

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 12th Day of March 2024

PRESENT:

Thiru M.Chandrasekar Chairman
Thiru K.Venkatesan Member
and
Thiru B.Mohan Member (Legal)

D.R.P. No. 18 of 2021

M/s. Amarjothi Spinning Mills Ltd.
Pudusuraipalayam
Nambiyur – 638 458
Gobi Taluk, Erode District
Repd. by its
Authorized Signatory R. Jaichander

... Petitioner
Thiru R.S. Pandiyaraj
Advocate for the Petitioner

Vs.

1. Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO),
Represented by its Chairman & Managing Director
10th Floor, 144, Anna Salai,
Chennai – 600 002.
2. Director Finance
Tamil Nadu Generation and Distribution Corporation Limited
144, Anna Salai,
Chennai – 600 002.
3. Superintending Engineer
Theni Electricity Distribution Circle
TANGEDCO, Theni.

.... Respondents
Thiru.N.Kumanan and
Thiru.A.P.Venkatachalapathy,
Standing Counsel for TANGEDCO

This Miscellaneous Petition stands preferred by the Petitioner M/s. Amarjothi Spinning Mills Ltd., Erode with a prayer to pass an order directing the Respondents to forthwith make payment of a sum of Rs.47,83,750/- being the sum due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and such further *pendent lite* interest as this Tribunal may deem fit from the date of filing till the date of realization and to direct the respondents to bear the costs of the instant petition including court fees and legal expenses and make payment of the said sum to the petitioner.

This matter coming up for final hearing before the Commission on 23-01-2024 in the presence of Thiru R.S.Pandiyaraj, Advocate for the Petitioner and Thiru.N.Kumanan and A.P.Venkatachalapathy, Standing counsel for the Respondents and upon hearing the submission made by the counsel for the petitioner and the respondents, on perusal of the material records and relevant provisions of law and having stood up for consideration till this date, this Commission passes the following

ORDER

1. Contentions of the Petitioner :-

1.1. The present petition is being filed seeking for payments due to the petitioner under the Wind Energy Purchase Agreements it has entered into with the Respondent TANGEDCO. The belated payment to the petitioner is all the more objectionable since not only have payments been effected after years of invoices being raised, even when

such payments are effected, they are not paid with the interest in terms of the Tariff Order and applicable terms of the EPA. By inordinately delaying such payments the Respondents have pushed the petitioner to financial distress by not only withholding payments under EPAs for years together but also not paying interest for the belated payments despite an express clause to the effect in the EPA.

1.2. The standard methodology now being employed by the Respondent is to delay payment of invoices to renewable Energy generators for years together and then force them to give rebates against Invoices as a pre-condition to release payments and also seek for express undertakings seeking waiver of interest claims or agreeing for 50% rebate on interest. Such actions are contrary to the express regulatory scheme and contrary to the binding judgment of the Hon'ble Supreme Court where TANGEDCO was a party. The Hon'ble Supreme Court has held that obtaining rebates against payments was contrary to express terms of the EPA and is impermissible. It has therefore become necessary to approach this Commission to seek payments that have become due on an urgent basis and to seek enforcement of such payments

1.3. The Petitioner owns Wind Mill bearing WEG No. T24, T26, T87, T88 and T25 within the jurisdiction of the 3rd respondent and producing electricity for the purpose of Sale to Board. The Petitioner owns windmills at feasible locations and accordingly, the wind power is sold at the rate of Rs.3.39/- per unit to the 1st Respondent in accordance with the Energy Purchase Agreement executed between the Officers of 2nd Respondent, in pursuance of the orders in force as issued by this Commission towards the same.

1.4. The Petitioner has entered into Energy Purchase Agreements with the Respondents, for sale of electricity generated under preferential Tariff Regime / REC Regime. The EPAs contain interest payment clauses. Even without an interest clause, it has been held that as regards the WEGs Commissioned under the preferential tariff regime by virtue of the judgment of the Hon'ble APTEL in Chairman, TNEB & Another V. Indian Wind Power Association and others in Appeal No.11 of 2012 dated 17-04-2012 which was upheld by the Hon'ble Supreme Court in C.A.No.2397 of 2014, interest was fixed at 10% per annum.

1.5. In Tariff Order No.1 of 2009 issued by the Commission, there is a specific instruction of interest payment. Para 8.11.1. of the Tariff Order deals with billing and payment and is extracted hereunder:

"8.11.1. When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month."

1.6. In light of the specific provision contained in Tariff Order No.1 of 2009 which is applicable to all WEGs commissioned after 19.09.2008, interest is payable for delay in payments. The specific interest payment clause in its EPA reads as under:-

Clause 6(a) The Wind Energy Generator shall raise a bill every month for the net energy sold after deducting charges for startup power and reactive power.

Clause 6(b) The Distribution Licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.

The Petitioner is entitled to interest on all delayed payments on all WEGs for which EPA has been entered into by the Petitioner with the Respondent. The petitioner has raised invoices for power supplied from its WEGs on a monthly basis as per the terms of the EPA.

1.7. Thus the following principles/directives apply for interest with respect to the type of Agreement and date of Commissioning.

a. Tariff Order No.1 of 2009 issued by the Commission, contains a specific inclusion of interest payment.

i. Para 8.11.1. of the Tariff Order deals with billing and payment. It is as follows:-

"8.11.1. When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month."

Thus, all generators who have WEGs covered by the 2009 Tariff Order will be entitled to claim interest at 1% per month upon pending invoice amounts beyond 30 days from the receipt of the bill by TANGEDCO (as opposed to 12%p.a.- the rate is a monthly 1% rate under the Tariff order and not an annual rate.)

1.8. The power generated by the WEGs, details of which have been set forth in this petition, is being sold to TANGEDCO under the respective EPAs. The petitioner has been raising Invoices from time to time in accordance with the contracts and Tariff Orders. However, for the past few years, the payments that have been received from

TANGEDCO are being consistently delayed. Even when payments are made belatedly, they are being made without any interest for such delay. Such non-payment of interest is a denial of a valuable right conferred by specific Tariff Orders and the judgment of the Hon'ble APTEL.

1.9. It has become necessary to set out the entire regime to highlight the injustice being meted out to the generators and the Respondent is taking advantage of the inability of the affected parties from approaching the Commission due to the high fees of 1% of the amount in dispute that has been fixed. TANGEDCO is also benefiting from the non-awarding of costs and the non-awarding of *pendente lite* interest. The petitioner is therefore seeking for such relief specifically in order that there is a disincentive imposed upon the Respondents from delaying payments and effecting payments to their favoured generators. Unless the Commission exercises its full powers and put the Respondents to terms, the said illegal actions by the Respondent would continue to be resorted to.

1.10. The Electricity Act, 2003, the National Electricity Policy, the National Action Plan on Climate Change (NAPCC) are unanimous in their need to encourage development of Non-conventional energy.

1.11. However, the TANGEDCO has delayed these payments for one year to almost three years consistently. Despite the substantial delay, TANGEDCO has not made any payment of interest on delayed payments contrary to the provisions of the Tariff Order and the terms of the binding contract.

1.12. At this juncture, it is pertinent to note that the Hon'ble Appellate Tribunal for Electricity has upheld the rationale behind incorporating interest / surcharge clauses in power purchase agreements in the case of Chairman, TNEB & Another V. Indian Wind Power Association and Others in Appeal No.11 of 2012 dated 17.04.2012. The relevant paragraphs are extracted hereunder:

"13. It is settled law, when a certain time limit has been prescribed within which payments have to be made, it would mean that any payments made after the said time period would be subject to payment of interest as indicated above.

17. In any power project, one of the important aspects is the promptitude in payment since the delays would seriously affect the viability of the project. All these projects are substantially funded through finances obtained from various funding organizations which require regular repayment of principal loan amount with interest by the generators. Only if regular payments are made for the power generated and supplied, the loans can be serviced along with the promised return of investment."

1.13. In the case of TANGEDCO v PPN Power Generation Co Ltd., Civil Appeal No. 4126 of 2013, the Hon'ble Supreme Court of India has enunciated the rationale behind incorporating interest clauses in agreements in the following manner:

"We are also not able to accept the submission of Mr. Nariman that invoices could not be paid in full as they were only estimated invoices. It is true that reconciliation is to be done annually but the payment is to be made on monthly basis. This cannot even be disputed by the appellant in the face of its claim for rebate at the rate of 2.5% for having made part payment of the invoice amount within 5 days. We also do not find any merit in the submission that any prejudice has been caused to the appellant by the delayed submission of annual invoice by the respondents. Pursuant to the directions issued by the State Commission, the monthly invoice and annual invoice for the respective years have been redrawn as on 30th September each year. Therefore, the benefit of interest has been given on such annual invoices. With regard to the issue raised about the interest on late

payment, APTEL has considered the entire matter and come to the conclusion that interest is payable on compound rate basis in terms of Article 10.6 of the PPA. In coming to the aforesaid conclusion, APTEL has relied on a judgment of this Court in *Central Bank of India vs. Ravindra & Ors.* In this judgment it has been held as follows:

“..... The essence of interest in the opinion of Lord Wright, in *Riches v. Westminster Bank Ltd.* All ER at p. 472 is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or, conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation; the money due to the creditor was not paid, or, in other words, was withheld from him by the debtor after the time when payment should have been made, in breach of his legal rights, and interest was a compensation whether the compensation was liquidated under an agreement or statute. A Division Bench of the High Court of Punjab 2002 (1) SCC 367 speaking through Tek Chand, J. in *CIT v. Dr. Sham Lal Narula* thus articulated the concept of interest. The words 'interest' and 'compensation' are sometimes used interchangeably and on other occasions they have distinct connotation. 'Interest' in general terms is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another. In its narrow sense, 'interest' is understood to mean the amount which one has contracted to pay for use of borrowed money.

..... In whatever category 'interest' in a particular case may be put, it is a consideration paid either for the use of money or for forbearance in demanding it, after it has fallen due, and thus, it is a charge for the use or forbearance of money. In this sense, it is a compensation allowed by law or fixed by parties, or permitted by custom or usage, for use of money, belonging to another, or for the delay in paying money after it has become payable."

56. Similar observations have been made by this Court in *Indian Council of Enviro-Legal Action vs. Union of India & Ors.* wherein it has been held as follows:

"178. To do complete justice, prevent wrongs, remove incentive for wrongdoing or delay, and to implement in practical terms the concepts of time value of money, restitution and unjust enrichment noted above-or to simply levelise-a convenient approach is calculating interest. But here interest has to be calculated on

compound basis-and not simple-for the latter leaves much uncalled for benefits in the hands of the wrongdoer.

179. Further, a related concept of inflation is also to be kept in mind and the concept of compound interest takes into account, by reason of prevailing rates, both these factors i.e. use of the money and the inflationary trends, as the market forces and predictions work out.

180. Some of our statute law provide only for simple interest and not compound interest. In those situations, the courts are helpless and it is a matter of law reform which the Law Commission must take note and more so, because the serious effect it has on the administration of justice. However, the power of the Court to order compound interest by way of restitution is not fettered in any way. We request the Law Commission to consider and recommend necessary amendments in relevant laws.

57. The late payment clause only captures the principle that a person denied the benefit of money, that ought to have been paid on due dates should get compensated on the same basis as his bank would charge him for funds lent together with a deterrent of 0.5% in order to prevent delays. It is submitted by Mr.Salve and Mr. Bhushan that bankers of the respondents have applied quarterly compounding or monthly compounding for cash credits during different periods on the basis of RBI norms. Article 10.6 of the PPA has followed the norms of the bank. This cannot be said to be unfair as the same principle would also apply to the Appellants"

1.14. The judgment of Central Bank of India vs. Ravindra & Ors would also apply and when the Invoice payments were made belatedly, at the time of effecting payment the interest not having been paid, the said sum became due and payable. Such sum having crystallized would continue to carry interest.

1.15. Furthermore, the Hon'ble Appellate Tribunal for Electricity in cases such as - (1) Jaipur Vidyut Nigam Limited vs. Rajasthan Electricity Regulatory Commission [(2019) SCC Online APTEL 98] and (2) Maharashtra State Electricity Distribution Co Ltd. vs.

Maharashtra Electricity Regulatory Commission &Anr. [(2018) SCC Online APTEL 38] has settled the law regarding mandatory payment of Late Payment Surcharge in the event of delay in payment of admitted outstanding dues by the Distribution Licensee to a Generating Company.

1.16. In view of the above, in cases such as the Petitioner's, where there is a specific provision in the EPA enjoining upon the Respondent TANGEDCO, the duty to pay interest for delayed honouring of invoices, TANGEDCO ought to be held liable to make good the claim for the same, otherwise it would render the whole purpose of incorporating such clauses hollow and meaningless.

1.17. Further, it is now apparent that the Respondent TANGEDCO deliberately delays payments to RE Generators who are always paid after conventional generators since the RE Generators are smaller players and cannot easily file recovery proceedings due to the costs involved. Further, as would be seen from their past conduct, the TANGEDCO after withholding payments, on the verge of the proceedings before the Commission would belatedly offer 6% interest and delay payments of even such interest payment. It is thus necessary that such conduct detrimental to the interest of the generators and which is in the teeth of the regulator's directives be curbed and put an end to. Thus, the petitioner is seeking for award of costs of the litigation including court-fees since the petitioner is forced to approach the Commission due to the deliberate disobedience to pay admitted dues. The status of the petitioner is all the more pitiable since it is a REC generator and is already being compensated by the Respondent for the electricity

purchased at a very low rate. Therefore, to be not paid even this low rate on time is wholly arbitrary and unexpected of a State controlled body such as the Respondent.

1.18. The Petitioner has raised invoices for power supplied on a monthly basis as per the terms of the EPA. However, the Respondent has failed to pay the invoice amounts within the agreed timelines thereby incurring liability to the interest on such belated payments where payments have been effected. The petitioner reserves its rights to enforce payments for the sums due under regular invoices should there be any further delay. Despite the substantial delay, TANGEDCO has, till date, not made any payment of the interest on delayed payments. The petitioner is filing the present claim only for interest. .

1.19. The default on part of the respondents to make payment for electricity supplied as per the terms of the agreement has made it difficult for the Petitioner to meet its commitments.

1.20. Further, the Commission vide order dated 25.03.2019, in the case of Century Flours Mills v TANGEDCO in D.R.P.No. 21 of 2013 has stated that the TANGEDCO is liable to make payment of interest on delayed payments at 12% per annum in the following manner:

"From the above, it is clear that the petitioner is entitled for an interest of 1 % per month i.e. 12% per annum for any delayed payment beyond 30 days. As such claim of the petitioner for interest at 12% as mentioned in Annexure "A" to the petition is correct. In view of the above, the petition is allowed. The respondents are directed to make the payments claimed by the petitioner after duly verifying the calculation within three months from the date of this order."

1.21. As is evident TANGEDCO is due and liable to pay to the petitioner a sum of Rs.4783750/- towards interest on delayed payments in respect of WEGs.

1.22. The substantial delay in making payments by the respondent has caused severe difficulties for the petitioner in meeting the financial obligations towards Banks and Financial institutions. The interest on delayed payments being much lower than the payments, the petitioner has to make to its Banks/Financial institutions under the term loans. The delay in payments by TANGEDCO has also hampered the petitioner's capacity to carry on its business.

1.23. The petitioner was initially attracted to the State of Tamil Nadu because of its geographical location which greatly favours wind energy generation and also by the policies of the State of Tamil Nadu and the respondent which was supportive of wind energy generation including the single window clearance system for establishing wind energy generation units. However, the failure of TANGEDCO to make payments promptly as per terms of the energy purchase agreements has adversely affected the petitioner's financial position and strained its finances. The current attitude of TANGEDCO not only affects the petitioner but would also have long term negative impact on the viability of the State of Tamil Nadu as the most favoured destination for investment in Renewable Energy, particularly Wind Energy Projects.

1.24. As per the Hon'ble Supreme Court order, the petitioner is eligible to claim interest @10% for the delayed payment but the petitioner agreed only for lesser interest rate of 6% from respondent. Unfortunately, till now there is no response from the respondent.

Hence the petitioner is filing the present petition seeking @10% as per the Supreme Court order.

1.25. The instant petition has been filed within the period of limitation as there has been no dispute raised. The EPA between the parties specifically contemplates amicable resolution and unfortunately, though the Respondent has never disputed the claims, it has not amicably resolved the issue, resulting in the petitioner having to file the present petition.

2. Contention of the Third Respondent, Theni Electricity Distribution Circle:-

2.1. The petitioner has raised invoices for power supplied from its WEG on a monthly basis as per the terms of the Power Purchase Agreement. The petitioner received payments against invoice GA1-T-24, GA1-T-25, GA1-T-26, WEG T-87, WEG T-88 for the period from July-2010 to December-2013. However, these payments have been delayed by as much as one year or more. Despite the substantial delay, TANGEDCO has not included interest on delayed payments.

2.2. The petitioner seeks directions to forthwith make the payment of a sum of Rs.28,70,249/- (Rupees Twenty eight lakhs seventy thousand two hundred and forty nine only) towards interest for delayed payment for the period of July-2010 to December-2013, in compliance with the order dated 08-07-2016 passed in Civil Appeal No.2937 of 2014 by the Hon'ble Supreme Court of India.

2.3. The details of the wind mills are set out below:-

Old No.	New No.	Capacity	Make	SF. No.	Village	Taluk	Date of WEG Commissioning
GA1-T24	05922476 0024	850 KW	Gamesa	83/3(P), 4 (P)	Jangalpatti	Theni	20-08-2010
GA1-T25	05922476 0025	850 KW	Gamesa	123/3B (P), 123/1B (P)	Govindanag aram	Theni	20-08-2010
GAI-T26	05922476 0026	850 KW	Gamesa	159/1A, 159/1B (P)	Govindanag aram	Theni	20-08-2010
WEG T-87	05922476 0272	850 KW	Gamesa	648/3C (P), 3B(P)	Vallalnathi	Theni	11-06-2010
WEG T-88	05922476 0273	850 KW	Gamesa	282/3 (P), 6(P)	Govinda nagaram	Theni	11-06-2010

2.4. The Commission issued Comprehensive Tariff order on wind energy (Order No.1 of 2009 dated 20.03.2009) wherein the relevant portion is extracted as follows:-

"8.11 Billing and Payment

8.11.1. When a wind generator sells power to the distribution license, the generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and reactive power. The Distribution license shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month".

From the above, it could be observed that when wind energy generator sells power to the distribution licensee, the generator shall raise a bill for the net energy sold. The distribution license shall make payment to the generator within 30 days of receipt of

the bill in accordance with Tariff Order No.1 of 2009 dated 20.03.2009. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month.

2.5. The Commission issued Comprehensive Tariff order on Wind energy (Order No.3 of 2016 dated 31.03.2016) wherein relevant portion is extracted as follows.

"9.3 Billing and Payment

9.3.1. When a wind generator sells power to the distribution license, the generator shall raise the bill every month for the net energy sold after deducting the charges for power drawn from distribution license reactive power charges etc. The distribution license shall make payment to the generator in 60 days of receipt of the bill. Any delayed payment beyond 60 days is liable for interest at the rate of 1% per month."

From the above, it could be observed that wind energy generator sells power to the distribution licensee. The generator shall raise the bill for the net energy sold. The distribution license shall make payment to the generator within 60 days of receipt of the bill in accordance with Tariff Order No. 3 of 2016 dated 31.03.2016. Any delayed payment beyond 60 days is liable for interest at the rate of 1% per month.

2.6. Due to shortage of power existing in Tamil Nadu, TANGEDCO has to purchase power at higher rate from other sources, which leads to facing critical financial crises and further not able to make payment within the time limit prescribed.

2.7. The following abstract shows sale to Board energy details:-

WEG No.	Invoice Amount	Interest
GAI-T-24	17066396	631172
GAI-T-25	7252620	448562

GAI-T-26	6789323	419604
WEG-T-87	16959842	630925
WEG-T-88	19876607	739986
Total	67944788	2870249

2.8. The monthly fund inflow of TANGEDCO through revenue from sale of power to its consumers is around Rs.3200 Crores and tariff subsidy from Government of Tamil Nadu is around Rs.600 Crores per month.

The monthly fund outflow towards the revenue expenditure is as below:

1. Payment for procuring fuel - Rs.300 Crores
2. Transportation of fuel - Rs.300 Crores
3. Payment to power suppliers, both CGS and Private generators
Rs.2000 Crores.
4. Payment to Central and State Transmission Utilities - Rs.300 Crores.
5. Employees cost including pension - Rs.650 Crores
6. Repairs, Maintenance and administrative expenses - Rs.100 Crores.
7. Interest and finance charges - Rs.1000 Crores.
8. Repayment of loan by TANGEDCO - Rs.500 Crores.

For all the above expenditures, the total outflow is around Rs.5150 Crores. There is an average shortfall of about Rs.1360 Crores. Some payments are postponed and made as and when loans are received from REC/PFC/IREDA and other financial institutions.

2.9. In the above circumstances, releasing of huge payments to wind generators will be a difficult one. However efforts are being taken for releasing payments for one or two months. And moreover, paying or adjustment of interest due every month will affect the cash inflow of TANGEDCO and payment of surcharge before payment of the dues will

not be a correct one under accounting principles. During the month of March 2020, wind mill payments for the period from September 2017 to March 2018 have been released.

2.10. Due to Covid-19 pandemic, the revenue collections to TANGEDCO has also gone down and with great hardship TANGEDCO is maintaining the payment of 50% to the Thermal generators under LTOA, MTOA and STOA for the months from March 2020 to June 2020. The GoI has announced a financial assistance package to a tune of Rs.90,000 crores through REC & PFC and TANGEDCO has also requested assistance to tune of Rs.32000 crores through GoTN. On receipt of the financial assistance, the pending energy bills, POC bills and bills on late payment surcharge will be cleared.

2.11. Regarding interest on delayed payment in respect some wind generators, TANGEDCO has consented before the Commission for payment of 50% of the surcharge as eligible under the PPA. Payment is being made towards interest at 50% to those who have filed DRP and also agreed for 50% waiver. Due to Covid-19 pandemic, as the cash inflow of TANGEDCO has considerably reduced, there is some delay in making the payments. However action is being taken to clear the dues at the earliest.

2.12. In the meantime, interest on delayed payment is the additional burden which has to be faced by the TNEB. The Commission confirmed the interest payment vide its order dated 17.04.2011 passed in MP No.36 of 2010 held that the TNEB is liable to pay interest at the rate of 1% per month to the Generators on the delayed payment. The order passed by the Commission was challenged by TANGEDCO before the Hon'ble Appellate Tribunal for Electricity (Hon'ble APTEL). The Hon'ble APTEL vide its judgment

dated 17.04.2012 in Appeal No.11 of 2012 dismissed the appeal. Again, the TNEB filed a Civil Appeal in C.A.No.2937 of 2014 before the Hon'ble Supreme Court of India which was also dismissed on 08.07.2016 holding "We see no reason to interfere with the award of simple interest at the rate of 10% per annum on the amount outstanding against the appeal and Electricity Board. The appeal is accordingly dismissed.

2.13. Based on the above Hon'ble Supreme Court order, the Generator has claimed a sum of Rs.28,70,249/- towards interest payable for the delayed payment made for the past period between July-2010 to December-2013

2.14. In order to overcome the financial crises of TANGEDCO, the generators who had been affected by delayed payments were personally requested to attend a negotiation meeting in the Chamber of the Director/ Finance/ TANGEDCO/Chennai 2. By expressing the financial position of TANGEDCO it was requested to waive the interest fully. Most of the generators accepted for receiving 50% of interest in installments.

2.15. Despite severe financial constraints faced by the TANGEDCO, sincere efforts are being made in clearing the pending bills of the wind energy generators as per seniority.

2.16. If the Commission directs the TANGEDCO to forthwith make payment of a sum of Rs.28,70,249/- (Rupees Twenty eight lakhs seventy thousand two hundred and forty nine only) to the payment for the past period from 10-08-2020 to 30-09-2021, it will adversely affect the fund flow of the respondents. Further, similarly placed generators may also seek the same and it will lead to multiplicity of litigations. This may lead to

difficulty in releasing payment for Coal companies, Central Generating Plants, Other fuel suppliers and power generators similar to the petitioner.

2.17. TANGEDCO a Corporate company, being owned by the Government of Tamil Nadu and is catering to the need of the general public at large. It would be put into irreparable losses grave prejudice, undue hardship and financial losses. In fact, such losses will be passing through in the future tariffs which have to be passed on the end-consumers affecting public interest. In any case, for the sake of a company, public authorities and the general public should not suffer financially.

2.18. The petitioner is claiming the interest for delayed payments from 2011 to 2014. As per the Limitation Act 1963, the claim by the Generator is to be made within 3 years from the date of commencement of dues. But the Generator is claiming the interest beyond the period of 3 years.

3. Rejoinder filed by the Petitioner:-

3.1. The present D.R.P.No.18 of 2021 has been filed praying to direct the 1st to 3rd Respondents to pay a sum of Rs.47,83,750/- as interest @10% under the Power Purchase Agreements entered into with Respondent TANGEDCO for the sale of power generated by the Petitioner's WEGs No. GA1-T-24, GA-T-25, GA1-T-26, T-87 & T-88, towards the delayed payments from July 2010 - December 2013 based on the orders passed by the Commission in M.P. No 36 of 2010 dated 17.04 2011 which was confirmed by the Hon'ble APTEL in Appeal No 11 of 2012 dated 17.04.2012 and

confirmed by the Hon'ble Supreme Court in C.A. No.2397 of 2014 dated 08.07.2016 finally fixing interest @ 10% p.a. The Hon'ble Supreme Court once again confirmed the Interest payment in CFC Vs Gangadhar Narasinghadas Agarwal in Review Petition (Civil) 1606 of 2018 in Appeal No.5456 of 2014 dated 16.08.2018.

3.2. There is always exorbitant delay on the part of TANGEDCO to make payment for the Wind Energy supplied by the Wind Energy Generators such as the Petitioner in the State of Tamil Nadu. Even the payments made after prolonged delays are made without any interest which is guaranteed under the various Wind Tariff Orders issued by the Commission from time to time and EPAs between the Petitioner and the Respondent TANGEDCO at 12% per annum. The 3rd Respondent himself has admitted in para 3 of the counter that for the invoices raised by the Petitioner towards the wind energy supplied from the Petitioner's WEGs GA1-T-24, GA-T-25, GA1-T-26, T-87 & T-88, coming under the jurisdiction of the 3rd Respondent, on monthly basis as per the terms of EPAs from July 2010 to December 2013, payments have been delayed by more than one year. The 3rd Respondent has also admitted that such delayed payments were made without any interest. The Respondent TANGEDCO was in the habit of denying payment of interest for such delayed payments to all the WEGs, including the Petitioner, by citing the pending litigations from time to time before the Commission in M.P.No.36 of 2010 and thereafter before the Hon'ble APTEL in Appeal No.11 of 2012 and thereafter before the Hon'ble Supreme Court in C.A. No. 2397 of 2014 in the matter of payment of interest on delayed payments to WEGs.

3.3. Once the legal battle on issue of payment of interest on the delayed payment was finally settled by the Hon'ble Supreme Court in C.A. No. 2397 of 2014 dated 0707.2016 at 10% p.a. (instead of 12% p a. as per the Tariff Order and EPA), the Petitioner approached the 2nd Respondent for settlement of interest at 10% for the delayed payment July 2010 to December 2013 for their WEGs No.GA1-T-24, GA-T-25, GA1-T-26, T-87 & T-88 along with other WEGs which are detailed in the following paragraphs of this rejoinder. The 2nd Respondent requested the Petitioner to give an undertaking for settlement of interest at 6% instead of 10% due to their financial difficulties and the Petitioner also agreed to the same by its dated 17-10-2016 which was duly acknowledged by the Respondent TANGEDCO on 18.10.2016. However, no payments were made by the 2nd Respondent towards Interest at 6% i.e. Rs.28.70,249/-.

3.4. While the facts being so, as admitted in para 15 of the counter filed by the 3rd Respondent, the Petitioner along with similarly placed wind generators, who have been affected by the delayed payments, were personally requested to attend the negotiation meeting in the Chambers of the 2nd Respondent i.e., Director Finance / TANGEDCO on 20.02.2018. The Petitioner also attended the personal negotiation meeting with the 2nd Respondent on 20.02.2018 and accepted settlement of 6% interest vide its letter dated 20.02.2018 which has been duly acknowledged by the 2nd Respondent. In the negotiation meeting dated 20.02.2018, the Petitioner not only gave acceptance letter dated 20.02.2018 for 6% interest for WEGs GA1-T-24, GA-T-25, GA1-T-26, T-87 & T-88 but also gave similar 6% acceptance letters all dated 20.02.2018 (which have been

similarly acknowledged by the 2nd Respondent) for its other WEGs i.e., WEG Nos.823, 878, 969, 1108, 1117, 1118 & 1262 of Tirunelveli EDC and for its other group concerns i.e., Amarjothi Wind Farms WEG No.469 of Tirunelveli EDC and Amarjothi Power Generation & Distribution Co Ltd WEG Nos.467, 482 & 483 of Tirunelveli EDC. The details of the same are given below-

Details of the negotiation meeting on 20.02.2018 in the 2nd Respondent's Chamber

Sl. No	Name	WEG Nos.	EDC of the WEGs	Period of delayed payment	Amount @ 6% interest	Date of 6% letter with acknowledgment	Payment status
1	M/s. Amarjothi Spinning Mills (Petitioner)	GA1-T24 GA1-T25 GA1-T26 T-87& T-88	Theni EDC 3 rd Respondent	June 2010 to December 2013	Rs.2870250/-	20-02-2018 (acknowledged on 20-02-2018)	Pending
2	M/s. Amarjothi Spinning Mills	823, 878, 969, 1108, 1117, 1118, 1262	Tirunelveli EDC	April 2009 to March 2012	Rs.1214953/-	16-02-2018 (acknowledged on 20-02-2018)	Paid
3	M/s. Amarjothi Wind Farms	469	Tirunelveli EDC	April 2009 to August 2014	Rs.1074353/-	16-02-2018 (acknowledged on 20-02-2018)	Paid
4	M/s. Amarjothi Power	WEG Nos. 467,	Tirunelveli EDC	June 2009 to June	Rs.1584509/-	16-02-2018 (acknowledged on	Paid

	Generation & Distribution Co. Ltd.	482 & 483		2014		20-02-2018)	
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From the above it is clear that the Petitioner, in the negotiation meeting held in the Chambers of the 2nd Respondent on 20-02-2018, accepted and gave acceptance letters for 6% interest which were all acknowledged by the 2nd Respondent on 20.02.2018 for the present GA-1-T-24, GA-T-25, GA1-T-26, T-87 & T-88 coming under the 3rd Respondent, for its other WEG Nos. 823, 878, 969, 1108, 1117, 1118 & 1262 coming under Tirunelveli EDC, for its group concerns M/s. Amarjothi Wind Farms WEG No.469 coming under Tirunelveli EDC and M/s. Amarjothi Power Generation & Distribution Co Ltd WEG Nos.467, 482 & 483 coming under Tirunelveli EDC. This position has been admitted by the 3rd Respondent at para 12 to 15 of his counter. Based on such 6% interest acceptance letters, the 2nd Respondent has internally directed the 3rd Respondent and Tirunelveli EDC to release the payment at 6% as per the respective acceptance letters, all dated 20.02.2018. Accordingly, SE/Tirunelveli EDC has made payment of Rs.12,14,953/- towards delayed payment for the period April 2009 to March 2012 for the Petitioner's WEG Nos. 823, 878, 969, 1108, 1117, 1118 & 1262, a sum of Rs.10,74,353/- towards delayed payment for the period April 2009 to March 2012 for the Petitioner M/s. Amarjothi Wind Farm's WEG No. 469 and a sum of Rs.15,84,509/- towards delayed payment for the period June / 2009 to June / 2014 for the Petitioner M/s. Amarjothi Power Generation & Distribution Co Ltd.'s WEG Nos.467, 482 & 483

based on the Petitioner's 6% interest acceptance letters respectively. However, the 3rd Respondent alone has failed to make payment till date based on the Petitioner's 6% acceptance letter dated 20.02.2018 submitted before the 2nd Respondent during the negotiation meeting dated 20.02.2018. The Petitioner is given to understand that the 2nd Respondent has issued directions to the 3rd Respondent to release payment at 6% for a sum of Rs.28,70,250/- as per the Petitioner's 6% acceptance letter dated 20.02.2018 and the 3rd Respondent has, illegally & deliberately not made payment to the Petitioner till date. The action of the 3rd Respondent is illegal, arbitrary and highly contemptuous. When the Petitioner's other WEGs have been settled interest payment at 6% based on the negotiation with the 2nd Respondent on 20.02.2018, the action of the 3rd Respondent in denying interest payments to the Petitioner's WEG No. GA1-T-24, GA-T-25, GA1-T-26, T-87 & T-88 alone is violative of Article 14 of the Constitution of India and against the principles of natural justice and contrary to all canons of law.

3.5. The 3rd Respondent counter merely states about financial constraints faced by the Respondent TANGEDCO as a reason for denying interest payments to the Petitioner. Such a stand has already been rejected in and also contrary to orders passed by the Commission in M.P.No.36 of 2010 dated 17.04.2011 which was confirmed by the Hon'ble APTEL in Appeal No.11 of 2012 dated 17.04.2012 and confirmed by the Hon'ble Supreme Court in C.A. No.2397 of 2014 dated 08.07.2016 finally fixing interest @ 10% p.a. Further, the Commission in various similar interest claim petitions has held that financial difficulties cannot be allowed as a valid ground to avoid payment of interest

for delayed payments by TANGEDCO. Hence, such submissions are liable to be rejected

3.6. The 3rd Respondent, has relied on Limitation Act. 1963 and stated that the present claim of the Petitioner is beyond the period of 3 years from the date of commencement of liability. Such a stand of the 3rd Respondent is illegal, arbitrary and liable to be punished under Section 142 of the Electricity Act. In the present case, the Petitioner was requested to attend the negotiation meeting in the Chambers of the 2nd Respondent i.e., Director Finance/TANGEDCO on 20.02.2018 and accordingly the petitioner attended various meetings as stated supra.

3.7. Further in the present case the cause of action arose when the similarly placed other WEGs & group concerns have been settled interest payment at 6% based on the negotiation with the 2nd Respondent on 20.02.2018 by Tirunelveli EDC and the 3rd Respondent alone denies the interest payments to the Petitioner's for WEG No. GA1-T-24, GA-T-25, GA1-T-26, T-87 & T-88 which is clearly violative of Article 14 of the Constitution of India and against the principles of natural justice. Hence the respect stand on the Law of Limitation does not apply to the present case and is liable to be rejected.

3.8. The Hon'ble Supreme Court in the case of Samruddhi Cooperative Housing Society Ltd Vs Mumbai Mahalaxmi Construction P Ltd reported in (2022) 4 SCC 103 has held that in case of continuing breach of contract, a fresh period of limitation begins to run at every moment of time during which the breach continues. Hence the present case

falls squarely within the above proposition of law as laid down by the Hon'ble Supreme Court and hence deserves to be allowed.

4. Findings of the Commission:-

4.1. The petition has been filed to pass an order directing the respondents to forthwith make payment of a sum of Rs.47,83,750/- being the sum due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and such further *pendent lite* interest as this Commission may deem fit from the date of filing till the date of realization and to direct the respondents to bear the costs of the instant petition including court fees and legal expenses and make payment of the said sum to the petitioner.

4.2. Heard the counsel for the both sides. It is seen that except for stating that the financial position of TANGEDCO is not sound, no other factual reason has been given by TANGEDCO in its counter for not making the payment to the petitioner company. It is to be stated here that the financial difficulties cannot be a reason for denying payment to the generators, and hence the said reason given by TANGEDCO cannot be accepted.

4.3. Having said that, it is also to be observed here that the question as to whether interest is payable for delay in payment of dues, is no longer *res integra* and has been well settled by Hon'ble Supreme Court in C.A.No.2397 of 2014. Therefore there is also no doubt on the point that a generator is entitled to 10% interest for delay in payment.

4.4. In view of the fact that during the course of hearing on 11.01.2024 and 23.01.2024, a broad agreement was reached between the petitioner and the respondent

to settle the interest at 6% per annum with an initial payment of Rupees 18 Lakhs payable within 2 weeks and the remaining amount payable in 10 equal instalments, we find there is nothing further to adjudicate in the instant case.

4.5. In fine, this Commission doth order as hereunder:-

The 1st Respondent TANGEDCO shall settle the due of Rs.47,83,750/- claimed by the petitioner as per the following schedule:-

- (i) A sum of Rs.18,00,000/- (Eighteen Lakhs only) shall be paid by the 1st Respondent within two weeks from the date of this order.
- (ii) The balance amount shall be paid by the 1st Respondent in ten equal monthly instalments. The 1st instalment shall begin from the month of April 2024.

There will be no order as to cost. Petition ordered accordingly.

(Sd.....)
Member (Legal)

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**