

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

**PRESENT:**

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

**D.R.P. No.1 of 2017**

Satia Industries Ltd.  
Rupana  
Muktsar (Punjab) – 152 032.

... 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.
3. The Superintending Engineer  
Udumalpet Electricity Distribution Circle  
Udumalpet.

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

**Dates of hearing :05-09-2019; 17-09-2019; 22-10-2019  
10-12-2019and 25-02-2020.**

**Date of order : 13-10-2020**

The D.R.P.No.1 of 2017 came up for final hearing before the Commission on 25-02-2020 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. 1 of 2017:-**

The prayer of the petitioner in this D.R.P.No.1of 2017 is to pass an order directing the respondents to make payment of a total sum of Rs.44,00,125/- (being the Principal amount of invoices Rs.6,54,258/- & Rs.37,45,867/-being the interest) which are due and payable to the petitioner against delayed payments made till March 2013 for power supplied from its Wind Power Generation Projects forthwith to the petitioner and to direct the respondents to bear the costs of the instant petition including court fees.

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

This petition has been filed to direct the Respondents to forthwith make payment of a sum of Rs.44,00,125/- (being the Principal amount of invoices Rs.6,54,258/- & Rs.37,45,867/- being the interest) which is due for wind power sold to TANGEDCO and payable to the petitioner against delayed payments made by TANGEDCO for power supplied and direct the Respondents to pay interest @ 1% per month for any delay in settlement of invoices beyond the period of 30 days.

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

3.1. This 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. In addition to the payments which have been made belatedly, there are substantial sums of money amounting to Rs.6,54,258/- due under invoices raised which are as yet outstanding. The payment of the unpaid invoice amounts together with the interest thereon is also due and payable.

3.2. The petitioner is currently preferring the claim on these invoices upto 31-01-2017 and in respect of interest portion of invoices already made. The petitioner reserves its right to claim additional interest on payments that are made without interest.

3.3. The petitioner is an independent power producer which is, *inter alia*, involved in the business of developing and operating Wind Energy Generation projects by utilizing clean technology. The petitioner is having wind power generators to the tune of 1.5 KW in the State of Tamil Nadu.

3.4. The petitioner has established Wind Power Generation projects in Udumalpetin the State of Tamil Nadu with a total capacity of 1.5 MW. The petitioner submits that the power generated by these units are sold to the 1<sup>st</sup> Respondent under the terms of agreements executed by the petitioner with the TANGEDCO.

3.5. The power generated by the unit was sold to TANGEDCO under the respective agreements. The petitioner had 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.

3.6. In Tariff Order No.1 of 2009 issued by the Commission, there is a specific inclusion 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.”*

3.7. 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 held as follows:-

*“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.*

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*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.”*

3.8. 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 day time limit is provided for payment and any delay beyond that will have to be made with interest @ 1% per month.

3.9. In the light of the specific provision contained in Tariff Order No. 1 of 2009 on interest on delayed payments, which is applicable to all WEGs commissioned after 19.09.2008 such as those of the petitioner, 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.

3.10. 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 April 2013. However, these payments have been delayed by as much as one year or more. Despite the substantial delay, TANGEDCO has not made any payment on 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.

3.11. TANGEDCO is due and liable to pay to the petitioner a sum of Rs.37,45,867/- towards interest on delayed payments alone.

3.12. The petitioner had sent a letter of demand on 06-08-2013 seeking payment of interest on delayed payments and 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.

3.13. The petitioner had sent another letter of demand on 10-01-2017 seeking payment of interest on delayed payments for payments made until March 2013. The Hon'ble Supreme Court of India, vide its order dated 08-07-2016, in I.A. No.4 of 2016 in Civil Appeal Nos. 2937 of 2014, has dismissed the appeal filed by TANGEDCO with respect to the issue concerning interest on delayed payments made by the company.

3.14. The petitioner is paying a substantial court fee of Rs.44,001/-to file the instant petition for recovery of principal amount of invoices (Rs.6,54,258/- against wind power sold to TANGEDCO and interest on delayed payments (Rs.37,45,867/- 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 actions 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 05-09-2019:-**

In the hearing held on 05-09-2019, the Counsel for the Respondent informed that notice seeking the willingness on the part of the petitioner for settlement at 6% interest has already been issued and TANGEDCO was directed to file counter.

**5. Hearing held on 10-12-2019:-**

In the hearing held on 10-12-2019, the petitioner's counsel agreed the offer of the TANGEDCO Counsel for settlement of dues with interest @ 6% per annum, if the payment is made within a period of 60 days.

**6.** On 17-12-2019, the petitioner has filed an affidavit accepting the offer of TANGEDCO to pay 6% interest on the belated payment. In the affidavit, the petitioner has stated as follows:-

- (a) The payment of 6% interest shall be paid by TANGEDCO on all payments made belatedly till date.
- (b) Such payment shall be made within 60 days of filing of this affidavit before the Commission.
- (c) The Commission may record such payment only on the basis of the present affidavit and this shall not be treated as a precedent for further belated payments, in respect of which interest at the rate provided for in the Tariff Orders, i.e. at 1% per month.
- (d) The court fee paid by the petitioner may be directed to be paid by TANGEDCO, in addition to such interest as payment towards costs of this D.R.P.

(e) In the event, the full payments due are not settled and paid within 60 days, the entire sums due towards interest become automatically due and payable at the full contractual rate and payment in that regard shall be paid by TANGEDCO.

**7. Hearing held on 25-02-2020:-**

In the hearing held on 25-02-2020, the counsel for the petitioner submitted that no payment has been made and the Commission directed to file both parties to file Written Submissions within two weeks. However, no Written Submission has been filed by any party.

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

8.1. The petition has been filed to pass an order directing the respondents to make payment of a total sum of Rs.44,00,125/- (being the principal amount of invoices Rs.6,54,258/- & Rs.37,45,867/- being the interest) which are due and payable to the petitioner against delayed payments made till March 2013 for the power supplied from the petitioner's Wind Power Generating Projects to the Respondent and further to direct the respondents to bear the costs of the instant petition including court fees.

8.2. The hearing in the matter took place on various dates. During the hearing held on 10-12-2019, the Petitioner's Counsel agreed the offer of the TANGEDCO counsel for settlement of dues with interest @ 6% p.a., if the payment is made within a period of 60 days.

8.3. On 17-12-2019, the petitioner also filed an affidavit agreeing to accept the offer of TANGEDCO for payment of interest at 6% per annum. In the affidavit, the petitioner has stated as follows:-

- (a) The payment of 6% interest shall be paid by TANGEDCO on all payments made belatedly till date.
- (b) Such payment shall be made within 60 days of filing of this affidavit before the Commission.
- (c) The Commission may record such payment only on the basis of the present affidavit and this shall not be treated as a precedent for further belated payments, in respect of which interest at the rate provided for in the Tariff Orders, i.e. at 1% per month..
- (d) The court fee paid by the petitioner may be directed to be paid by TANGEDCO, in addition to such interest as payment towards costs of this D.R.P.
- (e) In the event, the full payments due are not settled and paid within 60 days, the entire sums due towards interest become automatically due and payable at the full contractual rate and payment in that regard shall be paid by TANGEDCO.

8.4. On 25-02-2020, the counsel for the petitioner has submitted that no payment has been made. The Commission therefore directed both the parties to file their Written Submission within 2 weeks. However, neither of the parties has filed any Written Submission. Hence, the Commission is inclined to decide the issues based on available records.

8.5. Having perused the material records, we find that the respondent TANGEDCO has not denied its liability with regard to payment of interest. Having failed to avail the offer of settlement of interest at 6% per annum, the respondent is liable to pay interest as per the contractual terms or as per the orders of the Commission in force, as the case may be. In this connection, our attention is drawn to the provisions of Tariff Order No.1 of 2009 dated 20-03-2009 issued by the 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.”*

8.6. 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 upheld by the Hon'ble Supreme Court in CFC Vs. GangadharNarasingshadAsAgarwal in Revised Petition (Civil) 1606 of 2018 in Appeal No.5465 of 2014 dated 16-08-2018.

8.7. In view of the above, the respondent, TANGEDCO is liable to pay 1% interest for delayed payment beyond 30 days of receipt of the bill as per the above Tariff Order.

8.8. It is seen from the typed set of papers filed along with the petition (vide page 9 of the typed set) that Rs.37,45,867/- (Rupees Thirty Seven Lakhs forty five

thousand and eight hundred and sixty seven only) is the interest component in respect of the payments already received for the years 2009-10; 2010-11 and 2012-13. The limitation period for the money claim is 3 years from the date on which cause of action arose. In the case of interest on delayed payments, the cause of action for claiming interest for the delayed payment commences from the date of receipt of the payment on invoice. Similarly, the petitioner has also claimed the principal amount i.e. the unpaid invoice amount of Rs.6,54,258/- (Rupees Six Lakhs Fifty Four Thousand Two Hundred and Fifty Eight only). The right to claim the principal amount also expires on the expiry of 3 years from the date of invoice. The present petition has been filed on 20-04-2017 and hence if the date of payment of invoice is prior to 20-04-2014, claim of the interest on such delayed payment is barred by limitation. So also, in respect of principal amount if the date of invoice is prior to 20-04-2014, the claim of principal amount is also barred by limitation. Law is also well settled on the point that it is for the concerned court or Forum to examine the preliminary question of limitation even in the absence of pleadings to that effect and hence, the limitation factor is necessarily required to be considered.

8.9. In view of the above, the respondent is directed to rework the calculation for payment of interest at 12% per annum on the delayed payment of interest beyond 30 days of its receipt and also settle the principal amount of invoice taking into account the limitation factor as set out in para 8.8 above, after deducting the payments if any, already made within a period of three months from the date of this order. This is also subject to any acknowledgement of liability, if any, made in writing by TANGEDCO after 20-04-2014. In the circumstances, there will be no order as to the 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