 2016 had requested SHPL not to claim the interest amount. SHPL replied vide letter dated 4 November, 2016 expressing his inability to waive off the interest with reasons. There has been no reply from MSEDCL.
10. SHPL owns and operates wind generating units, which are Renewable Energy and are to be promoted and incentivized under the provisions of the Electricity Act, 2003 the Regulations framed there under and as per the orders passed by the Commission from time to time. One of the primary requirements of Renewable energy projects to operate in a sustained and viable manner is payment discipline to be maintained by the utilities and not to delay the payments to be made. The delays while increasing the burden on the interest burden on the utility results in substantial cash flow problems to SHPL.
11. In the present case, the PPA already provides for the due date to be 45 days upon the receipt of the invoices, which is very liberal compared to other States where it is in the region of 30 days or less. Despite such liberal provisions, MSEDCL invariably delay in the payment of invoices, resulting in substantial loss and prejudice to SHPL. Further, MSEDCL did not also paid the interest amounts due and payable in terms of the PPA.
12. In the present case, an amount of Rs.1,093,627 from SE Sangli as on 1 March, 2016 is due and payable by MSEDCL towards overdue interest, which it has failed to pay. In the circumstances mentioned above and as there are substantial amounts due and payable by MSEDCL to M/s Shalimar Hotel Pvt. Ltd and MSEDCL not paying the same, it has been constrained to file the present petition before the Commission.
13. MSEDCL is further liable to compensate SHPL before the delay in payment of the late payment surcharge. MSEDCL being required to pay the delayed payment surcharge for payment of the Principal amount, ought to pay the interest/carrying cost till the time the amounts due and payable are fully paid to SHPL
14. The amounts due and payable to SHPL cannot be disputed and is clearly in terms of the agreement between the parties. MSEDCL has also not disputed the liability to pay the delayed payment surcharge to MSEDCL, but have only failed to pay the same.
15. SHPL draws attention of the Commission to the order of APTEL in Appeal No. 1 of 2010 Dated: 1st October, 2010 by MSEDCL versus MERC and others upholding the Commission's order dated 12/09/2006 in Case No. 10 of 2006 on interest payment

beyond 45 days after the receipt of the invoices and even penalized MSEDCL by levying an exemplary cost.

The relevant portion of the APTEL order is reproduced as under:

9. On 24.11.2003, the State Commission passed the detailed tariff order for Wind Power Generation. Through this order it was directed that the Developer shall raise monthly energy bill based on the joint meter reading (JMR) taken by the Developer and the State Electricity Board and the due date for payment shall be within 45 days from the date of the bill and in case of delay the Developer shall be entitled to interest on delayed payment at the rate of 2% above the SBI short-term lending rate.

10. On 03.05.2006, the Renewable Energy Developers Association, Respondent-2 herein, filed an application before the State Commission seeking for direction for the implementation of the order of the State Commission dated 24.11.2003. In this application, on 12.09.2006, the State Commission passed order directing the Appellant namely, the successor of the Electricity Board to pay interest on delayed payment within one month of the date of the order to Wind Developers having any type of valid NOC for the period since the date of commissioning of the project.

11. This order was challenged by the Appellant before the Tribunal in Appeal No. 15 of 2007. On 05.02.2008, the Tribunal dismissed the Appeal observing that the Appellant is liable to pay interest and there was no reason as to why the Appellant should not pay interest from the date when the payment becomes due. Even then, these orders have not been complied with.

12. Hence, on 16.01.2009, the Renewable Energy Developers Association (R-2) filed Application before the State Commission seeking for implementation of the orders of the State Commission dated, 24.11.2003, 12.09.2006 and the order of the Tribunal dated 05.02.2008 contending and complaining that the Appellant had not made payments from the time the energy is fed into the grid and for this the distribution company, the Appellant has stopped accepting the invoices. In the reply to this Application, the Appellant contended that it had made payment only to the Wind Energy Developers who had raised invoices based on the joint meter reading; they have not received the bills from the Developers, therefore, the liability of the Appellant for making payment to other developers would not arise till they receive the bills or invoices from them.

13. The State Commission ultimately, by the impugned order dated 17.08.2009, has held that wherever invoices have not been issued after joint meter reading, 30 days from the joint meter reading would be deemed to be the date of the bill and the last due date of payment by the Appellant would be 45 days thereafter and for payment beyond 45 days, interest would become due. By this order, the State Commission directed the Appellant to pay joint meter reading amount as well as penal interest to the developers even without issuance of the bill. Aggrieved by this order, the Appellant has filed this Appeal.....

### 37. SUMMARY OF OUR FINDINGS

(iv) *It is specifically stated by the Respondent Association that*

.....  
*day from the Joint Meter Reading would be taken to be date of the bill and as such the due date of payment by the Appellant would be 45 days thereafter and for payment beyond 45 days interest would become due. This conclusion, in our view, is correct. Under these circumstances, the State Commission in the impugned order dated 17.09.2009 has held in giving a practical solution*

*“wherever invoices have not been issued, the 30<sup>th</sup> day from the Joint Meter Reading would be taken to be date of the bill and as such the due date of payment by the Appellant would be 45 days thereafter and for payment beyond 45 days interest would become due. This conclusion, in our view, is correct.*

**38. CONCLUSIONS:**

*In view of our findings, as referred to above, we conclude that the Appeal has no merit and the same is liable to be dismissed and accordingly dismissed.*

From these judgments it is apparent the overdue interest payment by MSEDCL is payable and mandatory.

**16.** Further, in the latest combined order dated 17 January, 2018 the Commission in case No. 73, 74 and 78 of 2017 passed the following judgment reading:

*“14. All the EPAs have standard Clauses requiring MSEDCL to pay DPC for delay in paying the principal amounts (at 2% per annum above the SBI short-term lending rate beyond 60 days in some, and at 1.25% per month after 45 days in others). These Clauses are based on the Commission’s first Wind Energy Order dated 18 September, 2003 in Case Nos. 3, etc. of 2002 and subsequent Orders, the relevant Regulations, and other dispensations from time to time. While some specifics may differ, such provisions for delayed payments are not peculiar to Wind EPAs, and are also specified in the Commission’s Multi-Year Tariff Regulations, RE Tariff Regulations and Open Access Regulations.*

*15. In general, DPC is in the nature of a surcharge for default in making timely payments. While delay in making payments impacts the concerned Generators, the DPC liability also affects MSEDCL since it cannot pass it on to its consumers because it arises out of a default in duly making payments. The financial difficulties cited by MSEDCL are extraneous to its contractual obligation to pay Generators in time, along with DPC to the extent of any delay.*

*16. This is the settled position in law, and the Petitioners have cited various rulings in this regard. In its Order dated 10 August, 2016 in Case No. 150 of 2015 in the Hindustan Zinc matter (which has been appealed against by MSEDCL but admittedly not stayed by the APTEL), in its Order dated 16 March, 2017 in Case No. 53 and other Cases of 2016 and also more recently in its Order dated 16 May, 2017 in Case Nos. 157 and 166 of 2016 and 18 of 2017, the Commission has held similarly about the payment of principal amounts and*



*DPC. The principle of DPC has also been upheld by the APTEL in Appeal Nos. 15 of 2007, 148 of 2009, 1 of 2010 and 11 of 2012 – all concerning payments for the energy sold by Wind Energy Generators in Maharashtra to MSEDCL – which have been quoted by the Commission in its earlier Orders.*

*17. In view of the foregoing, the Commission expects MSEDCL to pay the outstanding principal amounts due to the Petitioners expeditiously. In the meantime, in line with its Order in Case No. 150 of 2015 and its more recent Orders dated 16 March and 16 May, 2017, the Commission directs MSEDCL to pay the outstanding DPC amounts within 30 days. Thereafter, interest will accrue at 1.25% per month on any DPC amount remaining to be paid.*

*18. SPAD and KEC have stated that, in some recent months, MSEDCL had not issued GCNs, without which they could not even raise invoices for the energy injected. In the recent proceedings of Case No. 60 of 2017, MSEDCL had explained that it was putting in place an automated ERP system which took time to become fully operational but could not explain why it did not issue the GCNs manually in the meantime as in the past.*

*19. In the context of delays in the issue of GCNs as a result of which Wind Energy Generators could not raise bills, the Commission in its Order dated 17 August, 2009 in Case No 148 of 2008 had ruled as follows:*

*“15. ...For cases, where bills have been raised after Joint Meter Reading (“JMR”), there cannot be any ambiguity. For delayed payments beyond 45 days from the date of the bill, MSEDCL is liable to pay interest. For cases, where JMR has been taken but no bill has been raised for whatever reasons, the submissions made by the Petitioner are that the payment becomes due to Wind Farm Developers from the time when the energy is fed into the grid, which is however not tenable as a bill or a claim has to be preferred for payment. It is alleged that MSEDCL stopped accepting invoices from the Wind Farm Developers, and/or MSEDCL insisted on quarterly invoices.*

*...the Commission... rules that as a practical and reasonable solution, wherever invoices have not been issued/ accepted, 30 days from JMR would be deemed to be the date of “bill” and last due date of payment by MSEDCL would be 45 days thereafter and for payments beyond 45 days, interest would become due.”*

**17.** The proceedings of the hearing held on 20 June, 2018 are summarized as follows:

- i. The Representative of SHPL stated that it has raised invoices on account of energy supplied to MSEDCL for last 17 months, however since February, 2017 payments have not been made by MSEDCL. Also, there is over 300 days of delay for making payments beyond due date. Hence MSEDCL is liable to pay Delay Payment Charges (DPC) and interest on DPC. Further, it has to bear the labour charges and maintenance cost to operate the project for which timely revenue from the project is required, hence the Commission is requested to direct

MSEDCL to make the payment on account of principal and DPC amount expeditiously.

- ii. The Advocate of MSEDCL has stated that the Commission has observed the above issue in similar matter and directed MSEDCL in recent Daily Orders dated 17 and 18 June, 2018 under Case Nos. 128,134 of 2018 and 28 of 2018, respectively.
- iii. The Commission expressed its concern for pending dues and in order to avoid more financial burden due to DPC and interest on DPC, the Commission once again hereby directs MSEDCL to work out a time bound mechanism to clear outstanding claims in consultation with the generators, and submit it to the Commission within 6 to 8 weeks.

**18.** SHPL subsequently submitted its additional submission on 27 June,2018 in which it states as follows:

- i. The case was heard on 20<sup>th</sup> June 2018. MSEDCL had not submitted any written submission copy to the Petitioner. During the hearing responding to the Commission's query the lawyer for MSEDCL replied that the utility is facing financial difficulties due to revenue collection shortfall and the said shortfall gets covered in ARR or true up exercise by the Commission. The true up exercise is conducted after annual statutory audit of financial statements of MSEDCL. Considering the time required for annual statutory audit and regulatory process of the Commission, the true up exercise gets completed only after about 18 months from the approval of ARR, This results in inability in meeting the payment obligations. The Petitioner has countered this as the payments are delayed for the last three years and above. As on date it is more than sixteen months the sale invoices are pending amounting to Rs. 63,57,865/- Statement Enclosed.
- ii. The Petitioner also informs overdue payment surcharge for payments received up to January 2017 is also pending amounting to Rs. 15,95,534/- . with interest on the same.
- iii. Since it has not received payments for the bills raised post February 2017, the late payment interest and interest on delayed payment of overdue interest have not been calculated on those invoices. Post receipt of payments, the amounts can be crystallized and demanded.
- iv. Petitioner had invested in these windfarms and operates wind generating units, which are renewable energy and are to be promoted and incentivized under the provisions of the Electricity Act, 2003, the Regulations framed thereunder and as per the orders passed by the Commission from time to time, One of the primary requirements of renewable energy projects to operate in a sustained and viable manner is payment discipline to be maintained by the utilities and not to delay the payments to be made. The delays while increasing the burden on the promoter



leaves disturbed cash flows on his business. The Petitioner had invested for making profits by getting a return on the invested capital. The delayed payments by MSEDCL for the purchase of power results in delayed payments of the EMI, labor payments, WTGs maintenance charges, duties and payments of investors. The Petitioner cannot sustain for such prolonged delays in realizing the sale proceeds resulting in substantial losses and prejudice to the Petitioner.

v. The Petitioner submits and prays that the Commission may direct

- a) MSEDCL to pay the principal and delayed payment surcharge payable to the Petitioner in terms of the PPA and remit an amount of Rs. 79,53,399/- towards bills raised and submitted for generation up to May 2018 with delayed payment surcharge and interest on the delayed payment surcharge as per the settled position of the law as in the Hon. Commission's orders and Hon APTEL's judgements supra.
- b) Direct MSEDCL to continue to make timely payments for the future invoices as per PPA's and as per the directions in case No. 102 and 103 of 2018.
- c) Direct MSEDCLs to pay carrying cost at the rate of 15% per annum of the delay in payment of the late payment surcharge by MSEDCL;
- d) Direct MSEDCL to pay the costs of the present petition; and
- e) Pass such other further order(S) as the Hon'ble Commission may deem just in the facts of the present case.

19. As directed by the Commission in its Daily Order dated 20 June, 2018, MSEDCL has submitted its reply vide letter dated 12 September, 2018 wherein it has stated as follows:

- 1) In respect of Case Nos 28, 101, 128 and 134 of 2018 the Commission has directed to submit mechanism to clear outstanding claims. The commission has ruled as below:

*"The Commission expressed its concern for pending dues and in order to avoid more financial burden due to DPC and interest on DPC, the Commission once again hereby directs MSEDCL to work out a time bound mechanism to clear outstanding claims in consultation with generators, and submit it to the Commission within 06 to 08 weeks."*

- 2) In this regard, it is proposed to bring following facts to the notice of the Commission by way of following submission:

i) Presently, MSEDCL is facing severe cash-flow issues as the tariff hike approved by the Commission is much lower than the required tariff hike. This is mainly due to disallowance in various components of ARR such as AG Sales. Further, the tariff for FY 16-17 came into effect from 1 November 2016 instead of 1 April 2016. Actual growth in sales in subsidizing categories (e.g. HT Industrial and Commercial) was much less than that approved by the

Commission resulting into revenue gap. The Commission, preemptively considered sharing of Gains/Losses in the approved MYT Order instead at the time of true up as specified in MYT regulations , which resulted into loss of revenue to MSEDCL.

- ii) MSEDCL as an entity takes utmost care to adhere to EPA terms and conditions approved by the Commission. However, inadvertent delays in payments to some generators are attributable to circumstances which are beyond the reasonable control of MSEDCL.
- iii) MSEDCL has filed the MTR petition wherein the Commission's approval is requested for revenue Gap for various years as below:

<b>Particulars</b>	<b>Rs in Crs</b>
True up requirement for F.Y. 15-16	5546
True up requirement for F.Y. 16-17	6704
Revenue Gap for 17-18	5420
<b>Total</b>	<b>17670</b>

- 3) Considering the time period involved in approval for final true up activities of the respective years, MSEDCL has been deprived off the revenue in the respective years against which MSEDCL has already incurred expenditure in those years. This results in mismatch in revenue and expenditure thereby increasing the working capital requirement. In such situation MSEDCL has to borrow loan from Financial Institutions Banks, wherein interest is also a necessary component which in turn MSEDCL does not get pass through in ARR. These conditions are beyond the reasonable control of MSEDCL. The Commission has not been approving the expenditure incurred on interest on working capital loan which ultimately has impacted in further reduction of internal cash available.
- 4) The Commission has suo-motto disallowed sale of agriculture in 14-15 & 15-16 by 2414 & 3399 units thereby penalizing Rs. 935 & 2286 crores which has become revenue gap and cannot be met unless either the Commission allow that as per our request in MTR. This gap certainly hurts our capacity to meet the payment obligations.
- 5) Delay in payment to generators is on account of the difficulties mentioned above; however, such delayed payment is neither intentional nor deliberate. Notwithstanding several constraints brought out above, MSEDCL has already initiated steps to clear the outstanding dues of wind generators in a phased manner. Efforts are being made to pay the dues of wind generators from both, revenue cash inflows as well as by availing some Short/Medium term loan. Out of total outstanding amount of wind generators of Rs.2235.03 Crs., MSEDCL has paid Rs.300 Crs by the end of August 2018. Further outstanding amount to the tune of Rs.1591.96 Crs. corresponding to generation up to September 2017 is being planned for payment upto the end of December-2018. Regarding the dues relating to generation upto March-2018 amounting to Rs. 577.65 Crs, our endeavor would be to clear the same upto end of March-2019.

It is requested to consider the submission & placed before the Commission.

### **Commission's Analysis and Rulings**

- 20. SHPL has filed the present Petition against MSEDCL for outstanding payments of Power Purchases, interest on the delayed payments and carrying cost on the late payment surcharge for the Wind Power supplied from SHPL to MSEDCL.**
- 21. Some Wind Energy Generators in the past had approached the Commission for prolonged non-payment and/or late payment of principal amounts for the supply of energy as well as the Delayed Payment Charge (DPC) for such delayed payments by MSEDCL under the EPAs for their Wind Energy Projects. The Commission had issued a common Order on these Petitions in Case Nos. 53, 62, 68, 74, 75, 79, 135, 136 and 144 of 2016 and Miscellaneous Application No 22 of 2016 in Case No 53 of 2016 dated 16 March, 2017. In that Order, the Commission directed MSEDCL as follows:**

*“54. In view of the foregoing, the Commission expects MSEDCL to pay the principal amounts due to the Petitioners expeditiously. In the meantime, in line with its Order in Case No. 150 of 2015, the Commission directs MSEDCL to pay the DPC amounts due within 30 days. Thereafter, interest will accrue at 1.25% per month on any DPC amount remaining to be paid. In the case of those Petitioners who are also consumers of MSEDCL, these amounts could also be adjusted against their consumer energy bills.”*

- 22. Subsequently, more recently in its Combined Order dated 16 May, 2017 in Case Nos. 157 and 166 of 2016 and 18 of 2017, the Commission has held similarly about the payment of principal amounts and DPC.**
- 23. Aggrieved by the Commission's Combined Order in Case Nos. 53, 62, 68, 74, 75, 79, 135, 136 and 144 of 2016 and Miscellaneous Application No 22 of 2016 in Case No 53 of 2016 dated 16 March, 2017, MSEDCL has challenged the Commission's Order in APTEL. Recently APTEL in its various Judgments dated 7 May, 2018 has disposed off the Cases regarding outstanding payment, delay payment surcharge of Wind Generators in terms of the Judgment of APTEL dated 24 April, 2018 passed in Appeal No 75 of 2017. In these Judgment of APTEL, the Order passed by the Commission in Case No. 150 of 2015 of M/s Hindustan Zink Limited was upheld. The Commission in that Case No. 150 of 2017 had ruled as follows:**

*“In view of the foregoing, the Commission directs MSEDCL to pay the late payment surcharge due to HZL as per Section 11.04 of the EPA within 30 days. Thereafter, interest will be payable to HZL at 1.25% per month on any surcharge amount remaining to be paid”.*

- 24. Further, the Commission notes that the MSEDCL has requested Petitioner to waive off the interest on delay payment. The request of MSEDCL was not accepted by the Petitioner. All the EPAs have standard Clauses requiring MSEDCL to pay DPC for delay in paying the principal amounts (at 2% per annum above the SBI short-term**

lending rate beyond 60 days in some, and at 1.25% per month after 45 days in others). In general, DPC is in the nature of a surcharge for default in making timely payments. These Clauses are based on the Commission's first Wind Energy Order dated 18 September, 2003 in Case Nos. 3, etc. of 2002 and subsequent Orders, the relevant Regulations, and other dispensations from time to time. While some specifics may differ, such provisions for delayed payments are not peculiar to Wind EPAs, and are also specified in the Commission's Multi-Year Tariff Regulations, RE Tariff Regulations and Open Access Regulations.

25. The Commission in its Daily Order dated 20 June, 2018 in the instant Petition , Daily Order dated 17 June, 2018 in Case Nos 128 & 134 of 2018 and Daily Order dated 18 June, 2018 in Case No. 28 of 2018 directed MSEDCL to work out the time bound mechanism to clear the outstanding claims in consultation with the generators. Accordingly MSEDCL (in its plan submitted vide its letter dated 12 September, 2018) has stated that out of total outstanding amount of wind generators of Rs.2235.03 Crore, it has paid Rs. 300 Crore by the end of August 2018. Further outstanding amount to the tune of Rs.1591.96 Crore corresponding to generation up to September 2017 is being planned for payment upto the end of December 2018. Regarding the dues relating to generation upto March-2018 amounting to Rs. 577.65 Crore, would be released by end of March-2019. The Commission has noted the plan chalked out by MSEDCL to release the outstanding amount by end March, 2019.
26. In order to sort out the issues/differences once for all, the Commission directs the parties involved from both the sides in all the present Cases to sit together and reconcile the statement of account within two weeks from the date of this Order and a conciliation Report be submitted to the Commission within two days thereafter. The Commission recognizes the fact that MSEDCL in compliance with the Commission's earlier directions has worked out a time bound mechanism as specified in para 25 of this Order, in order to clear the outstanding claims of all the Wind generators. The Commission expects the plan to be adhered to in a very just and fair manner to cover all the Wind generators irrespective of the fact whether they have petitioned or otherwise. Hence the Commission is not limiting the time period of making payment of DPC within 30 days as directed in its earlier Orders as cited in para 21 and 22 of this Order. Further, the Commission notes that the plan is based on objective criteria for clearing outstanding dues in a sequence among concerned wind energy generators. The Commission directs MSEDCL to strictly adhere to the plan as submitted to the Commission in its true letter and spirit and release the amount to the Wind generators without any deviation in chronological order. At the time of reconciliation, MSEDCL shall inform the Petitioner the exact time limit in which the payment would be made to wind generator for its outstanding dues of principal and DPC amount. Further, MSEDCL should note that if it deviated from its commitment given in the plan,

interest will be payable thereafter (beyond the date committed in the plan) at 1.25 % per month on any DPC.

Hence the following Order:

### **ORDER**

1. MSEDCL is directed to release the agreed/admitted payments to the Petitioner on account of the principal amount and towards interest on the principal amount (i.e. DPC) as per the plan submitted to the Commission. Reconciliation shall be completed within two weeks from the date of this Order and a reconciled Report of outstanding dues shall be submitted to the Commission within two days thereafter. Further, MSEDCL should note that if it deviated from its commitment given in the plan, penal interest will accrue thereafter (beyond the date committed in the plan) at 1.25% per month on any DPC. MSEDCL is directed to submit its Compliance Report as cited earlier in this Order to the Office of the Commission.
2. Petitioner request regarding waiver of Petition fee is rejected. Parties to bear their own cost of Petitions.

The Petition of M/s Shalimar Hotel Pvt. Ltd in Case No.101 of 2018 stands disposed of accordingly.

Sd/-  
(MukeshKhullar)  
Member

Sd/-  
(Anand B. Kulkarni)  
Chairperson

  
(Abhijit Deshpande)  
Secretary

