

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**Order of the Commission dated this the 14<sup>th</sup> Day of May 2024**

**PRESENT:**

<b>Thiru M.Chandrasekar</b>		<b>.... Chairman</b>
<b>Thiru K.Venkatesan</b>		<b>.... Member</b>
	<b>and</b>	
<b>Thiru B.Mohan</b>		<b>.... Member (Legal)</b>

**D.R.P. No.11 of 2023**

M/s.G.R.Natarajan & Co.  
Represented by its Partner,  
Mr.N.Sairam,  
No.1, Jawaharla Nehru Street,  
T.Nagar, Chennai – 600 017.

**.... Petitioner**  
**Thiru Rahul Balaji**  
**Advocate for the Petitioner**

**Vs.**

1. Tamil Nadu Generation and Distribution Corporation Ltd, (TANGEDCO),  
10<sup>th</sup> Floor, 144, Anna Salai,  
Chennai – 600 002.
2. The Chief Financial Controller / Revenue,  
TANGEDCO,  
No.144, Anna Salai,  
Chennai – 600 002.
3. The Superintending Engineer,  
Tirunelveli Electricity Distribution Circle,  
TANGEDCO,  
Tirunelveli – 627 007.
4. The Superintending Engineer,  
Dindigul Electricity Distribution Circle,  
TANGEDCO,  
Tirunelveli – 624 002.

**.... Respondents**  
**Tvl. N.Kumanan and A.P.Venkatachalapathy,**  
**Standing Counsel for the Respondents**

This Miscellaneous Petition stands preferred by the Petitioner M/s.G.R.Natarajan & Co. with a prayer to-

- (i) pass an order directing the Respondents to forthwith make payment of a sum of Rs.9,71,825/- (Rupees Nine Lakhs Seventy One Thousand Eight Hundred and Twenty Five Only) being the interest due and payable to the petitioner as per the Order of the Hon'ble Supreme Court dated 08.07.2016 in C.A.No.2397 of 2014 and the Order of the Hon'ble Madras High Court dated 08.12.2021 in W.P. No. 22406 of 2017;
- (ii) pass an order directing the Respondents to forthwith make a payment of a sum of Rs.11,21,633/- (Rupees Eleven Lakhs Twenty One Thousand Six Hundred and Thirty Three Only) being the interest due and payable to the petitioner in respect of the invoice payments made from 12.03.2019 towards energy generated by its WEG No. D226;
- (iii) 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; and
- (iv) pass such further or other orders as the Commission may deem fit in the facts and circumstances of the case and thus render justice.

This petition having come up for final hearing on 02-01-2024 in the presence of Thiru Rahul Balaji, Advocate for the Petitioner and Tvl. N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the Respondents and on consideration of

the submission made by the Counsel for the Petitioner and the Respondents, this Commission passes the following:

## **ORDER**

### **1. Contentions of the Petitioner:-**

1.1. The present petition is being filed seeking for interest payments due to the petitioner under the Wind Energy Purchase Agreements it has entered into with the Respondent TANGEDCO. The non-payment of interest to the petitioner is all the more objectionable since they are against orders of the Commission, Hon'ble APTEL and the Hon'ble Supreme Court which the petitioner has obtained in its favour.

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 and the Hon'ble Supreme Court has held that obtaining rebates against payments were contrary to express terms of the EPA and are impermissible. It has therefore become necessary to approach the Commission to seek interest payments that have become due on an urgent basis and to seek enforcement of such payments.

1.3. The petitioner entered into an Energy Purchase Agreement dated 18.03.2011 with the Respondent TANGEDCO in respect of its WEG No. D226 connected to the 4<sup>th</sup> Respondent EDC. The Petitioner has also entered into Energy Purchase Agreements dated 24.02.2007 and 08.07.2008 with the Respondent TANGEDCO in respect of its WEG Nos. 2165 and 2411 connected to the 3<sup>rd</sup> Respondent EDC. The power generated in these units is being sold to TANGEDCO under the terms of the respective Energy Purchase Agreements/Energy Wheeling Agreements.

1.4. The petitioner has entered into Energy Purchase Agreements with the Respondent, for sale of electricity generated under preferential Tariff Regime. The EPAs contain interest payment clauses. Even without an interest clause, it has been held that interest is payable to the WEGS Commissioned under the preferential Tariff Regime for delay in payment of dues 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 also subsequently upheld by the Hon'ble Supreme Court in C.A.No.2397 of 2014 and fixing interest at 10% p.a. The present petitioner is the 2<sup>nd</sup> Respondent in the above mentioned appeals filed by TANGEDCO and thus, the orders are bound to be complied with by the TANGEDCO.

1.5. The WEG No.D226 was commissioned after the coming into effect of Tariff Order No.1 of 2009 issued by the Commission and is governed by the said order. In the 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 on interest in delayed payments, which is applicable to all WEGs commissioned after 19.09.2008, the petitioner is entitled to interest on delayed payments on the 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. The newer WEGS belonging to it operate under the Energy Purchase Agreements wherein TANGEDCO is liable to make payment against invoices raised within a period of 30 days from the date of invoice failing which the invoice amount would be payable along with interest towards delayed payment at the rate of 1% per month.

The relevant clause is extracted hereunder for ready reference:

**Billing and payment:**

- a. The wind energy generator shall raise a bill every month for the net energy sold after deducting the charges for start up power and reactive power.

- 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.

1.8 Despite the abovementioned clauses, payment against invoices raised by it for the power sold to TANGEDCO is being delayed inordinately. The petitioner has raised invoices for power supplied from its WEGs on a monthly basis as per the terms of the EPAs. Furthermore, M/s. Indian Wind Power Association and its members including the Petitioner filed an interim application before the Commission in I.A. No. 1 of 2010 in M.P. No. 36 of 2010 with a prayer seeking to issue an interim direction directing TANGEDCO to forthwith make payment of the sums due to the Petitioner generators for energy supplied under the respective Energy Purchase Agreements together with interest at 1% for every month from the due date of the respective bills. The petitioner was the second petitioner in the interim application as well as the miscellaneous petition. The Commission by Order dated 20.04.2011 directed TANGEDCO to pay interest at the rate of 1% per month on delayed settlement of bills.

1.9. TANGEDCO filed an appeal before the Hon'ble APTEL against the above order and the Hon'ble APTEL in its Order dated 17.04.2012 in Chairman, TNEB & Another V. Indian Wind Power Association and Others (Appeal No.11 of 2012) upheld the entitlement of wind generators for payment of interest at 10% per annum on delayed payment made by the Appellant for the purchase of power from the generators even

when there is no interest clause in the EPAs. The operative portion of the Order is extracted below:

*"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 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 long with the promised return of investment.*

*21. Hence, our conclusion is as follows:*

*"The Wind Power Generators are entitled for payment of interest on delayed payment made by the Appellant for the purchase of the power from the Generators."*

1.10. The same was further confirmed by the Hon'ble Supreme Court in C.A. No.(S) 2937 of 2014 by order dated 08.07.2016:

*"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 appellant-Electricity Board. The appeal is accordingly dismissed."*

1.11. The power generated by the WEGs details of which have been set forth in this petition, are being sold to TANGEDCO under the respective EPAs. The petitioner has been raising Invoices from time to time in accordance with the EPAs and Tariff Orders. However, for many 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 and the Hon'ble Supreme Court.

1.12. It has become necessary to set out the entire regime to highlight the injustice being meted to the generators and the advantage the Respondent is taking due to the inability of the affected parties from approaching the Commission due to the high court fees of 1% of the amount in dispute that has been fixed. The TANGEDCO is also benefiting from the non-awarding of costs and 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 sectors or generators. Unless the Commission exercises its full powers and puts the Respondents to terms, the said illegal actions by the Respondent would continue to be resorted to.

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

1.14. However, the TANGEDCO has delayed these payments for 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. The petitioner is annexing with the petition the details of the



invoices raised such as date of invoices, date of payment, date when the actual payment was made and the amount of interest on delayed payment.

1.15. 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 the Tek Chand, J. in CITv. Dr Sham La/ 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"*

1.16. 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.

1.17. 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.

1.18. 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 strictures hollow and meaningless.

1.19. 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 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. Therefore, 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 an RE generator and is already being compensated by the Respondent for the electricity purchased at a very low rate. Therefore, to not be paid even this low rate on time is wholly arbitrary and unexpected of a State controlled body such as the Respondent.

1.20. 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. Despite the substantial delay, TANGEDCO has not made any payment of the interest on delayed payments till date. The petitioner is filing the present claim only for interest.

1.21. 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.

1.22. Further, the Commission vide its order dated 25.03.2019 in the case of Century Flours Mills v. TANGEDCO 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 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."*

1.23. The following amounts are payable with respect to the WEGs connected to the 3<sup>rd</sup> Respondent:

TABLE – A

S.No.	SE/TIRUNELVELI	INVOICE PERIOD	INTERST AMOUNT (in Rs.)
1.	WETG.SC.No.2165	May, 2007 to June, 2015	4,52,234
2.	WETG.SC.No.2411	September, 2007 to February, 2016	5,19,581
TOTAL			9,71,815

1.24. The above amounts were part of the claim made and is covered under the Order of the Hon'ble Supreme Court in C.A. No. (S) 2937 of 2014 by order dated 08.07.2016 wherein the present petitioner was the 2nd Respondent. Subsequently, Indian Wind Power Association approached the Hon'ble Madras High Court by way of a writ petition in W.P. No. 22406 of 2017 seeking for a mandamus directing the TANGEDCO to release interest on delayed payments in terms of the order of the Hon'ble Supreme Court dated 08.07.2016 in I.A.No. 4 of 2016 in C.A. No. (S) 2937 of 2014 and the Hon'ble APTEL in a time bound manner. The said writ petition was filed in 2017. TANGEDCO did not comply

with the orders of the Hon'ble APTEL and the Hon'ble Supreme Court. The Hon'ble Madras High Court in its order dated 08.12.2021 held as follows:

*"6.2 Therefore, the Court is of the view that the present transaction between the petitioner-Association and the respondent-TANGEDCO, which is with regard to supply of energy is no doubt a commercial transaction. Therefore, the members of the petitioner-Association are entitled to the interest for such belated payment at commercial rate. However, the Hon'ble Supreme Court rationalized the said commercial interest at 10%, which would be just and reasonable.*

*6.3 Hence, this Court directs the respondent-TANGEDCO to pay interest, wherever, there is delay in settling the dues to the members of the petitioner-Association more than 60 days. From 61st day and till the date of clearing the entire dues to the members of the petitioner- Association, interest shall be paid at the rate of 10% by the respondent- TANGEDCO, It is made clear that, the Court is passing this order due to the fact that the second respondent-TNERC has not taken any steps to decide the present dispute, which, it ought to have done, as per the provisions contemplated under Section 86 of the Electricity Act, 2003. It is further made clear that, in case, the members of the petitioner- Association made any claim seeking interest more than 10%, the second respondent-TNERC is always at liberty to consider and decide the same in accordance with law.*

*7. With the above observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed. "*

1.25. The amounts in Table - A have been subject to litigation which finally came to a conclusion on 08.12.2021 when the Hon'ble Madras High Court directed TANGEDCO to pay the writ petitioner's members interest as per the Order of the Hon'ble Supreme Court. Therefore, the present claim is within limitation.

1.26. The following amounts are payable with respect to the WEG No. D226 connected to the 4<sup>th</sup> Respondent:

TABLE - B

S. No	Invoice	Invoice Amount (in Rs.)	Due Date	Payment Received on	No. of days delay	Interest @ 1% p.m (in Rs.)
1.	16/Sep/17	9,15,224	16/Oct/17	12/Mar/19	512	1,53,638
2.	13/Oct/17	4,31,550	12/Nov/17	27/May/19	561	79,377
3.	14/Nov/17	2,27,104	14/Dec/17	25/Oct/19	680	50,633
4.	13/Dec/17	55,827	12/Jan/18	25/Oct/19	651	11,916
5.	12/Jan/18	18,216	11/Feb/18	25/Oct/19	621	3,709
6.	13/Feb/18	11,148	15/Mar/18	25/Oct/19	589	2,153
7.	15/Mar/18	24,062	14/Apr/18	25/Oct/19	559	4,410
8.	17/Apr/18	54,131	17/May/18	25/Oct/19	526	9,335
9.	11/Mar/18	71,010	10/Jun/18	25/Oct/19	502	11,688
10.	13/Jun/18	58,244	13/Jun/18	25/Oct/19	469	8,956
11.	12/Jul/18	2,60,955	11/Aug/18	25/Oct/19	440	37,646
12.	16/Aug/18	7,04,052	15/Sep/18	25/Oct/19	405	93,489
13.	14/Sep/18	10,45,411	14/Oct/18	25/Oct/19	376	1,28,877
14.	12/Oct/18	8,40,052	11/Nov/18	25/Oct/19	348	95,865
15.	13/Nov/18	1,65,567	13/Dec/18	25/Oct/19	316	17,154
16.	10/Dec/18	34,214	9/Jan/19	25/Oct/19	289	3,242
17.	11/Jan/19	5,065	10/Feb/19	25/Oct/19	257	427
18.	1/Apr/19	25,366	1/May/19	25/Oct/19	177	1,472
19.	10/Apr/19	82,511	10/May/19	25/Oct/19	168	4,545
20.	7/May/19	55,821	6/Jun/19	25/Oct/19	141	2,581
21.	23/May/19	57,594	22/Jun/19	25/Oct/19	125	2,360
22.	24/Jun/19	2,53,358	24/Jul/19	25/Oct/19	93	7,725
23.	16/Jul/19	5,05,901	15/Aug/19	25/Oct/19	71	11,777
24.	13/Aug/19	6,67,199	12/Sep/19	25/Oct/19	43	9,406
25.	18/Sep/19	6,06,571	18/Oct/19	30/Sep/21	713	1,41,798
26.	17/Oct/19	3,58,015	16/Nov/19	30/Sep/21	684	80,289
27.	18/Nov/19	27,710	18/Dec/19	30/Sep/21	652	5,924
28.	27/May/20	15,850	26/Jun/20	30/Sep/21	461	2,396
29.	9/Jan/20	20,083	8/Feb/20	30/Sep/21	600	3,951
30.	14/Feb/20	54,557	15/Mar/20	30/Sep/21	564	10,089

31.	12/Mar/20	82,407	11/Apr/20	30/Sep/21	537	14,509
32.	29/Mar/20	28,762	28/Jun/20	30/Sep/21	459	4,328
33.	13/Jun/20	24,076	13/Jul/20	30/Sep/21	444	3,505
34.	20/Jun/20	1,29,379	20/Jul/20	30/Sep/21	437	18,537
35.	8/Jul/20	5,36,045	7/Aug/20	30/Sep/21	419	73,640
36.	13/May/22	24,076	12/Jun/22	22/Aug/22	71	560
37.	14/Jun/22	1,29,379	14/Jul/22	30/Aug/22	47	1,994
38.	5/Jul/22	5,36,045	4/Aug/22	17/Sep/22	44	7,733
<b>TOTAL</b>						<b>11,21,633</b>

1.27. The payments in respect of the invoices for the above periods, were made only from 12.03.2019 and therefore, the claim for interest stood crystallized only from 12.03.2019 onwards. Further, the period of limitation between 15.03.2020 till 28.02.2022 stands excluded in view of the Order dated 10.01.2022 of the Hon'ble Supreme Court in SMW (C) 3 of 2020, which reads thus:

"5.....

*1. The order dated 23.03. 2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27. 04. 2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings."*

1.28. The amounts in Table B have been subject to litigation which became due and payable on various dates beginning 12.03.2019. Further, since the period between 15.03.2020 and 28.02.2022 stand excluded in view of the above order of the Hon'ble Supreme Court, the present claim is within limitation.



1.29. The substantial delays in making payments by the respondent have caused severe difficulties for the petitioner in meeting the financial obligations towards banks and financial institutions. The interest on delayed payments is 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.

1.30. 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 respondents 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 most favoured destination for investment in Renewable Energy particularly Wind Energy Projects.

1.31. The petitioner has sent multiple letters to TANGEDCO and further sent a legal notice dated 07.02.2023. However, no response has been received. Hence, the petitioner is constrained to file the instant petition which it is legally entitled to. The petitioner submits ought to be awarded the costs of the petition including Court fees and legal expenses incurred.

**2. Counter Affidavit dated 05-10-2023 filed on behalf of the Superintending Engineer / Dindigul Electricity Distribution Circle:-**

2.1. The wind mill being WEG HT SC No. D.226 (600 KW) installed at S.F. No.431 / 3 (Part) of Kozhumankondan Village, Palani Taluk, Dindigul District was Commissioned on 18.03.2011.

2.2. The petitioner has raised invoices for power supplied from its WEG on a monthly basis as per the terms of the Power Purchase agreement, and the petitioner received payments against Invoices.

2.3. The petitioner is seeking directions to forthwith make the payment of a sum of Rs.11,21,633/- (Rupees Eleven Lakhs Twenty One Thousand Six Hundred and Thirty Three Only ) towards interest for delayed payment for the period from of October 2017 to September 2022.

2.4. The petitioner has not furnished invoices for interest claim as on date. As per the Limitation Act 1963, the claim by the Generator is be made within 2 years from the date of due. But the petitioner is claiming interest beyond the period of 2 years.

2.5. The present petition is neither maintainable in law nor on facts and as such the same is liable to be dismissed in limini.

2.6. The Commission issued Comprehensive Tariff order on wind energy (order No.1 of 2009 dated 20.03.2009) where in 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 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"*

2.7. From the above, it could be observed that, when wind energy generator sells power to the distribution license, 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.

2.8. The TNERC issued Comprehensive Tariff order on Wind energy (order No. 3 of 2016 dated 31.03.2016) where in relevant portion is extracted as follows.

*"9.3 Billing and Payment*

*2.10. 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 or 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. TANGEDCO has suggested for levy of interest at .75% per month. Some of the shareholders have sought for interest 1.5% to 2% for delayed payment beyond 60 days and some of them have requested for payment within 30 days. Having considered receivables of two months. Commission decides to retain the duration for payment by the Distribution license as 60 days as proposed and adopted in previous order and decides to adopt rate of interest of 1% per month for any delayed payment by the Distribution license beyond 60 days".*

2.9. From the above, it could be observed that when the wind energy generator sells power to the distribution license. The generator shall raise a 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.

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

2.11. 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. 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. The wind mill payments for the period from July 2020 to March 2022 is being paid in 48 Instalments, 1st Instalment commenced from August 2022.

2.12. As the Cash inflow of TANGEDCO has considerably reduced, due to Covid-19 pandemic, there is some delay in making the payments. However action is being taken to clear the dues at the earliest. On receipt of the financial assistance, the pending energy bills will be cleared as per seniority basis.

2.13. In the meantime, interest on delayed payment is the additional burden to be faced by the TNEB.

2.14. TANGEDCO is a corporation company wholly owned by the Government of Tamil Nadu and catering the need of the general public at large. Any direction, if granted as

sought for, would be put into irreparable losses grave prejudice, undue hardship and financial losses. In fact such losses will be passing through in the future tariff which have to be passed on the end-consumers and affecting public interest. In any case, the general public should suffer financially.

**3. Counter Affidavit dated 14-12-2023 filed on behalf of the Superintending Engineer / Tirunelveli Electricity Distribution Circle :-**

3.1. The petitioner has raised invoices for power supplied from its WEG on a monthly basis as per the terms of the Power Purchase agreement and the petitioner had received the payments against invoiced for the period up to 22-03-2015 & 02-01-2016. 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.

3.2. The petitioner has sought direction to make payment of a sum of Rs 9,71,825/- (Rupees Nine lakhs seventy one thousand eight hundred and twenty only) towards interest for delayed payment for the WEG No: 2165 (Period from May/2007 to June/2015) of Rs.4,52,234/- and for the WEG No: 2411 (Period from September/2007 to February/2016) of Rs.5,19,581/- totaling to Rs.9,71,815/- in respect of Tirunelveli EDC. 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 and for further or other orders as the Commission may deem fit and proper in the fact and circumstances of the case and thus render justice.

3.3. The wind mill bearing WEG HT SC No: 2165, B 2411 comes within the jurisdiction Tirunelveli Electricity Distribution Circle stands in the name of M/s.G.R.Natarajan located in SF No. 19 of Perungudi Village 1265/28, 31(P), 32, 35 & 40 Veppilankulam village Radhapuran Taluk, Tirunelveli District. The petitioner had executed Wind Energy Purchase agreement for the above WEGS on 24-02-2007 & 18-09-2007 respectively. The above two WEG services were sold to M/s. Shifa Chemicals have on 22-03-2015 & 02-01-2016.

3.4. The Commission issued Comprehensive Tariff Order on Wind Energy (Order No.1 of 2009 dated 20.03.2009) where is 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 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 in liable for interest at the rate of 1% per month".*

From the above, it could be observed that when the wind energy generator sells power to the distribution license, 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.

3.5. The TNERC issued Comprehensive Tariff order on Wind energy (Order No. 3 of 2016 dated 31.03.2016) where in the 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. TANGEDCO has suggested for levy of interest at 75% per month. Some of the shareholders have sought for interest 1.5% to 2% for delayed payment beyond 60 days and some of them have requested for payment within 30 days. Having considered receivables of two months. Commission decides to retain the duration for payment by the Distribution license as 60 days as proposed and adopted in previous order and decides to adopt rate of interest of 1% per month for any delayed payment by the Distribution license beyond 60 days".*

From the above, it could be observed that when the wind energy generator sells power to the distribution license, 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.

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

3.7. The interest on delayed payment is an additional burden which has to be borne by the Respondent. The Commission confirmed the interest payment vide its order dated 17.04.2011 in MP No.36 of 2010 which held that the TANGEDCO is liable to pay interest at the rate of 1% per month to the Generator on the delayed payment.

3.8. The order passed by the Commission was challenged by TNEB before the Hon'ble Appellate Tribunal for Electricity (Hon'ble APTEL). The Hon'ble APTEL, vide its judgment dated 17.04.2012 passed in Appeal No.11 of 2012 dismissed the same.

3.9. Again the TANGEDCO 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 them award of Simple interest at the rate of 10% per annum on the amount of outstanding against the appeal and Electricity Board. The appeal is accordingly dismissed".

3.10. Based on the above Hon'ble Supreme Court order, the petitioner has claimed a sum of Rs.9,71,825/- (Rupees Nine lakhs seventy one thousand eight hundred and twenty only) towards interest payable for the delayed payment made during the period between 2007 to 2016.

3.11. In view of the financial crises of TANGEDCO, the generators who were affected by delayed payments were personally requested to attend 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 agreed to 50% of the interest claim in installments. Copy of the negotiation letter and minutes have been filed.

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



3.13. Directing the TANGEDCO to forthwith make payment of a sum of Rs.9,71,825/- (Rupees Nine lakhs seventy one thousand eight hundred and twenty only) for the past period from 2007 to 2016 will adversely affect its fund flow. Further, similarly placed generators may also seek the same leading to multiplicity of litigations. This may further lead to difficulty in releasing payment for Coal companies, Central Generating Plants, Other fuel suppliers, make suppliers and power Generators similar to the petitioner.

13.14. TANGEDCO is a corporation company which wholly owned by the Government of Tamil Nadu and caters the need of the general public at large. It would be put into irreparable losses grave prejudice, undue hardship and financial losses, if any direction as sought for is issued. In fact such losses will be passing through in the future tariff which have to be passed on the end-consumers affecting public interest. In any case, general public should not suffer financially.

#### **4. Written submissions of the Petitioner:-**

4.1. The petitioner, a partnership firm, owns and operates three wind energy generators ('WEGs') - 2165, 2411, and D226. The Petitioner has been selling power generated by its WEGs to the Respondent TANGEDCO under the terms of the respective Energy Purchase Agreements ("EPA"). These EPAs were executed on 24.02.2007 for WEG No.2165, on 08.07.2008 for WEG No.2411 (both connected to the 3<sup>rd</sup> Respondent EDC), and on 18.03.2011 for WEG No.D226 (connected to the 4<sup>th</sup> Respondent EDC).

4.2. The dispute in the instant petition arises from the Respondents' continued failure to pay interest due to the Petitioner on the delayed payments, as stipulated in the EPAs entered into with TANGEDCO. TANGEDCO's persistent conduct of delaying payments and failing to pay Interest on such delays is in clear contravention of express contractual and regulatory mandates, as well as judicial precedents, to which both the Petitioner and Respondent TANGEDCO have been parties. Such conduct lays bare TANGEDCO's egregious and deliberate exploitation of renewable energy generators like the Petitioner herein and demonstrates a brazen disregard for the viability and growth of the renewable energy sector in the state, particularly wind energy projects.

4.3. Tariff Order No. 3 of 2016, sought to be relied upon by the Respondent in its counter affidavit upholds interest at the rate of 1% on payments delayed beyond 60 days.

4.4. Indian Wind Power Association and its members including the Petitioner herein filed an interim application before the Commission in I.A. No. 1 of 2010 in M.P. No. 36 of 2010 with a prayer seeking to issue an interim direction to direct the TANGEDCO to forthwith make payment of the sums due to the Petitioner generators for energy supplied under the respective EPAs along with interest at 1% for every month from the respective due date of the respective bills. The Petitioner was the second Petitioner in the interim application as well as in the miscellaneous petition. The Commission by Order dated 20.04.2011 held as follows:

*"6.9. As regards cases not covered by Order No. 1 of 2009, the present order of the Commission enables the petitioners to raise a claim of interest. If such claim is not honoured, the petitioners may approach the Commission with specific complaints of violation of the Order.*

*7. Direction:- In the light of the findings in paragraphs 6.1 to 6.9 above, the TNEB is directed to pay interest on delayed settlement of bills either as per Order No. 1 of 2009 or as per the provision of Code of Civil Procedure 1908 at the rate of 19% per month."*

4.5. The above order has reached finality and serves as an irrefutably binding precedent, supported by the Apex Court's endorsement in C.A. No. (S) 2937 of 2014 vide order dated 08.07.2016, reinforcing the Respondent/TANGEDCO's interest liability:

*"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 appellant- Electricity Board.*

*The appeal is accordingly dismissed. "*

4.6. Against the extensive backdrop of contractual, regulatory, and judicial mandates reinforcing TANGEDCO's duty to pay interest for the delayed honouring of the petitioner's invoices, the respondent's only cursory response is that these claims are time-barred. However, such an argument is demonstrably false.

4.7. The claims listed in the table became due and payable on various dates starting from 12.03.2019. Consequently, the claim for interest is crystallized from 12.03.2019 onwards, marking the earliest date from which the limitation period commences. In this regard, the current claim for interest from 12.03.2019 falls well within the prescribed three-year limitation period for recovery of money claims under Article 22 of the Limitation Act. It is so considering that the period of limitation between 15.03.2020 and

28.02.2022 is excluded in light of the order dated 10.01.2022 by the Hon'ble Supreme Court in SMW (C) 3 of 2020.

4.8. Since the commissioning of WEG No. D226 in 2011, the Petitioner has consistently issued invoices in accordance with the EPAS and Tariff Orders. The details of these invoices have been set out extensively in typed set filed along with the petition.

4.9. The Petitioner has repeatedly reached out to TANGEDCO, including by way of a legal notice dated 07.02.2023, which received no response. Such conduct of the TANGEDCO in failing to make timely payments, is a pattern whereby Respondent delays payments to renewable energy generators, often for years and then as a pre-condition for releasing payments, coerces generators into providing rebates against invoices and demands waivers of interest claims to the extent of 50%.

4.10. The current regime highlights a grave injustice to RE generators, adversely affecting their capacity to carry on operations. This is further compounded by the steep court fees of 1% of the disputed amount, which deters affected parties, like the Petitioner, from seeking redressal. Meanwhile, TANGEDCO benefits from the non-awarding of costs in these petitions.

4.11. In this regard, it is imperative that the Commission takes stringent action against the illegal practices resorted to by the Respondent TANGEDCO and directs the payment of interest due to the Petitioner, and further award the costs of the petition including court fees and legal expenses incurred to the Petitioner.

## **5. Findings of the Commission:-**

5.1 This petition has been filed to direct the respondents to-

- (i) pass an order directing the Respondents to forthwith make payment of a sum of Rs.9,71,825/- (Rupees Nine Lakhs Seventy One Thousand Eight Hundred and Twenty Five Only) being the interest due and payable to the petitioner as per the Order of the Hon'ble Supreme Court dated 08.07.2016 in C.A.No.2397 of 2014 and the Order of the Hon'ble Madras High Court dated 08.12.2021 in W.P. No. 22406 of 2017;
- (ii) pass an order directing the Respondents to forthwith make a payment of a sum of Rs.11,21,633/- (Rupees Eleven Lakhs Twenty One Thousand Six Hundred and Thirty Three Only) being the interest due and payable to the petitioner in respect of the invoice payments made from 12.03.2019 towards energy generated by its WEG No. D226;
- (iii) 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; and
- (iv) pass such further or other orders as the Commission may deem fit in the facts and circumstances of the case and thus render justice.

5.2. The matter came up on various dates and both side filed counter, rejoinder and written submission.

5.3. We have considered the rival submissions on both facts and law. The legal position is very clear on the point that interest is payable by the licensee to the

generators for delay in settlement of invoices. Except for stating that there is a financial constraint and directing TANGEDCO to pay the claim in question would adversely affect its fund flow, the respondent has not given any other justification for delay in the payment. We cannot agree to the prayer of the respondent for dismissal of petition on such ground and hence the petition is required to be disposed of on the basis of the provision in the Tariff Orders of the Commission and judgment of APTEL and Supreme Court.

5.4. In this connection, the provisions in Tariff Order No.1 of 2009 dated 20-03-2009 would be relevant:-

*“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.”*

5.5. The TNERC issued Comprehensive Tariff Order on Wind Energy (Order No. 3 of 2016 dated 31-03-2016) from which relevant portion is extracted as follows:-

*“9.3 Billing and Payment*

*9.3.1 When a wind generator sells power to the distribution licensee, the generator shall raise the bill every month for the net energy sold after deducting the charges for power drawn from distribution licensee reactive power charges etc. The distribution licensee 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. TANGEDCO has suggested for levy of interest at .75% per month. Some of the shareholders have sought for interest 1.5% to 2% for delayed payment beyond 60 days and some of them have requested for payment within 30 days. Having considered receivables of two months. Commission decides to retain the duration for payment by the Distribution licensee as 60 days*

*as proposed and adopted in previous order and decided to adopt rate of interest of 1% per month for any delayed payment by the Distribution Licensee beyond 60 days.”*

5.6. The Hon'ble APTEL in its order dated 17-04-2012 in Appeal No.11 of 2012 has upheld the payment of interest on delayed payment to the wind energy generators and this order has also been confirmed by the Hon'ble Supreme Court in CFC Vs. Gangadhar Narasinghadas Agarwal in Review Petition (Civil) 1606 of 2018 in Appeal No.5465 of 2014 dated 16-08-2018.

5.7. From the above, it is clear that Wind Energy Generators are entitled to interest at the rate of 1% per month for the delayed payment of invoices.

5.8. In view of the above, the Respondent TANGEDCO is liable to pay 1% interest per month for delayed payment as per the above Tariff Order.

5.9. In fine, it is directed as follows:-

The respondent shall pay interest of Rs.9,71,825/- being 10% interest on the outstanding dues as claimed by the petitioner and further pay a sum of Rs.11,21,633/- being the interest due and payable in respect of the invoice payments made from 12-03-2019 towards energy generated by its WEG No.D 226.

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

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

(Sd.....)  
Member  
/True Copy /

(Sd.....)  
Chairman

**Secretary  
Tamil Nadu Electricity  
Regulatory Commission**