

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82 (1) of the Electricity Act, 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:**

ThiruM.Chandrasekar .... Chairman  
Dr.T.PrabhakaraRao .... Member  
and  
Thiru.K.Venkatasamy .... Member (Legal)

**D.R.P. No.79 of 2014**

M/s. Madras HardtoolsPvt. Ltd.  
No.1, PeriannaMaistry Street  
Post Bag No.1687  
Chennai – 600 001.

... Petitioner  
(ThiruRahul Balaji  
Advocate for the Petitioner)

Vs

1. TANGEDCO  
Rep. by its Chairman Cum Managing Director  
No.144, Anna Salai  
Chennai – 600 002.
2. The Chief Financial Controller (Revenue)  
TANGEDCO  
144, Anna Salai  
Chennai – 600 002.

....Respondents  
(ThiruM.Gopinathan  
Standing Counsel for the Respondents)

**Dates of hearing :30-10-2018; 24-09-2019; 22-10-2019;  
10-01-2020 and 11-02-2020**

**Date of order : 21-07-2020**

The D.R.P.No.79 of 2014 came up for final hearing before the Commission on 11-02-2020 and the Commission upon perusing the petition and connected records and after hearing the submissions of both sides passes the following:-

### **ORDER**

#### **1. Prayer in D.R.P. No. 79 of 2014:-**

The prayer of the petitioner in this D.R.P.No.79 of 2014 is to pass an order directing the respondents to forthwith make payment of a sum of Rs.11,88,760.76 being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied 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.

#### **2. Facts of the Case:-**

The petition has been filed to pass an order directing the respondents to forthwith make payment of a sum of Rs.11,88,760.76 being the interest due and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and to direct the respondents to bear the costs of the instant petition including court fees and legal expenses

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

3.1. The petition is being filed seeking to claim interest on delayed payment against invoices raised by the petitioner for which payment has already been made by TANGEDCO. The petitioner submits that in addition to the payments which have been made belatedly, there are substantial sums of money due under Invoices

raised which are as yet outstanding. The payment of the invoice amounts together with the interest thereon is also due and payable. The petitioner is currently preferring the claim only in respect of interest portion of Invoices already made as the cause of action for making a claim on interest for payments against unpaid Invoices would arise -only when payments in that regard are received and when such payments are made without interest.

3.2. The petitioner is having wind power generators to the tune of 1.25 MW in the state of Tamil Nadu. The power generated by these units is being sold to the 1<sup>st</sup>respondent under the terms of Agreements executed by the petitioner with the TANGEDCO.

3.3. The location of its Windmills, date of commissioning, capacity and HT SC Nos. are as stated below:-

No.	Location of Windmill & Jurisdictional TANGEDCO Circle	Capacity of Windmill	HT SC. No.	Date of Commissioning
1	Tirunelveli District, Tamil Nadu	0.75 MW	2889 114 4125	31-07-2009 31-03-2012 31-03-2013
2	Coimbatore District, Tamil Nadu	0.50 MW	120 167	28-09-2008 31-07-2010

3.4. The power generated by these units is being sold to TANGEDCO under the respective agreements. 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.

3.5. In Tariff Order No.1 of 2009 issued by the Commission, there is a specific inclusion of interest payment. It provides 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.”*

3.6. TANGEDCO took the position that only for windmills covered by Tariff Order No.1 of 2009, there is a requirement for paying interest. This resulted in the Indian Wind Power Association filing a petition before the Commission which upheld the right of all wind generators irrespective of the date of commissioning to receive interest on delayed payments at the rate of 1% per month. The said judgment was upheld by the Hon'ble ApTEL in its judgment in Chairman, TNEB & Anr. V. Indian Wind Power Association and Ors. in Appeal No.11 of 2012 dated 17-04-2012. The relevant paragraph is reproduced hereunder:-

*“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.”*

3.7. Therefore all Wind Generators are entitled to interest on delayed payment @1% per month for every month's delay from the due date. Only a 30 days time limit for payment is provided and any delay beyond that will have to be made with interest @1% per month

3.8. 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 and because of the ruling of the Hon'ble APTEL in Appeal 11 of 2012, the petitioner is entitled to interest on delayed payments including those payments which have already been remitted.

3.9. The petitioner has raised invoices for power supplied from its WEGs on a monthly basis as per the terms of the EPA and the petitioner has received payments against invoices for the period upto 30-06-2014. However, these payments have been delayed by as much as one year or more. Despite the substantial delay, TANGEDCO has not made any payment of interest on delayed payments contrary to the order of the Hon'ble APTEL and the provisions of the Tariff Order No.1 of 2009 and the terms of the agreement.

3.10. TANGEDCO is due and liable to pay to the petitioner a sum of Rs.11,88,760.76 towards interest on delayed payments alone.

3.11. 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 being much lower than the payments, the petitioner has to make to its banks / financial institutions under the term loans. The petitioner further submits that the delay in payments by TANGEDCO has also hampered the petitioner's capacity to carry on its business.

3.12. The petitioner had sent a letter of demand on 05-04-2014 and also on 24-10-2014 seeking payment of interest on delayed payments. But, there has been no response or positive action from the respondents. The respondents have been making ad-hoc payments from time to time which are substantially delayed and even while making such admittedly belated payment, they have failed to pay interest on such delayed payments. Therefore, it has become necessary to file this petition.

3.13. The petitioner is paying a substantial court fee of Rs.20,000/- to file the instant petition for recovery of interest of delayed payments despite being entitled to the same as per the terms of the EPA, order of APTEL in Appeal No.11 of 2012 and Tariff Order No.1 of 2009 issued by this Commission. The petitioner submits that the action of TANGEDCO in not paying the petitioner interest on delayed payments, which the petitioner is legally entitled to, is contrary to the terms of the

contract / EPA and binding judgments and the petitioner submits that it ought to be awarded the costs of the petition including court fees and legal expenses incurred.

**4. Hearing held on 22-10-2019:-**

During the hearing held on 22-10-2019, the counsel for the petitioner has submitted a Memo accepting the offer of the TANGEDCO for settlement of dues with interest at 6% per annum, if the payment is made within a period of 60 days.

**5. Hearing held on 11-02-2020:-**

During the hearing held on 11-02-2020, the counsel for the petitioner has informed that TANGEDCO has not made the payment to the petitioner fully and only partial payments have been made and the Commission directed both the parties were directed to file their Written Submission within two weeks after serving a copy to the other side. However neither of them has filed Written Submission.

**6. Findings of the Commission:-**

6.1. The prayer in this petition is to pass an order directing the respondents to make payment of a sum of Rs.11,88,760.76 being the interest due and payable to the petitioner against delayed payments made till 30-06-2014 for power supplied from its Wind Power Generation Projects forthwith to the petitioner and direct the respondents to bear the costs of the instant petition including court fees.

6.2. During the hearing held on 22-10-2019, the counsel for the petitioner has submitted Memo accepting the offer of TANGEDCO for settlement of dues with interest at 6% per annum if the payment is made within 60 days. However, in the hearing held on 11-02-2020, the counsel for the petitioner informed that TANGEDCO has not made the payment to the petitioner fully and only partial payments have been made. In view of the above, the Commission has directed both the parties have been directed to file their Written Submission within two weeks after serving a copy to the other side. However neither of them has filed Written Submission. In the above circumstances, the Commission has to decide the issue based on the available records.

6.3. The respondent TANGEDCO has not denied its liability for payment of interest on belated payment. The respondent having failed to avail the offer made by the petitioner for reduced interest of 6% per annum, they are liable to pay interest as per the contractual rates or orders in force. Our attention has been drawn to the provisions of Tariff Order No.1 of 2009 of this Commission which provides 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.”*

6.4. Therefore all Wind Generators are entitled to interest on delayed payment @1% per month for every month's delay from the due date. Only a 30 days time limit for payment is provided and any delay beyond that will have to be made with interest @1% per month.

6.5. In view of the above, the Commission hold that the respondent is liable to pay interest at the rate of 1% per month for the delayed payment beyond 30 days of receipt of invoice

6.6. The respondent TANGEDCO is directed to make payment of Rs.11,88,760.76 with interest as per our findings in para 6.5 above, to the petitioner within three months from the date of receipt of this order, after deducting payments, if any, already made. In the circumstances, there will be no order as to costs.

This D.R.P. is finally disposed of on the above direction.

(Sd.....)  
**(K.Venkatasamy)**  
Member (Legal)

(Sd.....)  
**(Dr.T.PrabhakaraRao)**  
Member

(Sd.....)  
**(M.Chandrasekar)**  
Chairman

/True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission