

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

PRESENT:

Thiru M. Chandrasekar

and

... Chairman

Thiru K. Venkatasamy

... Member (Legal)

M/s. Bhabani Pigments Pvt. Ltd.
A-30, Block B-1
Mohan Cooperative Industrial Estate
New Delhi – 110 044.

... Petitioner
(Thiru Rahul Balaji
Advocate for the Petitioner)

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
Represented by its Chairman & Managing Director
Having its office at:
10th Floor, NPKRR Maaligai
144, Anna Salai, Chennai – 600 002.
2. The Chief Financial Controller (Revenue)
TANGEDCO
No. 144, Anna Salai, Chennai – 600 002.
3. The Chief Engineer
Non-Conventional Energy Sources
TANGEDCO
No.144, Anna Salai, Chennai – 600 002.
4. The Superintending Engineer
Tirupur Electricity Distribution Circle
TANGEDCO
Door No.208/650, KRBS Tower
3rd Floor, Mettupalayam Bus Stop
PN Road, Tirupur – 641 602.

....Respondents
Thiru M.Gopinathan
(Standing Counsel for the Respondents)

Dates of hearing : 28-12-2021; 19-01-2022; 01-02-2022
15-02-2022 and 01-03-2022

Date of Order : 15-03-2022

The D.R.P.No.20 of 2021 came up for final hearing on 01-03-2022. The Commission upon perusing the affidavit filed by the petitioner, counter affidavit filed by the respondent and all other connected records and after hearing both the parties passes the following:-

ORDER

1. Prayer of the Petitioner in D.R.P.No.20 of 2021:-

The prayer of the Petitioner in the above D.R.P.No.20 of 2021 is to pass an order directing the Respondents to forthwith make payment of a sum of Rs.90,62,345/- (Rupees Ninety Lakhs Sixty Two Thousand Three Hundred and Forty Five only) being the interest due and payable to the petitioner till 30-11-2021 against delayed payments made by TANGEDCO for power supplied and such further *pendent lite* interest as the 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.

2. Facts of the Case:-

This petition has been filed to direct the Respondents to pay sums due and payable of Rs.90,62,345/- as interest until 30.11.2021 under the Power Purchase Agreements entered into with Respondent TANGEDCO for the sale of power

generated by the Petitioner's Wind Energy Generators for payments effected for the period beginning April 2017

3. Contentions of the Petitioner:-

3.1. 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.

3.2. 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 this Hon'ble Tribunal

to seek payments that have become due on an urgent basis and to seek enforcement of such payments.

3.3. The petitioner entered into an Energy Purchase Agreement dated 31.03.2010 with the Respondent TANGEDCO. The Petitioner has manufacturing units at several places in India and is, inter alia, involved in the business of developing and operating Wind Energy Generation projects by utilizing clean technology. It has wind power generating projects to the tune of 1.5 MW in the state of Tamil Nadu.

3.4. It has wind power generation projects in V.Kallipalayam village, Tirupur Taluk, Coimbatore District, Location No. E-739 in the state of Tamil Nadu. The power generated in these units is being sold to TANGEDCO under the terms of the Energy Purchase Agreement/Energy Wheeling Agreement executed on 31.03.2010.

3.5. 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 as regards the WEGs Commissioned under the preferential Tariff Regime by virtue of the judgment of the Hon'ble APTEL in Chairman, TNEB & Another Vs. 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 and 10% p.a. interest fixed.

3.6. The petitioner's WEGs were 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 Tariff Order No.1 of 2009 issued by the TNERC, 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."

3.7. 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.

3.8. 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."*

3.9. Despite the abovementioned clauses, payment against invoices raised by the petitioner for 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 EPA. Furthermore, the Petitioner had filed a petition, DRP No. 24 of 2014, for interest at 12% p.a. on delayed payments for the period 05/2010 to 04/2013, before the Commission which thereafter, got settled as per the undertaking dated 22.06.2021 providing for reduced interest at 6% p.a. for the said period. The letters dated 05.02.2021 and 22.09.2021 and email dated 01.02.2021 were sent to the Respondents requesting for interest on delayed payments, however, to no avail. In fact, a legal notice dated 10.05.2019 was also issued to the Respondents, but the Petitioner has not received any response in this regard. The petitioner has received only partial payments (50%) against invoices for the period upto June, 2020, after which no payments have been received till date. However, even these partial payments were made after substantial delay and no payment of interest has been received on these delayed payments.

3.10. 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 and 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).

3.11. 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.

3.12. 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 non-awarding of *pendente lite* interest 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.

3.13. 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.

3.14. 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. 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 are annexed.

3.15. 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 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."

3.16. In the case of TANGEDCO v PPN Power Generation Co Ltd Civil Appeal No.

4126 of 2013, the Hon'ble Supreme Court of India 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."

3.17. 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 wrong doing 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"

3.18. 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.

3.19. 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 38J 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.

3.20. 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.

3.21. 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. 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. 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 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.

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

3.23. 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.

3.24. The Commission vide order dated 25.03.2019, in the case of Century Flours Mills v TANGEDCO 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. "

3.25. As is evident TANGEDCO is due and liable to pay to the petitioner a sum of Rs.90,62,345/- (Rupees Ninety Lakhs Sixty Two Thousand Three Hundred and Forty Five Only) towards interest till 30.11.2021 on delayed payments in respect of WEGs.

3.26. 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.

3.27. 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. 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 favored destination for investment in Renewable Energy, particularly Wind Energy Projects.

3.28. The petitioner is constrained to file the instant petition. The petitioner ought to be awarded the costs of the petition including court fees and legal expenses incurred.

3.29. 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.

4. Contentions of the Respondent:-

4.1 The 1 No. wind mill generator being WEG No:039224391639 was commissioned on 31.03.2010 having capacity of 1500 KW installed at Tirupur District.

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

Billing & Payment Condition:-

- (1) *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.*
- (2) *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."*

4.3. The Wind energy Generator agrees that if the consumption of the wind mill is more than the generation during a particular month, such excess consumption shall not be allowed to be carried forward to next month and the billing shall be done on the same month at the per unit realization rate of HT industrial service as per tariff order in force.

4.4. Due to temporary shortage of power which may arise due to outage of generation plant grid disturbance etc TANGEDCO is in a position to purchase power at Higher rate from other sources, to maintain which leads to UPS critical financial crises and further not able to make payment within the time limit prescribed.

4.5. 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 per month. Some payments are postponed and made as and when loans are received from REC/PFC/IREDA and other financial institutions.

4.6. 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. The wind mill payments for the period up to June 2020 have been released.

4.7. Due to Covid-19 pandemic, the revenue collections to TANGEDCO has also come 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 Government of India 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 Government of Tamil Nadu. For The generation period up to June 2020, 50% payment made on 26.03.2021 and another 50% payment made on 30.09.2021. On receipt of the financial assistance the pending energy bills and bills on late payment will be cleared.

4.8. Due to Covid-19 pandemic, the Cash inflow of TANGEDCO has considerably reduced and hence there is some delay in making the payments. However action is being taken to clear the dues at the earliest.

4.9. In the meantime interest on delayed payment is the additional burden 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 and held that the TNEB is liable to pay interest at the rate of 1% per month to the Generator on the delayed payment.

4.10. 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 basis.

4.11. If the Commission directs the TANGEDCO to forthwith make payment of Interest of Rs.21,14,833/- for the past period from April 2018 to June 2020, it will adversely affect the fund flow of the respondents. Further similar placed generators and may also seek release of payment and it will lead to multiplication of litigations. This may lead to difficulty In releasing payment for Coal companies, Central Generating Plants, Other fuel suppliers, material suppliers and power Generators similar to the petitioner.

4.12. The Commission has decided the same set of facts as found in this DRP. The Commission had passed daily order on 17-12- 2019 in DRP No.27 / 2014 and 17/9/2019 in DRP No.7/2014 by ordering 6% p.a Interest on the payment from TANGEDCO. These findings may be considered and applicable to this petition also.

4.13. TANGEDCO is a Corporation company wholly owned by the Government of Tamil Nadu catering the need of the general public at large and would be put into irreparable losses grave prejudice, undue hardship and financial losses. In fact such losses will be transferred through in the future tariffs and subsequently be passed on to the end-consumers which affect public interest. In any case, for the sake of a company, public authorities under general public should not get suffered financially.

5. Findings of the Commission:-

5.1 This petition has been filed to pass an order directing the Respondents to forthwith make payment of a sum of Rs.90,62,345/- (Rupees Ninety Lakhs Sixty Two Thousand Three Hundred and Forty Five only) being the interest due and payable to the petitioner till 30-11-2021 against delayed payments made by TANGEDCO for power supplied and such further *pendent lite* interest as the 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.

5.2. It is seen from the counter except for stating that there is a financial difficulty, no other reasons have been given to dispute the claim raised by the petitioner.

5.3. The financial difficulty cannot be allowed as a valid ground to avoid payment of principal and interest dues. Further, law is settled on the point that interest is payable on delayed payment and the respondent has to pay interest as per the contractual rate or as per the orders of the Commission, as the case may be. In this connection, the provisions of Tariff Order No.1 of 2009 dated 20-03-2009 issued by the Commission 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.”

5.4. The Hon'ble APTEL, has also 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. Narasinghadas Agarwal in Review Petition (Civil) No. 1606 of 2018 in Appeal No. 5465 of 2014 dated 16-08-2018.

5.5. In view of the above, the Respondent TANGEDCO is liable to pay 1% interest per month on delayed payment beyond 30 days as per the above Tariff Order on the balance amount that remains unpaid to the petitioner.

5.6. However, there is limitation factor which requires consideration and even though the same has not been raised in as defence, still it is for the Commission to examine the same as per settled legal position. It is seen that legal notice, email and letters have been sent by the petitioner to the respondent calling upon it to settle the dues. However, none of which evoked any response going by the records filed before the Commission. Hence, the present order is required to be passed on the basis of available records after determining the limitation factor. It is seen that the petition was filed before the Commission on 24-12-2021 and hence all claims in the present which become due before 25-12-2018 are barred by limitation. It is seen from Annexure "B" filed by the petitioner that five individual claims are barred by limitation. The date of receipt of payment from TANGEDCO being the last cause of action for the purpose of deciding the limitation factor, if the limitation factor is viewed on the basis of the date of receipt of payment in each case of invoice, the first five

invoices in the Annexure “B” are barred by limitation. The relevant invoices are tabulated below:-

2017-18 (E-739)

Interest receivable as per Power Purchase Agreement @ 12% per annum

S. No.	Invoice No.	Date	Amount	Credit Days	Due on	Payment Received on	Delay in Days	Interest (p.a.) @ 12%
1	Bppl/E-739/01/2017-18	15-May-17	1,47,306	30	15-Jun-17	2-Feb.-18	232	11,236
2	Bppl/E-739/02/2017-18	6-Jun-17	6,80,678	30	7-Jul-17	2-Feb.-18	210	46,995
3	Bppl/E-739/03/2017-18	11-Aug-17	5,54,913	30	11-Sep-17	7-May-18	238	43,420
4	Bppl/E-739/03A/2017-18	11-Aug-17	9,81,719	30	11-Sep-17	7-May-18	238	76,816
5	Bppl/E-739/04/2017-18	11-Aug-17	22,41,450	30	11-Sep-17	7-May-18	238	1,75,386
	Total		88,78,930					3,53,853

All the above invoices are to be excluded from the claim in view of limitation and in the result, the claim of Rs.3,53,853/- raised in those invoices stand excluded.

5.7. However, it is to be placed on record here that the Commission cannot, on its own, order reduction in payment of interest when the Tariff Orders provide for payment of interest @ 1% per month. It is for the parties to negotiate a settlement for reduction in interest, which of course, has not been done in this case. The Commission can pass orders only with reference to the statutory provisions and the agreement executed by the parties. Inasmuch as no attempt was made for waiver of interest to the extent of 50% as has been done in similar cases and even a counter

has not been filed in the instant case, the Commission is left with no alternative but order interest @ 12% per annum as per the extant Tariff Order in force.

5.8. In the result, TANGEDCO is directed to verify the claim made by the petitioner to the extent of Rs.87,08,492/- starting from the 6th item in the first table to the 21st item in the final table in the Annexure B of the petition make payment towards interest as per our findings to the petitioner within 30 days from the receipt of this order as per applicable Tariff Orders 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 with the above direction.

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

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

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission