TELANGANA STATE ELECTRICITY REGULATORY COMMISSION

5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O. P. No. 1 of 2022
&
I. A. No. 1 of 2022 &
I. A. No. 2 of 2022

Dated 28.06.2023

Present
Sri. T.Sriranga Rao, Chairman
Sri. M.D.Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s Hyderabad MSW Energy Solutions Private Limited,
13th Floor, Ramky Grandlose, Anijah Nagar,
Gachibowli, Hyderabad – 500 032. … Petitioner

AND

Southern Power Distribution Company of Telangana Limited,
Corporate Office, H.No.6-1-50, Mint Compound,
Hyderabad – 500 063. … Respondent

The petition came up for hearing on 31.01.2022, 02.02.2022, 11.04.2022, 02.05.2022, 22.08.2022 and 12.09.2022. Sri Avinash Desai, Advocate for the petitioner appeared on 31.01.2022, Sri. Matrugupta Mishra, Advocate for the petitioner appeared on 02.02.2022, Sri. Avinash Desai, Advocate alongwith Sri. Matrugupta Mishra, Advocate for the petitioner appeared on 11.04.2022, Sri. Avinash Desai, Advocate and Sri. Matrugupta Mishra, Advocate as well as Ms. Ishita Thakur, Advocate appeared on 02.05.2022, 22.08.2022 and 12.09.2022. Sri. Mohammad Bande Ali, Law Attaché for respondent appeared on 31.01.2022, 02.02.2022, 11.04.2022, 22.08.2022 and 12.09.2022. Sri K.Vijaya Kumar, SE/IPC FAC/TSPCC for respondent appeared on 02.05.2022. The matter having been heard through video conference on 31.01.2022, 02.02.2022 and physically on 11.04.2022, 02.05.2022, 22.08.2022 and 12.09.2022 and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Hyderabad MSW Energy Solutions Private Limited (petitioner) (HMESPL) has filed the petition under Section 86(1)(f) and (k) of the Electricity Act, 2003 (Act, 2003) seeking directions to quash the communication dated 16.07.2021 issued by the Southern Power Distribution Company of Telangana Limited (TSSPDCL) (respondent) which is seeking to recover tipping fee from the petitioner.

a. It is stated that the present petition is being preferred by the petitioner for quashing the impugned notice dated 16.07.2021 (impugned notice) issued by the respondent seeking reimbursement of tipping fee from the petitioner, being ex facie bad in the eyes of law and violative of the tariff order dated 18.04.2020.

b. It is stated that the petitioner is a company incorporated under the provisions of Companies Act, 2013 (Act, 2013) and is a generator within the meaning of Section 2(28) of the Act, 2003. The petitioner is a subsidiary of M/s Ramky Enviro Engineers Limited (REEL), in the form of a Special Purpose Company (SPC), undertaking the function of setting up, operating and maintaining a 19.8 MW Refuse Derived Fuel (RDF) based Waste to Energy (WTE) plant at Jawaharnagar, Hyderabad in the Telangana State. The power plant of the petitioner has achieved its commercial operation on 20.08.2020.

c. It is stated that the respondent is a distribution licensee operating in the Telangana State that has been granted license by the Commission for carrying on the business of distribution and retail supply of electrical energy within its command area. It is a distribution licensee within the meaning of Section 2(17) of the Act, 2003.

d. It is stated that another subsidiary of REEL, namely, Hyderabad Integrated MSW Private Limited (HIMSW) has been the operator of the integrated municipal solid waste management (IMSWM) facility at Jawaharnagar, since 2012 and receiving the tipping fee from Greater Hyderabad Municipal Corporation (GHMC) for fulfilling the obligations set out in the agreement.

e. It is stated that the petitioner company obtained sanction and approval for setting up the WTE plant from Telangana State Renewable Energy Development Corporation Limited (TSREDCO), which is a State owned entity and established as a nodal agency for the promotion of renewable energy

projects in the State. The said approval was granted by TSREDCO vide its proceedings dated 06.06.2018, upon certain conditions. One of such condition was to obtain an authentication from GHMC.

f. It is stated that accordingly, a letter of authentication was issued by GHMC to REEL, on 29.01.2019, whereby an authentication was granted to the petitioner as a SPC to set up, operate and maintain the WTE facility. The relevant extract of the aforementioned letter is as under.

> *"… … Accordingly, GHMC hereby issues its authentication to Hyderabad MSW Energy Solutions Pvt Ltd as Special Purpose Company (SPC) as incorporated Ramky Enviro Engineers Ltd for setting up and operation & maintenance of Waste to energy facility under the IMSWM project of GHMC with a condition that all such facilities so set up/going to set up and maintained by the SPC shall be handed over to GHMC under the same terms and conditions of the Concession Agreement keeping them encumbrance free. There shall not be any exclusive rights to this SPC (Hyderabad MSW Energy Solutions Pvt Ltd) as the same shall be treated as permitted assign of REEL/HIMSW whose validity shall cease on expiry of the Concession period of the IMSWM project under the Concession Agreement."*

g. It is stated that the petitioner requested the respondent to process its request of executing a power purchase agreement (PPA) for procurement of renewable energy from the RDF based WTE project vide its letter dated 07.02.2019 and followed up by submission of relevant corporate documents vide letter dated 23.02.2019. The respondent acknowledged the same and asked the petitioner to produce a novation agreement vide its letter dated 15.03.2019. The respondent further addressed another letter to the petitioner vide its letter dated 19.12.2019 to sign the PPA and approach the Commission for determination of tariff as there was no tariff applicable as on that date.

h. It is stated that the PPA was executed between the petitioner and the respondent on 19.02.2020 for purchase of power, generated from the 19.8 MW RDF based power project located at Jawaharnagar Village, Hyderabad at the tariff, to be determined by the Commission. Clause 2.2 of the PPA dealing with the payment of tariff reads as follows:

> *"2.2 The Company shall be paid the tariff for the net energy delivered at the interconnection point for sale to DISCOM at the tariff as determined by TSERC from time to time. No tariff will be paid for the energy delivered at the interconnection point beyond contracted capacity. The orders of*

TSERC are enforceable in entirety and shall be considered for the purposes of computation of tariff."

i. It is stated that thereafter, the Commission, desirous of determining the generic tariff for electricity generated from RDF based power projects in the Telangana State, achieving COD during the period of 01.04.2020 to 31.03.2024, issued a public notice dated 20.03.2020 inviting suggestions and comments from all the stakeholders and public at large.

j. It is stated that in the public notice, the Commission mentioned the proposed financial and technical norms considered while computing the levelized tariff as Rs.7.76/kWh comprising of levelized fixed cost of Rs.3.31/kWh and levelized variable cost of Rs.4.45/kWh respectively. The Commission also proposed reimbursement of the levelized impact of tipping fee, computed as Rs.3.54/kWh, assuming a notional benchmark of base tipping fee of 1431/ton of waste by the generator to the distribution licensee(s), after receipt of the same under the provisions of its concession agreement (CA).

k. It is stated that the petitioner, through letter dated 14.04.2020 made submissions pursuant to the public notice issued by the Commission. The petitioner in its submission pertaining to tipping fee, stated that it does not receive any such fee from GHMC and hence the proposed norm of pass through of tipping fee should not apply to it.

l. It is stated that the respondent has also vide its letter dated 15.04.2020 responded to the public notice dated 20.03.2020 issued by the Commission inviting suggestions and comments in the matter of determination of generic tariff for RDF based power plants. Reference may be made to the remark column at entry 22 and 23, wherein the respondent did not make any suggestion with regard to reimbursement of tipping fee, rather, it simply suggested for deduction of the impact of tipping fee in the tariff itself, as computed by the Commission as Rs.3.54/kWh. The relevant extract of the submissions made by the respondent are as under:

Sl. No.	**Parameter**	**Proposed Norms**	**Remarks**
20.	Base fuel price	1800 Rs./MT	Escalation may be adopted as per actual. Gujarat Commission adopts 3% escalation. Hence, TSDISCOMs seeks 3% annual fuel price escalation
21.	Annual fuel price escalation	5%	
22.	Base tipping fee	1431 Rs./MT	

Sl. No.	Parameter	Proposed Norms	Remarks
23.	Annual escalation on tipping fee	5%	TSERC arrived at Rs.3.54/kWh towards tipping fee to be paid back to DISCOMs as and when received from government. Such impact of tipping fee tariff can be directly deducted from the tariff to be paid by DISCOM to the generators.

m. It is stated that after recording stakeholders' submissions, the Commission passed an order dated 18.04.2020 in O.P.No.14 of 2020. The directions relating to tipping fee, captured in para 91 and 92 of the said order, stipulated that the tipping fee should be reimbursed to the distribution licensee(s) by the generator on receipt of the same under the provisions of its CA. Para 91 has been culled out below:

"91. The Commission has gone through the stakeholders' submission regarding the tipping fee. The Commission does not subscribe to the stakeholders' submission that the tipping fee is to cover the difference between the sum of revenue from sale of all products and the O&M expenses. tipping fee means a fee or support price determined by the local authorities or any state agency authorised by the State Government to be paid to the concessionaire or operator of waste processing facility or for disposal of residual solid waste at the landfill. When the cost-plus tariff for electricity generated from waste is determined under Section 62 of the Electricity Act, 2003 by allowing all the legitimate expenses plus Return on Equity, the benefit of tipping fee should be passed on to the ultimate consumers of electricity as otherwise it would amount to double recovery for the same expenses through electricity tariff and tipping fee. Therefore, the Commission directs that the tipping fee should be reimbursed to the Distribution Licensee(s) by the generator on receipt of the same under the provisions of its Concession Agreement. The impact of tipping fee cannot be directed to be deducted upfront in the tariff as there may be a time gap between the developer's claim for tipping fee and the actual receipt from the authorities and the generator should not be subject to financial stress during this period."

n. It is stated that In para 92, the Commission did not offer any view on the particular submissions made by some of the stakeholders claiming that their projects are not entitled to any tipping fee thereby leaving the responsibility of such speculation and verification upon the distribution licensees. Para 92 of the order dated 18.04.2020 has been culled out below:

"92. The Commission is not expressing any opinion on some of the stakeholders' submission that their projects are not entitled to any tipping fee. It is the responsibility of the Distribution Licensee(s) to verify the facts and make claims for the implementation of the Commission's directions regarding the reimbursement of tipping fee."

o. It is stated that the petitioner has achieved COD of its 19.8 MW RDF based WTE plant, as per the applicable law read with the terms and conditions of the PPA, on 20.08.2020 and has been supplying power to the respondent as per the PPA since achievement of COD.

p. It is stated that in utter disregard to the principle laid down by the Commission in the tariff order dated 18.04.2020, the respondent has issued notice dated 16.07.2021 to the petitioner stating that it is liable to reimburse to the respondent, tipping fee that is allegedly received from GHMC, under the provisions of the CA.

q. It is stated that the impugned notice was issued pursuant to Article 2.2 of the PPA dated 19.02.2020, read with the directions issued in the order dated 18.04.2020, passed by the Commission. Vide the impugned notice, the respondent has also stated that in case the tipping fee received from GHMC is not reimbursed within one month from the date of receiving the impugned notice, then the respondent would be entitled to deduct the same from the energy bills payable to the petitioner. The notice is, therefore, arbitrary and illegal, being absurd and coercive in nature.

r. It is stated that it is also to be noted that an amount of Rs.120,77,07,312/- as on 26.11.2021, towards monthly bills payable for supply of energy is due to be paid by the respondent to the petitioner.

s. It is stated that it is important to note that the respondent is well aware of the fact that GHMC is paying the tipping fee for the waste management to HIMSW as part of the CA. This piece of information has also been supplied to Transmission Corporation of Telangana Limited (TSTRANSCO) from GHMC itself vide a letter issued in May, 2021 whereby GHMC has categorically specified that no tipping fee is being paid to the petitioner. This fact of the petitioner not being the recipient of the tipping fee is also evident from the admitted statements made in the impugned notice by the respondent. The respondent has however made an absurd claim that since both HIMSW and the petitioner, are subsidiary companies of REEL, a lifting of corporate veil would show that they are parts of one concern, owned by the same parent. The respondent has thus, incorrectly concluded that the petitioner also receives the

tipping fee on account of having the same parent entity as HIMSW and is therefore liable to reimburse it to the distribution licensee.

t. It is stated that it is pertinent to mention that the petitioner on multiple occasions has informed the respondent and other relevant bodies that it is not receiving any tipping fee and that only HIMSW is receiving the tipping fee from GHMC as per the provisions of CA.

u. It is stated that the petitioner had given an undertaking on 12.01.2021 to TSTRANSCO stating that it does not receive any tipping fee from GHMC. It further affirmed that the petitioner did not receive any grant from either GHMC or from the Government of Telangana (GoTS) for setting up of 19.8 MW RDF based WTE plant.

v. It is stated that the Telangana State Power Coordination Committee (TSPCC) vide its letter dated 19.01.2021 also requested the petitioner to reimburse the tipping fee to the respondent on receipt of the same from the concerned authority and also to furnish a copy of the CA executed with GHMC.

w. It is stated that in response to the above, apart from the aforementioned undertaking which was already given, the petitioner also given a letter dated 25.01.2021 to TSPCC, reiterating the above affirmation made in the undertaking. Further, the petitioner annexed the bank's statement which clearly demonstrates that no payment of tipping fee has been received by the petitioner from GHMC or from any other entity.

x. It is stated that through the speculations and affirmations made by the respondent itself, it is evident that the respondent is in possession of this knowledge that the petitioner is an entity separate from HIMSW and does not receive any tipping fee under the CA. The Superintending Engineer of the respondent had passed an assessment order dated 28.08.2020 alleging unauthorized use of electricity by the petitioner. The petitioner had utilized the power during construction of its 19.8 MW RDF based WTE plant from 2018 onwards till back charge prior to commissioning from the energy connection of HIMSW. It is held that both entities being different, an amount of Rs.100 lakhs (Rupees One Hundred Lakhs only) was imposed as penalty initially and the final assessment order reduced this to Rs.75 lakh which has since been paid

by the petitioner. The relevant extract of the assessment order is culled out below:

"Case is Examined as here under

1. *M/s Hyderabad MSW Energy Solutions Pvt Ltd availing supply from HT service HBG 2510 for construction of power plant, whose height is above 10 meters and they did not know the categorization of supply under HT-VII as nobody from department appraised them.*
2. *The ADE/Op/Keesara who takes the readings every month did not check the activity in the premises during the period 02/2018 to 06/2020.*
3. *The Concession Agreement dt. 29.02.2009 is entered between GHMC and M/s Ramky Enviro Engineers Ltd., (Concessionaire) for collection, transportation, processing and disposal of Municipal Solid Waste (MSW) generated in the city and to convert Waste to Energy (WTE) by utilizing the scientific advancement to meet Environment Regulations. under the grants Jawaharlal Nehru Urban Renewal Mission (JNNURM), a Program under the Ministry of Urban Development (GOI),*
4. *M/s Hyderabad Integrated MSW Management Ltd., is a special purpose company appointed by GHMC exclusively for the dumping yard disposal.*
5. *M/s Hyderabad MSW Energy Solutions Pvt Ltd., is a special purpose company appointed by GHMC for conversion of waste to energy (WTE),*
6. *Construction of the power plant at the site came to the notice of the TSSPDCL when M/s HYD MSW Energy Solutions Pvt Ltd., requested for extension of power supply (2178 kVA) to backcharge the newly erected 132 kV evacuation line to start their commissioning works. Keeping in view that this is a prestigious Government Project a Non-Conventional Renewable Energy project first of its kind in South India wherein the Municipal solid waste is converted to Energy funded by JNNURM under the Ministry of Urban Development of India (GOI) under GHMC Hyderabad, the reassessment is made duly limiting to 75% of the assessed value."*

y. It is stated that the petitioner vide its letter dated 26.08.2021 has responded to the impugned notice and thereby denied and disputed the alleged claim made by the respondent. It has reiterated the factual narration that it does not receive any tipping fee from GHMC, as distinguished from HIMSW which is operating the treatment and disposal facility since 2012. Therefore, it cannot be held liable for reimbursement of tipping fee that it does not even receive and definitely cannot be at the brunt of any deduction made against the claim of reimbursement.

z. It is stated that thus, from the above factual matrix, it is clear that the respondent has acted in an arbitrary manner, and as such, the petitioner is constrained to

approach the Commission for adjudication of disputes involved in the present case.

GROUNDS IN SUPPORT OF THE PRESENT PETITION:

aa. It is stated that for that a bare perusal of the very impugned notice itself displays incoherency and inconsistency, both in the factual matrix, as well as the analysis on the basis of which the alleged claim made. It goes without saying that the petitioner vide an undertaking, followed by a letter dated 12.01.2021, apprised the respondent of the factual background of the whole integrated project under IMSWM project at Jawaharnagar. The petitioner has specifically annexed the statements from its bank account for the satisfaction of the respondent displaying that it has neither received any tipping fee nor any incentive or support from any authority including but not limited to GHMC. Moreover, GHMC has also reiterated this fact in its letter written to TSTRANSCO in May, 2021.

ab. It is stated that GHMC paying the tipping fee for the waste management to HIMSW as part of the CA, has been admitted by the respondent in the impugned notice. It has also been stated by the respondent that both HIMSW and the petitioner are subsidiary companies of REEL and a lifting of corporate veil would only show that they are parts of one concern owned by the same parent. It has, however, been inaccurately concluded by the respondent that the petitioner also receives the tipping fee on account of having the same parent entity as HIMSW and is therefore liable to reimburse it to the respondent.

ac. It is stated that notwithstanding the above undisputed and admitted material facts, the respondent has issued the impugned notice which is contrary to the factual background which has been demonstrated in its own letter.

ad. It is stated that for the respondent, on its own has assumed the responsibility of establishing the liability of the petitioner to reimburse the tipping fee. When the respondent itself has agreed that tipping fee under the CA is being received by HIMSW, the question of raising a demand or claim against the petitioner is outrageously arbitrary and a display of highhanded abuse of dominant position on the part of the respondent, which is not only a State utility but also the exclusive procurer of the entire power generated by the petitioner.

ae. It is stated that for that the indulgence of the Commission is being sought for appreciating the predicament of the petitioner who has been subjected to such claim, when the respondent which is making the claim has agreed that the petitioner has not received the amount which is required to be reimbursed. Hence, the principle of nemo dat quod non habet is being referred by the petitioner, since, the respondent is claiming for reimbursement of an amount which has admittedly never received by the petitioner.

af. It is stated that for that the entire claim made by the respondent is based on conjectures and surmises, which are premised on the presumptive context that the respondent being a party to the contract, has usurped the function of a court by applying the principle of lifting of corporate veil, whereas, prima facie neither there is any circumstance in which such principle can be made applicable nor the respondent is empowered to apply such principle unanimously to claim for reimbursement. It is established law that such power only lies with a judicial or an adjudicatory body and not with a party to the matter. The respondent is being a judge in its own cause by stating that the implications of lifting or piercing the corporate veil in the present matter.

ag. It is stated that even a lifting of the corporate veil would only show that the two entities have separate sets of rights and liabilities, with HIMSW performing the functions of is collecting, processing and disposing of MSW and disposing off generated compost; while the petitioner is operating and maintaining the WTE facility.

ah. It is stated that for that it is a settled principle of law that even wholly owned subsidiaries ("WOS") are distinct from the parent company. The Hon'ble Supreme Court of India, in the matter of '*Vodafone International Holdings BV Vs. Union of India*', reported in 2012 (6) SCC 613, held as under (see para 150):

> *"150. The legal relationship between a holding company and WOS is that they are two distinct legal persons and the holding company does not own the assets of the subsidiary and, in law, the management of the business of the subsidiary also vests in its Board of Directors. … … Holding company and subsidiary company are, however, considered as separate legal entities, and subsidiary is allowed* decentralized management."

ai. It is stated that further, the Hon'ble High Court of Bombay, in the case of '*M.T. Hartati Vs. M/T Hartati*', reported in 2014 (2) Bom CR 854, highlighted the

independence of each company that has been incorporated under the Companies Act. The relevant extract of the judgment is as under:

> *"34. Indian law views each company incorporated under the Companies Act as a separate and legal entity from its shareholders and other companies and the fact that the two companies have common shareholders or common Board of Directors will not convert the two companies into a single entity."*

aj. It is stated that the respondent has however completely failed to recognize the doctrine of separate legal entity while arguing that by lifting or piercing the veil, it can be concluded that REEL is the developer and operator of the 19.8 MW RDF based power project and therefore REEL and consequently, the petitioner are receiving the tipping fee which GHMC is, in fact, paying to HIMSW as per the CA.

ak. It is stated that the averments made by the respondent in the impugned notice, defeat the very basic principle of company law jurisprudence as well as the inherent foundation of the principle that each company is a juristic person having a distinct and independent identity from the other. It is wrong on the part of the respondent to raise the alleged claim on the ground that it is implied that the holding company, REEL and the subsidiary petitioner are receiving the tipping fees, which GHMC is admittedly paying to HIMSW as per the CA.

al. It is stated that for that it is important to note that REEL, a company having pan India operation, has incorporated various SPC/SPVs as its subsidiaries, for undertaking various functions and obligations under CAs or otherwise. It is thus, illogical and incorrect to state that all the subsidiaries of REEL can be treated as one single entity and that the money, received by any one subsidiary, can be deemed to have been received by another. It is stated that such an interpretation if accepted would lead to a fatal blow to the industrial setup of the country where all subsidiaries will be treated as one entity.

am. It is stated that therefore, the entire impugned notice is an outcome of a misconstrued and distorted understanding of the entire scheme and the limited role played by the petitioner in the entire scope of the IMSWM project. Hence, the impugned notice is a misfire and misdirected and liable to be quashed at the very outset being completely non-est in the eyes of law.

an. It is stated that for that the impugned notice is a nullity being issued in derogation of the very finding of the Commission under para 91 and 92 of the tariff order dated 18.04.2020. It may be appreciated that the Commission in its order very categorically mentioned that the liability of reimbursement would only come into picture when the generator receives the tipping fee from the concerned authority. This eventuality has admittedly not been arrived in the present facts and circumstances qua the petitioner, since admittedly the petitioner has not received any tipping fee from GHMC. The intention behind the observation made by the Commission in para 91 has to be honored and the respondent cannot resort to colorable or convoluted approach towards creation of liability with the petitioner, which is per se violative of the order of the Commission.

ao. It is stated that for that the directions given by the Commission in para 91 of the order dated 18.04.2020 are to be read and understood in light of the observations made in para 92, whereby the Commission has refrained from expressing any opinion on the petitioner's submission that the proposal of reimbursement of tipping fee to the respondent does not apply to its case. The Commission has only made an observation to the effect that it is the responsibility of the respondent to verify the facts and make claims for reimbursement of tipping fee.

ap. It is stated that quite apart from the above, the word 'reimburse' employed in para 91 is of immense significance and must be accorded its general legal meaning for interpreting the true meaning and purport of the directions contained in the said paragraph. The word 'reimburse' has been defined in the Black's Law Dictionary is as follows:

> *"REIMBURSE. To pay back, to make restoration, to repay that expended; to indemnify, or make whole. Los Angeles County Vs. Frisbie, 19 Cal.2d 634, 122 P.2d 526; Askay Vs. Maloney, 92 Or. 566, 179 P. 899, 901."*

Reimbursement, therefore, means to pay back or to restore what one has already received. In other words, unless something has been received the question of making a reimbursement does not arise. Keeping this in mind and giving a holistic reading of the impugned order, it admits no other meaning except that respondent have been directed to verify as who has received the

tipping fee from the authorities and subsequently submit its claim for reimbursement to that entity only. This is due to the fact that the reimbursement or paying back of the tipping fees to the respondent has been made subject to the receipt of the same by the generators/distributors from the authorities.

aq. It is stated that for that reference may be made to the last para of the impugned notice whereby the respondent directs for reimbursement of tipping fee received from GHMC till date shall be reimbursed to the respondent which is absurd and also ambiguous. The respondent has omitted to mention the amount to be reimbursed. The impugned notice is therefore vague and uncertain.

ar. It is stated that for that the respondent after verifying the facts has assumed on its own that the petitioner is liable and accordingly the alleged claim is being made. The respondent has failed to discharge the responsibility bestowed upon it by the Commission in para 92 of the tariff order empowered by its ignorance of the principle of separate legal entities. Hence, the impugned notice also suffers from the irregularity of failure of the respondent to discharge its responsibility in lieu of the claim as directed by the Commission in para 92 of its order.

as. It is stated that for that the PPA is consented by the Commission in exercise of its power under Section 86(1)(b) of the Act, 2003. Further, the tariff order was passed in exercise of its power under Section 62 read with Section 86 of the Act. Both the parties herein are bound by the tariff order and the tariff payable under the PPA is the tariff determined by the Commission in its tariff order. Therefore, the right to claim reimbursement is ensuing out of such para 91 of the tariff order and while exercising power to claim tariff, the respondent cannot transgress the order or travel beyond the four corners of the order. Therefore, the very impugned notice is liable to be quashed being violative of paras 91 and 92 of the tariff order.

at. It is stated that for that it is also crucial to note that the respondent, in case of the petitioner’s failure to reimburse the amount of tipping fee, has conveyed a threat to deduct the same from monthly energy bills payable to the petitioner. Such a threat itself stands in absolute derogation of the observations made by

the Commission in para 91 and runs counter to the order dates 18.04.2020, wherein it has been categorically stated that the impact of tipping fee cannot be deducted upfront in the tariff as there may be a time gap between the developer's claim for tipping fee and the actual receipt from the authorities. The Commission has already offered its views on the option of deducting the impact of tipping fee from the tariff and has specifically enunciated that this option will only subject the generator to financial stress and thereby cannot be carried out. The respondent has arbitrarily issued this threat of deduction acting completely against the literal and unambiguous observation made by the Commission. The above observation, as part of para 91 has been culled out below:

> *"… … The impact of tipping fee cannot be directed to be deducted upfront in the tariff as there may be a time gap between the developer's claim for tipping fee and the actual receipt from the authorities and the generator should not be subject to financial stress during this period."*

av. It is stated that for that it is further submitted that the respondent's action of asking the tipping fee received from GHMC to be reimbursed within one month from the date of receiving the impugned notice, failing which the respondent would be entitled to deduct the same from the energy bills payable to the petitioner, is highly arbitrary, irrational and based on incorrect interpretation of the directions issued by the Commission. The amount payable to the petitioner, under energy charges, is a legitimate amount payable against energy bills. In pursuance to the PPA entered into between the petitioner and the respondent, the petitioner is entitled to the payment of tariff for the net energy delivered, on 100% PLF basis, for sale to the respondent at the delivery point and such right to payment cannot be curtailed for an ambiguous amount that is received by a sister concern, which has nothing to do with power generation of the petitioner.

ax. It is stated that for that the impugned notice is particularly worrisome to the petitioner considering the humongous amount of Rs.120,77,07,312/-, towards monthly bills payable for supply of energy that is due to be paid by respondent to the petitioner, as on 26.11.2021.

ay. It is stated that in light of the above arguments and the precedents cited, the impugned notice dated 16.07.2021 has been issued on a fallacious interpretation of law in utter ignorance of the doctrine of separate legal entity

and has been arbitrarily issued without application of mind. It is for this reason that the impugned notice is liable to be quashed.

az. It is stated that there is a prima facie case in favour of the petitioner and against the respondent, since at the very outset, the impugned notice suffers from gross irregularity apart from being violative of principles of natural justice and in denial of the unambiguous directions/observations made by the Commission in its tariff order dated 18.04.2020.

ba. It is stated that unless the prayers made herein below are granted in favour of the petitioner, the said petitioner shall suffer and incur irreparable harm and loss to its business and a free hand would be available to the respondent to deduct amounts from energy bills payable to the petitioner to the grave prejudice of the petitioner.

2. In view of the facts and reasons stated above, the petitioner has sought the following reliefs in the petition.

> *"a. To quash the impugned notice dated 16.07.2021 issued by the respondent to the petitioner, seeking reimbursement of tipping fee, as illegal and arbitrary.*
>
> *b. To restrain the respondent from deducting any amount towards reimbursement of tipping fee from energy bills payable to the petitioner."*

3. The petitioner has also filed an interlocutory application (I.A.No.1 of 2022) and the relevant averments of the same are extracted below:

a. It is stated that the present application is filed by the applicant in the captioned petition seeking an ex parte ad interim stay on the operation of the impugned notice issued by the respondent seeking reimbursement of tipping fee.

b. It is stated that as an option provided under the CA, REEL decided to set up a 19.8 MW RDF based WTE plant at Jawaharnagar and the applicant was tasked with the function of setting up, operating and maintaining the plant. The plant achieved COD on 20.08.2020.

c. It is stated that another subsidiary of REEL, namely, HIMSW was incorporated and was assigned the task of acting as the operator of the MSW processing facility at Jawaharnagar.

d. It is stated that the the applicant entered into a PPA with the respondent for supply of power on 19.02.2020. Clause 2.2 of the PPA dealing with payment of tariff dictated that the orders of the Commission would be enforceable in entirety for the purposes of computation of tariff.

e. It is stated that the Commission in exercise of its powers under Sections 62(1) read with 86(1)(a), (b), (c) & (e) of the Act, 2003 determined the generic tariff for purchase of power by the DISCOM from RDF based WTE power generation plants whose COD was achieved during the period of FY 2020-21 to FY 2023-24, passed an order dated 18.04.2020 in O.P.No.14 of 2020. Vide the said order, the Commission directed that WTE generators are liable to reimburse tipping fee to DISCOM on receipt of the same under the CA.

f. It is stated that the respondent issued the impugned notice seeking reimbursement of the tipping fee received under the CA. The respondent also threatened to deduct the amount to be reimbursed from energy bills payable by it to the applicant in case the reimbursement is not done. It is crucial to note herein that the respondent owes an amount of Rs.1,20,77,07,312/- as on 26.11.2021, towards monthly bills payable for supply of energy to the applicant.

g. It is stated that the detailed facts and circumstances giving rise to the filing of the accompanying petition, have been stated in the said petition and the said facts and circumstances are not being repeated herein for the sake of brevity. The said facts and submissions made in the petition, may be read as par and parcel of the present application.

h. It is stated that the respondent has erroneously raised the demand in its self-contradicting and ambiguous notice in utter ignorance of the directions issued by the Commission in its order dated 18.04.2020. This demand has been raised despite the admitted fact that HIMSW receives the tipping fee for carrying out the scope of work under the CA, while the applicant is only the generator supplying energy. This conduct on the part of the respondent is precipitative and coercive in nature. Irreparable loss and prejudice would be caused to the applicant unless the operation of the impugned notice is stayed and the respondent is restrained from giving effect to the impugned notice in terms of the deduction mentioned in the impugned notice or otherwise.

i. It is stated that the the respondent has deliberately issued the impugned notice with the knowledge that it owes an amount of Rs.120,77,07,312/- to the applicant. The respondent is taking advantage of the applicant's financial vulnerability on account of this tremendous amount due to it by the respondent. This itself shows the mala fide intention with which such notice has been issued to prejudice the interest of the applicant thereby causing financial loss as well as operational difficulty for the applicant.

j. It is stated that a perusal of the above, read with the submissions and averments made in the accompanying substantive petition, portray the illegality and arbitrariness of the impugned notice and can be summarised as follows, which require an indulgence of the Commission for adjudicating upon the present application while the accompanying petition is sub-judice for final adjudication:

(i) A demand notice issued for claim of an amount has to disclose the underneath rights of the party claiming the demand which empowers the said party to raise the demand. Apart from that it also has to disclose that how the addressee of the demand notice is liable to make payment of such demanded claim both the above disclosure as to the source of claim and the liability of the addressee are to be unambiguous and certain;

(ii) The respondent has miserably failed in establishing both the above primary ingredient of a demand notice. It has been issued in complete violation of the directions made by the Commission. There is neither any quantification as to the total claim amount nor there is any basis provided on which such claim amount can be quantified.

(iii) Further, the demand notice itself is inconsistent which contributes towards its absurdity being established beyond all reasonable doubt. On one hand, the respondent claims that the petitioner does not receive the tipping fee and on the other hand, it raises the demand of reimbursement, while the tariff order clearly stipulates that a generator would only be liable to reimburse the tipping fee to the respondent, when such generator receives the same from the authority.

(iv) Further, it is a reimbursement, which itself denotes that upon receipt of the amount the grantor would be able to reimburse the same to the respondent, while on the contrary, the respondent has illegally cautioned the petitioner that in the failure of reimbursement, the tipping fee amount would be deducted from the tariff, which is again violative of the expressed directions of the Commission.

k. It is stated that in the light of the above, an illegality would be perpetuated unless the operation of such an arbitrary and absurd notice is stayed by the Commission. The impugned notice is violative of the principles of natural justice

as well as the directions made by the Commission vide its order dated 18.04.2020.

l. It is stated that the in the light of the above submissions, the balance of convenience lies in favour of the applicant. In case such interim relief is not granted it would amount to giving a free hand to the respondent to take coercive actions against the applicant in line with the impugned notice dated 16.07.2021. No loss or prejudice would be caused to the respondent, if the relief sought are passed in favour of the applicant.

m. It is stated that the unless, the relief sought herein are passed in favour of the applicant, an illegality would be perpetuated and a free hand would be available to the respondent to issue notices in the nature of the impugned notice, to the grave prejudice of the applicant. Therefore, the present application is being made to stay the operation of the impugned notice and to restrain the respondent from deducting any amount from legitimate energy bills payable to the applicant.

n. It is stated that the Commission has powers under Section 94(2) of the Act, 2003 read with clause 24 of the Conduct of Business Regulations, 2015 to grant relief claimed in the present application.

4. The petitioner/applicant has sought the following prayer in the application.

> *"To pass an ex parte ad interim stay of the operation of the impugned notice dated 16.07.2021 issued by the respondent seeking reimbursement of tipping fee from the applicant."*

5. The petitioner further has filed an another interlocutory application (I.A.No.2 of 2022) seeking urgent listing under section 19(1) of the TSERC (Conduct of Business) Regulations, 2015 with a prayer "*to list the accompanying petition as filed by the applicant at the earlies possible on an urgent basis."*

6. The respondent in compliance to the directions of the Commission issued on 31.01.2022 (refer Record of Proceedings) has filed a Memo stated that "*the respondent undertakes that no amounts towards Tipping Fee would be deducted from the energy bills payable to the Petitioner till the disposal of I.A.Nos.1 & 2 of 2022 in O.P.No.1of 2022."*

7. Later on , the respondent has filed the counter affidavit and the contents of it are extracted below:

a. It is stated that be that as may be, the brief facts of the case are that:-

i. It is stated that the concession agreement dated 21.02.2009 was entered between GHMC and REEL for IMSWMP for the city of Hyderabad.

ii. It is stated that REEL formed two SPCs namely, HIMSW for carrying out the integrated waste management activities and HMESPL for generating/operating the 19.8 MW RDF based power project.

iii. It is stated that subsequently, in terms of clause 5.26 [Assignment of Concession to Special Purpose Company (SPC)] of the CA, a tripartite novation agreement dated 01.02.2012 was entered between GHMC, M/s REEL and M/s HIMSW.

iv. It is stated that Government of Telangana (GoTS), vide G.O.Ms.No.13, dated 18.03.2017, permitted M/s HIMSWML for establishment of 19.8 MW waste power plant for disposal of solid waste and harnessing of renewable energy from waste.

v. It is stated that vide proceedings dated 06.06.2018, duly noting the G.O.Ms.No.13 issued by GoTS, TSREDCO accorded sanction to M/s HMESPL to establish the RDF based WTE plant with a capacity of 19.8 MW at Jawaharnagar village, Kapra municipality, Medchal district for generation of power.

vi. it is stated that upon the request of M/s REEL, GHMC issued authentication vide letter dated 29.01.2019 to M/s HMESPL as SPC as incorporated by REEL for setting up and operation and maintenance of WTE facility under the IMSWM project of GHMC.

vii. It is stated that accordingly, novation agreement dated 08.04.2019 was entered into between M/s REEL and M/s HMESPL.

viii. It is stated that later, PPA dated 19.02.2020 was entered into between TSSPDCL and M/s HMESPL for sale of power from their 19.8 MW RDF based power project at tariff to be determined by the Commission.

ix. It is stated that Commission issued public notice dated 20.03.2020 in the matter of determination of generic tariff for electricity generated from RDF based power projects, who achieved COD during the period from 01.04.2020 to 31.03.2024.

x. It is stated that consequently, the Commission issued order dated 18.04.2020 in O.P.No.14 of 2020 in the matter of suo-moto determination of generic tariff for electricity generated from RDF based power projects in the Telangana State who achieve COD during the period from FY 2020-21 to FY 2023-24.

xi. It is stated that the RDF plant of the petitioner achieved COD on 20.08.2020.

xii. It is stated that taking the provisions of the PPA dated 19.02.2020 along with the Commission generic tariff order dated 18.04.2020 into consideration, notice dated 16.07.2021 was issued to the petitioner seeking reimbursement of tipping fee received from GHMC.

d. It is stated that for better illustration of the facts and reasons which compelled the respondent to issue notice dated 16.07.2021 to the petitioner seeking reimbursement of tipping fee, the related articles of the PPA and the findings of the Commission in generic tariff order dated 18.04.2020, are extracted below:

> Provisions of PPA dated 19.02.2020
>
> Article 2.2
>
> "The company shall be paid the tariff for the net energy delivered at the interconnection point for sale to DISCOM at the tariff as determined by TSERC from time to time. No tariff will be paid for the energy delivered at the interconnection point beyond contracted capacity. The orders of TSERC are enforceable in entirety and shall be considered for the purposes of computation of tariff".

Findings of TSERC in generic tariff order dated 18.04.2020 (the same is already extracted elsewhere in this order).

e. It is stated that as such, the Commission made it amply clear that the distribution licensee(s) shall have to verify the facts and seek reimbursement of tipping fee and the developer, being the signatory to the novation agreement, is made liable to reimburse the tipping fee to the DISCOM.

f. It is stated that it is pertinent to state that TSERC, in the notification dated 20.03.2020, proposed for reimbursement of tipping fee to the distribution licensees by the Generator on receipt of the claim for reimbursement as per the terms of the concession agreement. The levelised impact of tipping fee was proposed at Rs.3.54/kWh.

g. It is stated that keeping the higher tariff proposed/decided by the Commission in view and taking the interests of the consumers in the State into consideration, TSSPDCL, in the objections/suggestions filed before the Commission, requested the Commission to deduct the tipping fee directly from the tariff to be paid by DISCOMs to the generators to avoid any legal complications that may be raised by the generators/developers at a later point of time.

h. It is stated that however, the Commission was not inclined to consider the submission of DISCOMs in respect of the deduction of tipping fee upfront from the tariff payable on the ground that there may be a time gap between the claim of tipping fee by the developer from the local authority and the actual receipt of such fee from the authority concerned resulting financial stress to the generator

during the said period. The Commission further held that it is the responsibility of the DISCOMs to verify the facts and make claims for the implementation of the direction of the Commission in regard to the reimbursement of tipping fee.

i. It is stated that accordingly, the Commission in its final order dated 18.04.2020, directed the developers to reimburse the tipping fee to the distribution licensees on receipt of the same by the developers under the provisions of its concession agreement and thus did not quantify the fee.

j. It is stated that aggrieved by the order of Commission in regard to the tipping fee, TSDISCOMs filed Review Petition in R.P.(SR) No.20 of 2020 seeking review of the order dated 18.04.2020 in O.P.No.14 of 2020 praying the Commission to review the decision in regard to reimbursement of tipping fee and to direct deduction of tipping fee from the tariff with a view to avoid financial stress on the DISCOMs which finally passes onto the end consumers.

k. It is stated that the Commission by order dated 14.09.2020 rejected the review petition filed by TSDISCOMs holding that there is no mistake apparent on the face of the record as contended and therefore the review sought is not maintainable.

l. It is stated that basing on the directions contained in the generic tariff order of the Commission dated 18.04.2020, letters dated 16.10.2020 and 19.01.2021 were addressed to the petitioner requesting to reimburse the tipping fee on receipt of the same from the concerned authority.

m. It is stated that however, the petitioner replied that it did not receive any tipping fee from any authority/GHMC. The petitioner to substantiate that it did not receive any amount, enclosed bank account statement. The developer also furnished undertaking stating and affirming that M/s HMESPL does not receive any grant from either GHMC or GoTS in setting up the 19.8 MW RDF based Waste to Energy plant at Jawaharnagar.

n. It is stated that the respondent draws the attention of the Commission to the fact that, though the respondent stressed upon factoring the tipping fee component in the tariff, in its objections and in the review petition, the Commission directed the developers to reimburse the tipping fee.

o. It is stated that subsequently letter dated 22.03.2021 was addressed to the Commissioner, GHMC requesting him to notify TSSPDCL/TSPCC as and when tipping fee amount is transferred to M/s HMESPL.

p. It is stated that in response to the aforesaid letter, the Commissioner/GHMC vide letter dated 18.05.2021 informed that GHMC has not entered into separate concession agreement with M/s HMESPL for establishment of 19.8 MW RDF based Waste to Energy plant at Jawaharnagar and is not paying any tipping fee separately for generation of power. GHMC informed as follows:

> *"… …*
>
> *In this regard, it is to inform that GHMC has entered into Concession Agreement dated 21.02.2009 with M/s Ramky Enviro Engineer Limited through competitive bidding process as the Public Private Partnership partner for establishing the Integrated Solid Waste Management Project and REEL has novated the same to M/s Hyderabad Integrated MSW Limited which is a Special Purpose Vehicle formed by REEL for carrying out the integrated waste management activity comprising of collection, transportation, processing and disposal of solid waste in the GHMC area in a manner compliant with SWM Rules 2016.*
>
> *It is to inform further that, as per the Concession Agreement between GHMC and REEL, GHMC has to pay tipping fee of Rs.1431 (as per 2009-10 rates) per metric ton of MSW to HIMSW towards collection, transportation and treatment and disposal and the same shall be enhanced every year as per the escalation clause. The tipping fee being paid for the FY 2020-21 is Rs.2045.75 per metric ton. However, GHMC is paying only 40% as part tipping fee towards treatment and disposal as the collection and transportation activities are not fully handed over to HIMSW except for a few areas. Therefore, at present part tipping fee of Rs.818.30 per metric ton is being paid to HIMSW towards treatment and disposal facility.*
>
> *As per the Concession Agreement, it is the obligation of HIMSW for disposal of the generated compost and RDF after treatment of MSW. Whereas, upon the request of REEL to form a Special Purpose Company for setting up of the Waste to Energy projects for generation of green power from RDF. GHMC has issued authentication to HMESPL as a Special Purpose Vehicle of REEL formed for setting up operating and maintaining the Waste to Energy facility under the IMSWM project of GHMC. It is to further inform that GHMC is not paying any separate tipping fee to HMESPL or transfer any tipping fee payable to HIMSW towards generation of power from the said waste to energy plant or for any other purposes. As GHMC has not entered into any concession agreement with HMESPL. … … "*

r. It is stated that the following facts are evident from the letter of GHMC:

i. that GHMC entered into concession agreement with M/s REEL for IMSWM project for the city of Hyderabad;

ii. that REEL formed two SPCs namely M/s HIMSW and M/s HMESPL with the approval of GHMC as per provisions of the CA;

iii. that though tipping fee is not being paid to HMESPL separately for generation activity and the same is being disbursed to HIMSW;

s. It is stated that admittedly tipping fee is being received by HIMSW as contended by the petitioner itself in para 4 of its affidavit.

t. It is stated that receipt of tipping fee by HIMSW is as good as receiving tipping fee by HMESPL. To substantiate the same, the attention of the Commission is drawn to the various provisions/articles/clauses of novation agreements concluded by REEL, which illustrate the fact that M/s REEL is the major stakeholder in both the limited liability SPCs formed viz., M/s HIMSW and M/s HMESPL:

Novation Agreement dated 01.02.2012 between GHMC, REEL and HIMSW –

"… …

2. *M/s REEL has promoted and incorporated a SPC "Hyderabad Integrated MSW Limited" on 23.04.2009 as a limited liability company under the Companies Act, 1956 in terms of clause 5.26 of the CA to undertake and perform all its obligations and exercise the rights of the Concessionaire under the CA.*
3. *M/s REEL hereby undertake to hold at least 51% (fifty one percent) of the paid up capital of the SPC throughout the Concession period.*
4. *M/s REEL undertakes to hold itself principally responsible for all the duties and obligations under the CA throughout the concession period.*
5. *GHMC agreed that the SPC is a permitted Assign who shall do and cause to be done the implementation of CA duly discharging all the duties, obligations and responsibilities of M/s REEL and claiming the rights reserved for the Concessionaire.*
6. *The Novation Agreement is only to facilitate the principal to execute the CA through its associate/assigns. It is not a contract for substitution of M/s REEL with the assign and discharge the M/s REEL from its obligations. … …"*

Letter of Authentication issued by GHMC dated 29.01.2019 –

"… …

Accordingly, GHMC hereby issues its authentication to Hyderabad MSW Energy Solutions Private Limited as Special Purpose Company (SPC) as incorporated by Ramky Enviro Engineers Limited for setting up and operation & maintenance of Waste to Energy facility under the IMSWM project of GHMC with a condition that all such facilities to set up/going to set up and maintained by the SPC (Hyderabad MSW Energy Solutions Pvt Ltd) shall be handed over to GHMC under same terms and conditions of the Concession Agreement vide reference 4th cited keeping them encumbrance free. There shall not be any exclusive rights to this

SPC (Hyderabad MSW Energy Solutions Pvt Ltd) as the same shall be treated as permitted assign of REEL/HIMSW whose validity shall cease on expiry of the Concession period of the IMSWM project under the Concession Agreement vide reference 4th cited … …

Novation Agreement 08.04.2019 between REEL & HMESPL –

"… …

1. *REEL has promoted and incorporated HMESPL in terms of clause 5.26 of the Concession Agreement to undertake and perform the construction, operation and maintenance of the RDF based waste to energy plants and the same was authenticated by GHMC vide aforementioned Letter of Authentication which shall be treated as part & parcel of this Novation Agreement.*
2. *REEL undertakes to hold itself principally responsible for all the duties and obligations under the Concession Agreement throughout the Concession period, though the Construction & Operation & Maintenance of RDF Based Waste to energy plants is assigned in favour of HMESPL.*
3. *HMESPL will obtain all clearances and approvals by itself as required for the said construction and O&M of the said RDF based WTE plants and execute agreements as may be necessary from time to time for the conduct of the said business of RDF based Waste to energy projects and in compliance with the provisions of the concession agreement between the REEL and GHMC.*
4. *REEL shall hold at least 51% (fifty one percent) of the paid up capital of the HMESPL throughout the concession period.*
5. *The Novation agreement shall be governed by and construes in accordance with the provisions of the Concession Agreement dated 21st February 2009 between REEL and Greater Hyderabad Municipal Corporation (GHMC) and forms an integral part of this Novation Agreement. … … "*

u. It is stated that the aforementioned provisions make it abundantly clear that M/s REEL has signed CA with GHMC. For the sake of operational convenience, M/s REEL formed separate SPCs namely HIMSW and HMESPL entrusting the integrated waste management activities to HIMSW, and HMESPL is entrusted with the responsibilities relating to the generation/operation of 19.8 MW RDF based power project.

v. It is stated that it is a fact that M/s HIMSW and M/s HMESPL cannot act independently since admittedly they draw their rights/obligations from the CA entered between GHMC and M/s REEL. The activities taken up by the SPCs cannot be viewed or considered as independent and autonomous.

w. It is stated that neither the letter of authentication nor the novation agreements can be read or implemented independently. They have to be read in conjunction

with the concession agreement, which is the basis for the integrated solid waste management project, which includes both integrated waste management activities (assigned to HIMSW) and operating 19.8 MW RDF based power project assigned to HMESPL. Essentially, the CA is executed between M/s REEL and GHMC; HIMSW and HMESPL being SPCs of REEL. It is a fact that the generator who is receiving the cost of the energy supplied by it from the DISCOM is being paid tipping fee from GHMC. It is a fact that the Commission while issuing generic tariff order directed the generator to reimburse the tipping fee to the DISCOM.

x. It is stated that as per Section 2(87) of the Act, 2013, 'subsidiary company' or 'subsidiary', in relation to any other company (that is to say the holding company), means a company in which the holding company –

(i) controls the composition of the Board of Director; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies;

y. It is stated that in accordance with the above provision, HIMSW and HMESPL are subsidiary companies of REEL as it is holding more than one-half (51%) shares in both the companies in pursuance of the novation agreements.

z. It is stated that the Hon'ble Supreme Court of India in State of UP vs Renusagar Power Co., AIR 1988 SC 1737, 1757, 1758 (1191) 70 Com cases 127, held as follows:

> *"It is high time to reiterate that in the expanding of horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties. The horizon of the doctrine of lifting of corporate veil is expanding."*

aa. It is stated that the petitioner cited decisions of Hon'ble Apex Court and other High Courts in its affidavit in support of its case but the same are not applicable to the facts and circumstances of the present case.

ab. It is stated that it is very much clear from the aforementioned facts that REEL is the main developer and operator of the 19.8 MW RDF based project under the CA and HIMSW and HMESPL are its subsidiaries. In such view of the matter

receipt of tipping fee by any of the subsidiaries amounts to receipt of the same by REEL.

ac. It is stated that in the circumstances mentioned above, this respondent issued the impugned notice dated 16.07.2021 to the petitioner seeking reimbursement of tipping fee.

ad. It is stated that the petitioner instead of reimbursing the tipping fee as per the directions of the Commission filed the present petition praying to quash the impugned notice.

ae. It is stated that the petitioner with an intention to evade reimbursement of tipping fee to the respondent filed the present petition on false and baseless grounds.

af. It is stated the averments of the petition which are not specifically admitted or denied by this respondent may be deemed to have been denied.

ag. The respondent has therefore prayed that the Commission may dismiss the I.A. for stay and also the main petition with cost.

8. The petitioner has filed the rejoinder to the counter affidavit and the contents of it are extracted below.

a. It is stated that the present rejoinder is being filed by the petitioner in response to the counter affidavit filed by respondent. The Commission, vide its order dated 31.01.2022, recorded that the petitioner is apprehending deduction, in terms of the notice dated 16.07.2021 issued by the respondent (impugned notice), from the amounts payable to the petitioner towards tipping fee. In view of the petitioner's plea for interim relief, the Commission directed the respondent to file an undertaking by way of a memo stating that it will not affect the said deductions. Thereafter, on hearings dated 02.02.2022, the counsel for the respondent informed the Commission that a memo in furtherance of the same has been filed.

b. It is stated the Commission, vide its order dated 02.02.2022, was pleased to allow the respondent to file its counter affidavit and consequently allowed the petitioner to file its rejoinder. In view of such observation, the petitioner is filing the present rejoinder.

c. It is stated that a bare perusal of the counter affidavit filed by the respondent, would show that the respondent has overlooked material facts before the Commission and misinterpreted settled principles of law as well as the directions issued by the Commission vide order dated 18.04.2020, passed in O.P.No.14 of 2020.

d. It is stated that at the outset, save and except what are matters of record and matters arising therefrom, all other averments made by the respondent are denied and disputed. It is stated herein that the respondent vide its counter affidavit has misrepresented certain facts with respect to the petitioner and its liability to reimburse tipping fee to the respondent, which are denied and hence disputed in toto. The entire case/defence of the respondent is based on surmises and fallacious presumptions and preposterous deductions made on the basis of such surmises.

PRELIMINARY SUBMISSIONS

e. It is stated that the facts and submissions made by the petitioner in the petition, may be read as part and parcel of the present rejoinder. For the sake of brevity, the same are not reiterated here.

f. It is stated that the entire submission of the respondent is revolving around the inter se relationship between the petitioner, M/s REEL and M/s HIMSW and the lifting of corporate veil between these entities for the purpose of bringing an analogy that there is no distinction between tipping fee payment made to HIMSW and the petitioner, since both the entities are subsidiaries of REEL. Further, the respondent has referred to the definition of 'subsidiary' under Section 2(87) of the Companies Act, 1956 and referred to the observations made by the Hon'ble Supreme Court of India in the State of Uttar Pradesh vs. Renu Sagar Power Company, reported in 1988 4 SCC 59, however without making any logical deduction as to how these provisions and the case laws are substantiating the submissions made by the respondent. For the very reason of which, the petitioner is making the following submissions at the very outset which will defeat all the arguments made by the respondent, put together:

i. It is stated that the averments made by the respondent are in violation of the fundamental principles of Companies Act as well as the basic tenets of corporate democracy which is not only enshrined under the

Companies Act but also happens to be the basis on which both precedence as well as practice of company affairs are based on;

ii. It is stated that there is no harm or illegality in formation of SPCs as subsidiaries of a holding company, which happens to be a concessionaire under the CA dated 21.02.2009. When there is neither any contractual nor any statutory restriction, the independence of an entity to carry out business under distinct SPCs are the prerogative of such entity and moreover the SPCs are legally distinct companies having their own capital investment by way of equity and debts in the project formed for that specific purpose and the same cannot be misled or taken away by the mere apprehensions made by the respondent;

iii. It is stated that admittedly, REEL has a right to undertake various functions and obligations under the CA either by itself or through independent SPCs created under its umbrella, as subsidiaries under clause 5.26 of the CA. Moreover, clause 2.6 of the CA allows the concessionaire to sell and dispose off all material and RDF to third parties. Merely because the petitioner (which is an independent entity) happens to be a group company, the nature of treatment would not change, tipping fee is specifically the consideration for the work being done under the CA and is totally accounted for under the CA. Incidentally, the WTE plant is set up by a subsidiary of REEL, it is possible that it could be set up by a third party to which the RDF could have been sold. In that scenario, the tipping fee is not reimbursable to the respondent. Merely because the RDF is being consumed by another legal entity, that is a subsidiary of the concessionaire under the CA agreement, tipping fee cannot be treated to be reimbursable to the respondent;

iv. It is stated that more so, HIMSW is promoted and incorporated specifically for collection and processing of the MSW towards which work the tipping fee is being received, while on the contrary the petitioner, with its own investment, has set up a 19.8 MW waste to energy plant whereby it is generating electricity by incinerating RDF. Therefore, the entities are independent and are performing independent activities as required under respective independent contractual obligations.

v. It is stated that it is a completely fallacious argument by the respondent that due to HIMSW and the petitioner being subsidiaries of REEL, the doctrine of lifting of corporate veil would be attracted and it can be assumed that the petitioner and HIMSW are one and the same, consequently it would be implied as if the petitioner is receiving the tipping fee which is actually received by HIMSW;

vi. It is stated that the doctrine of lifting of corporate veil is an exception to the rule of separate and independent legal existence between a holding company and a subsidiary or subsidiaries, inter se. However, this has been a settled principle of law that such lifting of corporate veil is to be exercised cautiously and exceptionally, whenever such eventualities arise, where illegal activities are undertaken under the garb of corporate structure, hence, the veil of independent existence is lifted to expose the reality.

vii. It is stated that the corporate veil is lifted whenever there is a prima facie reason to suspect that a subsidiary company has been constituted with the sole intention of concealing material facts or to act as a facade and thereby perpetrate fraud. Reference may be made to the law laid down by the Hon'ble Supreme Court of India in LIC vs. Escorts Limited & Ors., reported in 1986 (1) SCC 264, the corporate veil may be lifted where a statute contemplated lifting of the veil, fraud or improper conduct intended to be prevented or a taxing statute or a beneficial statute is sought to be evaded or where associated companies are inextricably in reality part of one concern.

viii. It is stated that as a matter of fact, applying the above principle to the present facts and circumstances, there is neither any eventuality nor any prima facie case, which would give rise to the occasion of lifting of corporate veil. As a matter of admitted fact, HIMSW and the petitioner have distinct corporate identities, having distinct obligations/ responsibilities to discharge under the CA. They are permitted assignees to perform different set of obligations under the CA. Therefore, there is no prima facie case made out for allowing lifting of corporate veil merely on the vague and bald allegation coupled with complete distorted understanding of the basic principles of company law. There is neither any fraud nor any evasion of liability either perpetrated or seemed to be perpetrated by the activities carried out by REEL and its subsidiaries.

ix. It is stated that it is not only the bald allegations made by the respondent, but it also failed to take cognizance of the communications made by GHMC, the details of the bank statements and other documents, which unequivocally depict that no tipping fee is being received by the petitioner, hence, the liability to reimburse the same to the respondent does not arise at all in the light of the directions made by the Commission in paras 91 and 92 of the tariff order dated 18.04.2020.

x. It is stated that at the sake of repetition, it is stated that the respondent, as it seems, has been making allegations without having any basis and further such allegations are so abruptly positioned that the averments do not derive any sanctity from the premises in which such submissions have been made. Reference may be made to the para 21 of the reply, which itself is erroneous since there is no basis on which the respondent has straightaway came to a conclusion that receipt of tipping fee by HIMSW is as good as receiving tipping fee by the petitioner. REEL, being the holding company, nowhere under the law, it indicates that the subsidiaries shall not have independent legal existence with separate operations and activities. The company once incorporated holds the status of a separate legal entity in the eyes of law and is a juristic person different from the person who constitute it. The very statement made by the respondent is violative of the principles laid down in the case of Vodafone International Holdings BV vs. Union of India, reported in 2012 (6) SCC 613.

xi. While REEL takes the primary responsibility for all the duties and obligations under the CA, being the concessionaire, how this amounts to equating the consideration flowing from a municipal corporation to one SPC for discharging a set of activities, to that of another SPC, which is

a generating company within the meaning of Section 2(28) of the Act, 2003 and supplying electricity to a distribution licensee under an approved PPA under Section 86(1)(b), at a tariff determined by the Commission under Section 62 read with Section 86(1)(a) of the Act, 2003.

g. It is stated that further, in view of Article 2.2 of the PPA dated 19.02.2020, and catalyzed by a fallacious understanding of paras 91 and 92 of the order dated 18.04.2020 culled out above, the respondent issued the impugned notice dated 16.07.2021 stating that the petitioner is liable to reimburse to the respondent, the tipping fee that is allegedly received from GHMC, under the provisions of the CA. The impugned notice also mentioned that in case the tipping fee received from GHMC is not reimbursed within one month from the date of receiving the impugned notice, then the respondent would be entitled to deduct the same from the energy bills payable to the appellant.

h. It is stated that it is also to be noted that an amount of Rs.150.21 crore, as on 31.03.2022, towards monthly bills payable for supply of energy, is due to be paid by the respondent to the petitioner.

i. It is stated that the petitioner has produced ample evidence before the Commission to corroborate the fact that it is not in receipt of any tipping fee from GHMC and that the same is received by HIMSW under Article 7.1 of the CA.

PARA-WISE REPLY

j. It is stated that at the outset the petitioner denies each and every submission made in the counter affidavit filed by the respondent, in the manner alleged or at all, save and except what are matters of record or facts, specifically admitted by the petitioner. The denial of the allegation made through the averments of the respondent are made in toto, failure of any specific response to any allegation, may not be construed as an admission.

k. The petitioner also places before the Commission the fact that the respondent has used the term ‘generator’ as has been used in the order dated 18.04.2020 by the Commission, interchangeable with the term ‘developer’ as has been used to define the petitioner in the PPA dated 19.02.2020. The petitioner requests the Commission to interpret this use by the respondent as meaning ‘generator’ when used in relation to the order dated 18.04.2020.

l. It is stated that the direction laid down in para 91 of the order dated 18.04.2020 leaves no ambiguity as to the fact that it is only a generator being in receipt of the tipping fee under the CA and not a developer that is liable to reimburse the tipping fee to the distribution licensee.

m. It is stated that the novation agreement dated 08.04.2019, relied upon by the respondent, clearly states that REEL remains principally responsible for all the duties and obligations under the CA throughout the concession period, while the construction and O&M of RDF based WTE plant is assigned in favour of the petitioner. While it also states that the novation agreement has to be governed by and construed in accordance with the provisions of the CA dated 21.02.2009, executed between REEL and GHMC, the same cannot be inferred to mean, as an extension, that the petitioner is also liable for the obligations under the CA, and it inarguably cannot be inferred that a fee received under the CA by HIMSW is also received by the petitioner. The obligations assigned to the respective SPCs are not made interchangeable on account of this novation agreement. On the contrary, the novation only further clarifies the individual and separate obligations of the two SPCs.

n. It is stated that Article 2.1 of the CA lays down the scope of work under the CA and does not include generation of electricity. Accordingly, it can be deduced that while the option of setting up of a WTE plant has been given under the CA, the task of generation of electricity that has been delegated to petitioner, is not an obligation ensuing out of the CA. Additionally, the liabilities of the petitioner as generator are primarily originating from the PPA dated 19.02.2020 and are independent of the CA.

o. It is stated that the respondent has misinterpreted the directions laid down in paras 91 and 92 of the order dated 18.04.2020 and also the settled principles of company law in stating that the receipt of tipping fee to HIMSW, a separate legal entity, is as good as having been received by the petitioner, which while an associated company, is still an independent one in all aspects. The provisions of the novation agreements dated 01.02.2012 and 08.04.2019, along with the letter of authentication dated 29.01.2019, as cited by the respondent, do not infer in any way that the petitioner is also responsible for carrying out the obligations under the CA, against which tipping fee is paid as a consideration.

The following can be concluded about the relationship and obligations of the three independent entities from the three documents cited:

i. It is stated that REEL has incorporated two entities, HIMSW and the petitioner, both in terms of Article 5.26 of the CA. novation agreement dated 01.02.2012 sets out the obligations of HIMSW while the novation agreement dated 08.04.2019 sets out the obligations of the petitioner.

ii. It is stated that irrespective of both novations, REEL remains principally responsible for the terms and conditions in the CA and the two agreements do not substitute REEL with HIMSW or the petitioner.

iii. It is stated that the novation agreement dated 01.02.2012 promotes HIMSW to undertake and perform all obligations and exercise all rights of the concessionaire/REEL under the CA.

iv. It is stated that the letter of authentication dated 29.01.2019 states that the petitioner shall be treated as a permitted assignee of REEL/HIMSW for setting up and O and M of waste to energy facility under the IMSWM project of GHMC and has not been given any exclusive rights.

v. It is stated that the novation agreement dated 08.04.2019 states that REEL has promoted and incorporated the petitioner to undertake and perform the construction, operation and maintenance of the RDF based WTE plants and the same was authenticated by GHMC vide aforementioned letter of authentication which shall be treated as part and parcel of this novation agreement. The novation agreement, while has to be read with the provisions of the CA, does not confer any obligations of the CA upon the petitioner.

p. It is stated that tipping fee is paid as per Article 7.1 of the CA, towards fulfillment of the activities listed in sub-clause (b) of Article 7.1, which have now been novated to HIMSW. On the contrary, the work pertaining to setting up of WTE plant has been taken up by the petitioner in respect of which it is generating electricity by incinerating RDF and supplying the same to the respondent for the consideration of tariff as determined by the Commission. This task that the petitioner has been obligated with, while permitted under the CA, is not an obligation ensuing out of the CA, but is instead an obligation ensuing out of the PPA executed with the respondent. Hence, the very question of liability towards reimbursement of tipping fee does not arise at all, when the petitioner admittedly performs none of the activities listed in sub-clause (b) of Article 7.1 of the CA, towards which tipping fee is paid. The petitioner is thereby not a generator in receipt of tipping fee under the CA, the defined category under para 91 of the order dated 18.04.2020 that is liable to reimburse the tipping fee.

q. It is stated that the petitioner in its petition has produced ample precedents that demonstrate the separate legal entity status of all companies that have been

incorporated under the Companies Act. Even associated companies and subsidiaries companies are independent of their parent company (Vodafone International Holdings BV Vs. Union of India). In the present case, while HIMSW and the petitioner are both SPCs of REEL and part of the IMSWM Project under the CA dated 21.02.2009, for the discharge of obligations under the CA by HIMSW, it is receiving tipping fee as a consideration and for the purpose of generating and supplying electricity by the petitioner, the same is entitled to tariff as determined by the Commission. Therefore, it cannot be argued that the two entities are responsible for each other's obligations or liabilities when it is settled principle that the two entities are independent and separate legal entities.

r. It is stated that the case of '*Balwant Rai Saluja Vs. Air India Limited'*, reported in 2014 (9) SCC 407, further relied upon the above precedent laid down in '*Vodafone International Holdings BV Vs. Union of India'*, supra and elaborated as under:

> *"67. The Companies Act in India and all over the world have statutorily recognized subsidiary company as a separate legal entity. Section 2 (47) of the Companies Act, 1956 (for short "the Act, 1956") defines 'subsidiary company' or 'subsidiary', to mean a subsidiary company within the meaning of Section 4 of the Act, 1956. For the purpose of the Act, 1956, a company shall be, subject to the provisions of sub-section (3) of Section 4, of the Act, 1956, deemed to be subsidiary of another. Clause (1) of Section 4 of the Act, 1956 further imposes certain preconditions for a company to be a subsidiary of another. The other such company must exercise control over the composition of the Board of Directors of the subsidiary company, and have a controlling interest of over 50% of the equity shares and voting rights of the given subsidiary company.*
>
> *68. In a concurring judgment by K.S.P. Radhakrishnan, J., in the case of Vodafone International Holdings BV Vs. Union of India, (2012) 6 SCC 613, the following was observed:*
>
> *"Holding company and subsidiary company*
>
> *... ...*
>
> *257. The legal relationship between a holding company and WOS is that they are two distinct legal persons and the holding company does not own the assets of the subsidiary and, in law, the management of the business of the subsidiary also vests in its Board of Directors. ...*
>
> *258. Holding company, of course, if the subsidiary is a WOS, may appoint or remove any Director if it so desires by a resolution in the general body meeting of the subsidiary. Holding companies and subsidiaries can be considered as single economic entity and*

consolidated balance sheet is the accounting relationship between the holding company and subsidiary company, which shows the status of the entire business enterprises. Shares of stock in the subsidiary company are held as assets on the books of the parent company and can be issued as collateral for additional debt financing. Holding company and subsidiary company are, however, considered as separate legal entities, and subsidiary is allowed decentralized management. Each subsidiary can reform its own management personnel and holding company may also provide expert, efficient and competent services for the benefit of the subsidiaries."

69. The Vodafone case (supra), further made reference to a decision of the US Supreme Court in United States Vs. Bestfoods [141 L Ed 2d 43: 524 US 51 (1998)]. In that case, the US Supreme Court explained that as a general principle of corporate law a parent corporation is not liable for the acts of its subsidiary. The US Supreme Court went on to explain that corporate veil can be pierced and the parent company can be held liable for the conduct of its subsidiary, only if it is shown that the corporal form is misused to accomplish certain wrongful purposes, and further that the parent company is directly a participant in the wrong complained of. Mere ownership, parental control, management, etc. of a subsidiary was held not to be sufficient to pierce the status of their relationship and, to hold parent company liable."

s. It is stated that the judgment passed in '*Krishi Foundry Employees Union, Industrial Estate, Hyderabad Vs. Krishi Engines Limited & Ors.*', reported in 2003 SCC Online AP 57, can also be relied upon for the above averment. The precedent of independency of any company incorporated under the Companies Act was reiterated:

"The company incorporated under the Companies Act is entirely different from its shareholders. It has its own name, seal and assets. It is distinct juristic person inviolable personality. Whether it is a holding company or subsidiary company, this fundamental principle of company law does not get obliterated. It remains always same. Both the companies remain distinct and independent of each other though in the case of holding company and subsidiary company the former may to some extent be inter-dependent of the latter and vice versa. It is no doubt true that the doctrine of lifting the veil has been applied in the case of holding company and subsidiary company. The same, however, is not universal principle. To a limited extent, in certain situations, the holding company was held omnipotent in the affairs of the subsidiary."

t. It is stated that the two novation agreements have to be read with the CA as has been clearly stated in the agreements itself and that the IMSWM project includes both integrated waste management activities carried out by HIMSW and operating 19.8 MW RDF based power project assigned to the petitioner.

The CA is executed between REEL and GHMC; HIMSW and HMESPL being SPCs of REEL.

u. It is stated that while the petitioner does receive the cost of energy from the respondent, such consideration is independent of the tipping fee, which is only being received by HIMSW for the discharge of its separate obligations under the CA. It is reemphasized that the tariff order only directs for reimbursement of tipping fee by the generator only upon its receipt under the CA and not otherwise.

v. It is stated that the petitioner has contended that the respondent, vide the impugned notice, has assumed the power to lift this corporate veil. Despite such assumption of power by the respondent, a lifting of the corporate veil would only demonstrate that HIMSW and the petitioner are two separate entities, while promoted under the same agreement, one cannot be made accountable for the obligations or liabilities of the other.

w. It is stated that additionally, it has been settled law, as stipulated in '*LIC Vs. Escorts Ltd*.', reported in 1986 (1) SCC 264, that the doctrine of lifting the veil can be invoked if the public interest so requires or if there is allegation of violation of law by using the device of a corporate entity. It has further been stated in '*Kapila Hingorani Vs. State of Bihar'*, reported in 2003 (6) SCC 1, that the corporate veil can be pierced when corporate personality is found to be opposed to justice, convenience and interest of the revenue or workmen or against public interest. None of these eventualities are either present nor the facts and circumstances of present facts, make any prima facie case towards bringing an apprehension in that direction.

x. It is stated that the decisions cited by the petitioner are pertaining to the separate legal entity status of companies and are established principles of law over the course of company law jurisprudence and their applicability to the present case can be disputed.

y. It is stated that the respondent has misdirecting itself by now stating that REEL is also in receipt of the tipping fee, contradictory to its earlier claim against the petitioner vide the impugned notice. The respondent has falsely deduced that REEL is the main developer and operator of the 19.8 MW RDF based project

when the developer has been very clearly defined in the PPA as being the petitioner and as per the novation agreement dated 08.04.2019, the petitioner has been particularly tasked to perform the construction, operation and maintenance of the RDF based WTE plants. As per the novation agreements, REEL only remains principally liable for the duties and obligations under the CA, which do not include construction, operation and maintenance of an RDF based WTE plants.

z. It is further stated as follows:

i. It is stated that when the respondent has agreed being apprised that tipping fee under the CA is being received by HIMSW, the question of raising a demand or claim against the petitioner is outrageously arbitrary and a display of highhanded abuse of dominant position on the part of the respondent.

ii. It is stated that the respondent is making the claim while agreeing that the petitioner has not received the amount which is required to be reimbursed. Hence, the principle of nemo dat quod non habet has been referred in the petition, since, the respondent is claiming for reimbursement an amount which has admittedly never received by the petitioner.

iii. It is stated that the impugned notice is also in derogation of the very finding of the Commission under para 91 and 92 of the tariff order dated 18.04.2020. The Commission has very categorically mentioned that the liability of reimbursement would only come into picture when the generator receives the tipping fee from the concerned authority. This eventuality has admittedly not been arrived in the present facts and circumstances qua the petitioner.

iv. It is stated that the tipping fee under Article 7.1 of the CA is being paid for the quantum of MSW collected and weighed at the receiving end by HIMSW. The fee is a consideration for performance of these obligations while the petitioner is only a generator entitled to by producing and selling 19.8 MW power by incinerating RDF.

v. It is stated that it is pertinent to mention herein that the petitioner as a company was very much in existence since 2018, while the tariff order came in the year 2020. After carrying out the formalities required, the plant was constructed with all statutory clearances in its name, much before the passing of the order and even the approval of the PPA obtained in February, 2020. Therefore, the allegation of intention to evade reimbursement of tipping fee is preposterous and completely farfetched, apart from being baseless and frivolous.

vi. It is stated that further, the respondent has wrongly raised the threat of deduction when this prospect of deduction has clearly been rejected by the Commission in para 92 of its order and also in order dated 14.09.2020 passed by the Commission in R.P.(SR) No.20 of 2020

rejecting the respondent's prayer of allowing for deduction towards tipping fee.

vii. It is stated that the PPA is approved by the Commission in exercise of its power under Section 86(1)(b) of the Act, 2003. Further, the order dated 18.04.2020 was passed in exercise of its power under Section 62 read with Section 86(1)(a) of the Act, 2003. Both the parties herein are bound by the tariff order and the tariff payable under the PPA is the tariff determined by the Commission in its order. Therefore, the right to claim reimbursement is ensuing out of such para 91 of the order and while exercising power the respondent cannot transgress the order. Therefore, the impugned notice and the demand raised therein is liable to be quashed being violative of paras 91 and 92 of the order and also the settled principles of law.

aa. Therefore, in view of the detailed submissions made above, the petitioner prays the Commission to allow the petition and the Commission may quash the impugned notice dated 16.07.2021 issued by the respondent or any demand towards reimbursement of tipping fee from the petitioner as prayed for in the petition.

9. The Commission has heard the parties and also considered the material available to it. The submissions made by the parties on various dates are extracted for ready reference.

Record of proceedings dated 31.01.2022:

"… … The counsel for petitioner stated that the licensee had issued notice seeking to recover the amount paid or payable by the government towards tipping fee from the tariff to be paid by it for generation. The said notice is questioned in this petition. The licensee is on the verge of deducting the amount from the payments to be made to it. Therefore, necessary orders are sought by filing interlocutory application alongwith another application for expeditious hearing of the matter. The representative of the respondent stated that the necessary notice alongwith paper book has been received only on 24.01.2022, as such he needs time to file counter affidavit. The Commission pointed out that the petitioner is apprehending deduction of amounts, as such the licensee should file an undertaking through a memo that it will not resort to recovering the amount as directed by the Commission in the order dated 15.04.2020 in terms of the notice issued by it. The representative of the respondent sought sufficient time to file memo as well as counter affidavit. However, the Commission is not inclined to grant time in respect of memo, as such sufficient time will be granted to file counter affidavit upon filing the memo. The memo should be filed by the next date of hearing that is 02.02.2022. In view of the discussion the matter is adjourned."

Record of proceedings dated 02.02.2022:

"… … The counsel for petitioner stated that there is an urgency in the matter. The Commission had, on the last date of hearing, directed the licensee to file

an undertaking by way of a memo that they will not effect deductions from the amounts payable to the petitioner, the amount paid or payable by the government towards tipping fee. The representative of the respondent stated that a memo to that effect has been filed before the Commission yesterday itself. In view of the filing of memo, recording the same, the matter is adjourned. In the meantime, the respondent shall file its counter affidavit and the petitioner may file a rejoinder, if any. Both parties are to effect service of the same on either side well in advance to the date of hearing."

Record of proceedings dated 11.04.2022:

"… … The counsel for petitioner stated that the respondent has filed counter affidavit in this petition and stated that a review petition is pending, therefore, a rejoinder is to be filed in this petition. As such, this matter may be adjourned by three weeks. It may be taken up with the R. P. (SR) No.94 of 2022. Accordingly, the matter is adjourned."

Record of proceedings dated 02.05.2022:

"… … The counsel for petitioner stated that the counter affidavit as well as rejoinder is filed by the parties. The rejoinder filed by the petitioner is not received. He also stated that authorized representative is out of station and therefore, the matter may be adjourned. Accordingly, the matter is adjourned."

Record of proceedings dated 22.08.2022:

"… … The counsel for petitioner stated that the counter affidavit as well as rejoinder is filed by the parties. The pleadings are complete. However, in the connected matter in R. P. No.2 of 2022 the rejoinder has been filed today. The Commission may consider hearing both the matters together on the next date of hearing. The representative of the respondent stated that the Commission may hear the submissions in this matter and can hear the other matter as decided by the petitioner's counsel on another date. In view of the submissions of the parties, the matter is adjourned."

Record of proceedings dated 12.09.2022:

"… … The advocate representing the counsel for petitioner stated that the petitioner is questioning demand raised by the respondent seeking reimbursement of the tipping fee paid by the Grater Hyderabad Municipal Corporation (GHMC). The payment of tipping fee arises out of the concession agreement that has been entered by the GHMC the original concessionaire as such the generator cannot be burdened with such deduction. The Commission had determined the waste to energy tariff in the year 2020 and had imposed a condition that the tipping fee paid by GHMC shall be refunded to the distribution licensee as and when it is paid for. The Commission had determined the tariff of the WTE projects by front loading the tipping fee also into the tariff. The tipping fee per-se is neither part of the generation tariff nor it is component of expenditure involved in generation of power supply. The power generated by the petitioner is not a direct consequence of the action initiated under the concessional agreement. The concessionaire draws the waste from the GHMC and converts it to combustible material, which is used for generation of power. As such, the petitioner is not involved in collection or conversion of the material for generation of power.

The advocate representing the counsel for petitioner stated that the respondent has taken a stand that the Commission should lift the veil and see that the petitioner as well as the concessionaire are one and the same and hence is not entitled to claim exemption of the tipping fee. Even though, the concessionaire had agreed with the GHMC to undertake the collection, transportation and conversion of the waste for safeguarding environment, which enables it to claim tipping fee, it is not appropriate that the petitioner be made to reimburse the tipping fee. The said fee paid by GHMC is not to the petitioner but to the concessionaire. It is also relevant to state that though the concessionaire had established two separate entities as a holding entity, it does not mean that whatever is earned by the holding company would constitute an income of the subsidiary also. It is appropriate to state that the concessionaire had established two separate entities and one of them is the petitioner, though they have relationship between them, they cannot be treated as single entity.

The advocate representing the counsel for petitioner stated that the petitioner is not concerned with the responsibilities of the concessionaire or the agreement reached by the concessionaire with the GHMC. The petitioner has been established to undertake the generation of power using RDF, which is the product of the concessionaire. Had the concessionaire not established this unit, he would have sold the RDF to anybody else in the market. As also, if the concessionaire not established the generation facility, a third party could have established the generation facility and in that event, such generation facility creator would not be liable for reimbursement of the tipping fee.

The advocate representing the counsel for petitioner would endeavour to submit that the Commission had factored in the tipping fee and decided the tariff and if the same is not included, the Commission would have determined the levelized tariff of the generation facility at much higher rate than what is decided at present. The tariff at present, which includes the tipping fee after deduction of the same would be an unviable tariff. Though the submission is not relevant here, the parent company of the petitioner has, therefore, filed a review petition before the Commission to redetermine the tariff omitting the tipping fee and thus determine the tariff for WTE projects.

The representative of the respondent, while referring to the pending litigation between the petitioner and the respondent, has pointed out that the petitioner is only seeking waiver of reimbursement of the tipping fee, which has been factored in the tariff by the Commission and to be reimbursed to it by the petitioner. It is not relevant for the respondent as to from whom it is being received or who will gain from the same. The respondent is only insisting on the compliance of the directions issued by the Commission while determining the tariff for WTE projects. In that context only, the respondent sought to raise the contention that the petitioner and the concessionaire appears to be one and the same and therefore, the Commission should lift the veil and see to its satisfaction that they are one and the same entity. However, it is also his case, that once levelized tariff is fixed by the Commission, any issue with regard to components of such tariff, cannot be agitated by any of the parties before the Commission. At best, it could be a ground for appeal. Since, the Commission had determined generic tariff, which has been accepted by the petitioner in terms of the provisions of the PPA, it cannot turn-round and approach the

Commission to refix the generic tariff in the guise of questioning the demand for reimbursement of tipping fee as directed by the Commission.

The representative of the respondent would also submit that this proceeding initiated by the petitioner cannot be sustained unless and until the Commission modifies the tariff itself. In order to mitigate the issue, the parent company has already initiated proceedings for reviewing the order passed by the Commission with regard to self-same issue, which is also pending consideration before the Commission and any decision therein would be having a bearing on the present proceedings. Without waiting for any decision in the matter or appropriate consequences, the petitioner rushed to the Commission. Though, the respondent had issued notice for recovery of the tipping fee as and when it is reimbursed by GHMC, it had already undertaken before the Commission that it would not take any coercive steps in the matter. Therefore, the Commission may not entertain this petition on the above grounds as also in terms of the submissions made by the respondent in its counter affidavit.

The advocate representing the counsel for petitioner, while explaining the consequences of demand made by the respondent, would endeavour to say that the tariff determined by the Commission cannot factor an expenditure or income related to another entity and deny the petitioner its rightful income including but not limited to reasonable return. If the tipping fee is allowed to be part of the tariff and to be reimbursed to the respondent, then the petitioner will be at grave loss and will not be a viable project. Therefore, he would submit that the Commission may consider restraining the DISCOM from claiming tipping fee from the petitioner by modifying the condition imposed in the tariff order. Having heard the submissions of the parties, the matter is reserved for orders."

10. The point for consideration is, whether the petitioner is liable for payment of tipping fee in terms of the order of the Commission dated 18.04.2020 in O.P.No.14 of 2020.

11. The petitioner has relied upon the following judgments as part of its submissions before the Commission.

a. Vodafone International Holdings BV Vs. Union of India reported in 2012 (6) SCC 613.
b. Balwant Rai Saluja Vs. Air India Ltd. reported in 2014 (9) SCC 407.
c. Indowind Energy Ltd. Vs. Wescare (I) Ltd. reported in 2010 (5) SCC 306.
d. M. T. Hartati Vs. M/T Hartati reported in 2014 (2) Bom CR 854.
e. Krishi Foundry Employees Union, Industrial Estate, Hyderabad Vs. Krishi Engines Limited & Ors. reported in 2003 SCC online AP 57.
f. Salomon Vs. A. Salomon & Co. Ltd. reported in 1897 AC 22 & 1896 UKHL1.
g. Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar reported in 1964 (6) SCR 885.
h. S. L. Agarwal (Dr) Vs. GM. Hindustan Steel Ltd. reported in 1970 (1) SCC 177.

i. LIC Vs. Escorts Ltd. & Ors reported in 1986 (1) SCC 264.
j. Kapila Hingorani Vs. State of Bihar reported in 2003 (6) SCC 1.
k. E. P. Royappa Vs. State of T.N. reported in 1974 (4) SCC 3.
l. Maneka Gandhi Vs. Union of India reported in 1978 (1) SCC 248.

Of the above judgments, the petitioner had already referred to items (a) and (d) as also the other judgments mentioned above either in the original pleadings or in the rejoinder filed by it.

12. Before adverting to the facts and rival contentions of the parties, it is appropriate to state that the petitioner has relied upon the following listed judgements as part of its submissions before the Commission:

(a) <u>*Vodafone International Holdings BV Vs Union of India and another, (2012) 6 Supreme Court Cases 613*</u>

In this Judgement at paragraph 257 the Hon'ble Supreme Court held that:

257. The legal relationship between a holding company and WOS is that they are two distinct legal persons and the holding company does not own the assets of subsidiary and, in law, the management of the business of the subsidiary also vests in its Board of Directors. … …

And at paragraph 260 of this Judgement the Hon'ble Supreme Court held that:

260. Courts, however; will not allow the separate corporate entities to be used as a means to carry out fraud or to evade tax. Parent Company of a WOS, is not responsible, legally for the unlawful activities of the subsidiary save in exceptional circumstances, such as a company is sham or the agent of the share holder, the parent company is regarded as shareholder Multinational companies, by setting up complex vertical pyramid-like structures, would be able to distance themselves and separate the parent from operating, thereby protecting the multinational companies from legal liabilities.

(b) <u>*Balwant Rai Saluja and another Vs Air India Limited and others, (2014) 9 Supreme Court Cases 407*</u>

In this Judgement at paragraph 74 the Hon'ble Supreme Court held that:

74. Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the Court to disregard the separate legal personality of a Company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company

was mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would it seek remedy a wrong done be the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case.

(c) *Indowind Energy Ltd. Wescare (India) Ltd, (2010) 5 SCC 306*

In this Judgement at paragraph 15 the Hon'ble Supreme Court held that;

"15. … … that Subuthi and Indowind are two independent companies incorporated under the Companies Act, 1956. Each company is a separate and distinct legal entity and the mere fact that two companies have common shareholders or common Board of Directors, will not make the two companies a single entity. Nor will existence of common shareholders or Directors lead to an inference that one company will be bound by the acts of the other. … … the mere fact that Subuthi described Indowind as its nominee or as a company promoted by it or that the agreement was purportedly entered by Subuthi on behalf of Indowind, will not make Indowind a party in the absence of a ratification, approval, adoption or confirmation of the agreement dated 24.2.2006 by Indowind."

(d) *M.T.Hartati Vs. M/T Hartati, (2014) SCC online Bom 223*

In this Judgement at paragraph 34 the Hon'ble High Court of Bombay by making reliance over the Judgement of Indowind Energy Ltd. Wescare (India) Ltd (Supra) held that:

34. Indian law views each company incorporated under the Companies Act as a separate and legal entity from its shareholders and other companies and the fact that the two Companies have common shareholders or common Board of Directors will not convert the two companies in to a single entity.

(e) *Krishi Foundry Employees Union, Industrial estate, Hyderabad Vs. Krishi Engines Limited and others. 2003 SCC online AP 57*

In this Judgement at paragraph 13 the Hon'ble High Court of Andhra Pradesh held that:

13. The company incorporated under the Companies Act is entirely different from its shareholders. It has its own name, seal and assets. It is a juristic person's inviolable personality. Whether it is distinct is a holding subsidiary company, this company or get fundamental principle of company law does not obliterate. It always remains the same. Both the companies remain distinct and independent of each other though in the case of holding company and subsidiary company the former may to some extent be inter-dependent of the latter and vice versa. It is no doubt true that the doctrine of lifting the veil has been applied in the case of

holding company and subsidiary company. The same, however, is not a universal principle. To a limited extent, in certain situations, the holding company is omnipotent in the affairs of the subsidiary.

(f) *Saloman Vs. A. Saloman & Co. Ltd. (1897) AC22/ (1896) UKHL 1*

In this judgement Lord Halsbury LC, negating the applicability of the doctrine of "piercing the corporate veil" to the facts of the case stated

> *"that a company once legally incorporated must be treated like any other independent person with its rights and liabilities appropriate to itself, and that the motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are, unless there is such proof."*

(g) *Tata Engineering and Locomotive Co. Ltd and Others Vs State of Bihar and others (1964) 6 SCR 885*

In this Judgement at paragraph 24 the Hon'ble Supreme Court held that:

> *"24. The true legal position in Company which owes its incorporation to a statutory authority is not in regard to the character of a doubt or corporation or a dispute. The Corporation in law is equal to a natural person and has a legal entity of its own. The entity of the Corporation is entirely separate from that of its shareholders: it bears its own name and has a seal of its own; its assets are separate and distinct from members: those of its it can sue and be Sued creditors cannot obtain exclusively for its own purpose; its liability of the members or satisfaction from the assets of its members; the shareholders is limited to the capital by them; invested assets of similarly, the creditors of the members have no right to the since the Corporation. This position has been well established ever the decision in the case of Salomon v. Salomon and Co. [(1897) AC 22 (HL)] was pronounced in 1897; and indeed, it has always been the well-recognised principle of common law. However, in the course of time, the doctrine that the Corporation or a Company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the Corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the Corporation. As a result of the impact of the complexity of economic factors, judicial decisions have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more"*

(h) *Dr. S.L.Agrawal Vs. The General Manager, Hindustan Steel Ltd. (1970) 1 SCC 177*

In this Judgement at paragraph 10 the Hon'ble Supreme Court held that:

"10. … … In our judgment these differences rather accentuate than diminish the applicability of the principle laid down in the English case (Tamlin Vs Hennaford, (1950) 1 KBD 18) to our case. The existence of shareholders, of capital raised by the issuance of shares, the lack of connection between the finances of the corporation and the consolidated fund of the Union rather make out a greater independent existence than that of the corporation in the English case. We must, therefore, hold that the corporation which is Hindustan Steel Limited in this case is not a department of the Government nor are the servants of it holding posts under the State. It has its independent existence and by law relating to Corporations it is distinct even from its members. In these circumstances, the appellant, who was an employee of Hindustan Steel Limited, does not answer the description of a holder of 'a civil post under the Union' as stated in the Article 311 and was not entitled to the protection of Art. 311. The High Court was therefore right in not affording him the protection. …"

(i) *LIC of India Vs.Escorts Ltd. And others, (1986) 1 SCC264*

In this Judgement at paragraph 90 the Hon'ble Supreme Court held that:

"90. … … Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that object must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc."

(j) *Kapila Hingorani Vs State of Bihar, (2003) 6 SCC 1*

In this Judgement at paragraph 27 the Hon'ble Supreme Court held that:

"27. The corporate veil indisputably can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workmen or against public interest

(k) *E. P.Royappa Vs. State of Tamil Nadu, (1974) 4 SCC 3*

In this Judgement at paragraph 85 the Hon'ble Supreme Court held that

"85. ... … Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and it affects any matter relating

to public employment, it is also violative of Article 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action. as distinguished from motive inducing from the antechamber of the mind is not legitimate and relevant but is extraneous and outside the area of power and that is hit by Arts. 14 and 16."

(l) *Maneka Gandhi Vs. Union of India, (1978) SCC 248*

In this Judgement at paragraph 7 the Hon'ble Supreme Court by taking reference of the case of E. P.Royappa Vs. State of Tamil Nadu (supra) explained the nature and requirement of the procedure under Article 21 of the Constitution of India.

13. Insofar as, the Judgements referred to in items (a), (c), (d), (e) and (h) above, there is no dispute or denial of the findings wherein the relationship between parent company and subsidiary company, separate legal entity of each of the company explained/enumerated. The ratios of these judgements may be applicable to establish the fact that the petitioner is a separate entity, but that does not absolve it's requirement of complying or otherwise of the order passed by the Commission in the above said original petition. There is no denial of the petitioners claim that it is a separate entity and the status of the petitioner to that effect is appreciable. It can be seen from the observations made in these judgements that the directors or the shareholders may be the same persons, but the entity established would be a separate entity in terms of the law.

14. Coming to the Judgement referred in item (f) above. It seems the discussion of doctrine *"piercing the corporate veil"* started from this case as the reference of this case has been made in the judgments referred to in items (a), (b), (g), (i) and (j) above. In these judgements commonly it is observed that the doctrine of piercing the veil allows the court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company and the doctrine should be applied only in such cases wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding the liability and the intent of piercing

the veil must be such that it would seek to remedy a wrong done by the persons controlling the company and it's application would depend upon the facts and circumstances of each case.

15. The judgement referred in item (k) above, speaks about the equality of the law and equal protection of rights in favour of the women, scheduled caste and scheduled tribes under the Constitution of India. The judgement referred in item (l)above, speaks about provisions of the Constitution of India with regard to equality before law and right to life. Further, the main question fell for consideration in this case was with regard to impounding the passport of the petitioner therein, which was ultimately conceded by the Government that it will look into the matter again. Nothing can be derived from these two judgements i.e. (k) and (l) with regard to distinct companies, liability of SPC in place of parent company or any other such aspects and the ratios of these two judgements are of no consequence to the parties on either side and have no bearing on the material facts of the case.

16. The brief facts of the present case are as follows:

a) Greater Hyderabad Municipal Corporation (GHMC) has entered into Concession Agreement dated 21.02.2009 with M/s Ramky Enviro Engineers Limited, Hyderabad (original Concessionaire or REEL) through competitive bidding process as the Public Private Partnership partner for establishing the Integrated Municipal Solid Waste Management (IMSWM) Project for the city of Hyderabad. The Concession Period being for a tenure of 25 years from the date of COD – T&D (Treatment & Disposal facility at Jawaharnagar and shall be two (2) years from the date of Agreement) and extendable thereafter on mutual agreement between the Concessionaire and GHMC. Further, as per the Concession Agreement, GHMC has to pay tipping fee of Rs.1431/- per metric ton of MSW to REEL (as per 2009-10) towards collection, transportation and treatment and disposal and the same shall be enhanced every year as per the escalation clause.

b) REEL under the IMSWM project has incorporated and novated two (2) Special Purpose Companies (SPCs) viz., i) Hyderabad Integrated MSW Private Limited (HIMSW) [date of incorporation 23.04.2009] for carrying out the integrated waste management activity comprising of collection, transportation, processing

and disposal of solid waste in the GHMC area in a manner compliant with SWM Rules 2016, and as per Concession Agreement. It is the obligation of HIMSW for disposal of the generated compost and RDF after treatment of MSW ii) Hyderabad MSW Energy Solutions Private Limited (HMESPL or petitioner) [date of incorporation 23.12.2010] for setting up and operation & maintenance of Waste to Energy (WTE) facility i.e., generating/operating the 19.8 MW RDF based power project at Jawaharnagar, Hyderabad.

c) The State Government vide G.O.Ms.No.13 Environment, Forests, Science & Technology (FOR-III) Department, dated 18.03.2017 has permitted HIMSW for establishment of 19.8 MW waste power plant for disposal of solid waste and harnessing of renewable energy from waste.

d) HMESPL (the Developer as per TSREDCO) has approached and got sanction on 06.08.2018 from Telangana State Renewable Energy Development Corporation Limited (TSREDCO), which is a state entity, nodal agency for the promotion of renewable energy project in the Telangana State, to establish the RDF based Waste to Energy plant with a capacity of 19.8 MW at Jawaharnagar, Hyderabad, subject to certain conditions, the one being "*the developer should submit the authentication like Novotional agreement or Concession agreement of HMESPL from GHMC, Hyderabad."*

d) Upon request through their letters of Director, REEL and Project Director, HIMSW, the GHMC vide letter dated 29.01.2019 has issued its authentication to HMESPL. The relevant extract of the letter is reproduced below:

> "*Accordingly, GHMC hereby issues its authentication to Hyderabad MSW Energy Solutions Pvt. Ltd., as Special Purpose Company (SPC) as incorporated by Ramky Enviro Engineers Ltd for setting up and operation & maintenance of Waste to Energy facility under the IMSWM project of GHMC with a condition that all such facilities to set up/ going to set up and maintained by the SPC (Hyderabad MSW Energy Solutions Pvt Ltd) as the same shall be treated as* ***permitted assign*** of REEL/ HIMSW whose validity shall cease on expiry of the Concession period of the IMSWM project under the Concession Agreement … .

e) Accordingly, a novation agreement dated 08.04.2019 was entered into between REEL and HMESPL and the same is reproduced below:

1. *REEL has promoted and incorporated HMESPL in terms of clause 5.26 of the Concession Agreement to undertake and perform the construction, operation and maintenance of the RDF based waste to energy plants and the same was authenticated by GHMC vide aforementioned Letter of Authentication which shall be treated as part & parcel of this Novation Agreement.*
2. *REEL undertakes to hold itself principally responsible for all the duties and obligations under the Concession Agreement throughout the Concession period, though the Construction & Operation & Maintenance of RDF based Waste to energy plants is assigned in favour of HMESPL.*
3. *HMESPL will obtain all clearances and approvals by itself as required for the said construction and O&M of the said RDF based WTE plants and execute agreements as may be necessary from time to time for the conduct of the said business of RDF based Waste to Energy projects and in compliance with the provisions of the concession agreement between the REEL and GHMC.*
4. *REEL shall hold at least 51% (fifty one percent) of the paid up capital of the HMESPL throughout the concession period.*
5. *The Novation agreement shall be governed by and construes in accordance with the provisions of the Concession Agreement dated 21st February 2009 between REEL and Greater Hyderabad Municipal Corporation (GHMC) and forms an integral part of this Novation Agreement. … … "*

f) Power Purchase Agreement (PPA) dated 19.02.2020 was entered into between TSSPDCL and HMESPL for purchase and sale of power from 19.8 MW RDF based power project at tariff to be determined by the Commission and to be injected at 132 kV at an interconnection point of 400 kV Malkaram substation.

g) The Commission issued order dated 18.04.2020 in O.P.No.14 of 2020 in the matter of Suo Moto determination of generic tariff for electricity generated from RDF based power projects in the Telangana State, who achieve COD during the period from FY 2020-21 to FY 2023-24, wherein at para 91 and 92 the Commission has expressed its view with regard to certain suggestions/ comments received from stakeholders on the issue of 'Tipping Fee' is as reproduced below:

Issue No. 20: Tipping Fee

Stakeholders' submission

84. *The WtE plants are generally characterised by gate fee in the countries like Singapore, China, Korea, Japan etc. Globally, the waste management is centered on the concept of gate fee/Tipping Fee as a sustainable model for investments and accomplishing the task of effective solid waste management. Tipping Fee is a contract price for*

operator of MSW facility which is paid for various activities of waste management like segregation, processing, aerobic composting, anaerobic digestion, thermal processing of waste (waste to energy) leachate treatment and disposal, disposal of residues into a sanitary landfill and post closure maintenance of the same.

85. *The Tipping Fee is a bidding parameter for MSW projects and the developer agency decides in the tender based on various components in the project including statutory compliances besides high capital and operational costs. The Tipping fee is paid by the municipal authority based on the quantity of actual waste processed at the facility. The contract amount is paid as per the Concession Agreement between the developer and the municipality, the authority implementing the project. The developer is eligible for recovering the revenues out of sale of compost, power and as also the revenue from the Tipping Fee. The Tipping Fee is expected to cover the difference between the sum of revenue from sale of all products and the O&M expenses. The tendering process is carried out by any municipal authority on the basis of such assumption, which is declared in the bid and the Concession Agreement. A part of Tipping Fee, usually not exceeding 10%, is withheld to be deposited into an Escrow Account for meeting the obligation of post closure of the landfill, that is after expiry of the Concession Agreement. The facilities are returned to the concession authority at the end of concession period.*

86. *Presently, irrespective of any technology, the Indian cities are facing great problems in disposal of MSW in scientific and sustainable manner. The processing of combustible fraction of MSW viz., RDF to power meeting environmental norms is better and viable option much suited for waste conditions in India. The fuel with enhanced fuel value used for power generation cannot be benchmarked to the quantum of incoming mixed, raw waste which does not have any appreciable fuel value and need segregation prior to its use as fuel. The fuel portion is only a fraction of the raw waste.*

87. *The proposal for reimbursement of impact of Tipping Fee to the Distribution Licensee(s) will make the WtE projects unviable and is also a violation of Concession Agreement. Further, the reimbursement of impact of Tipping Fee to the Distribution Licensee(s) will not attract investment and purpose of preferential tariff will be defeated. The proposal of reimbursement of impact of Tipping Fee may be withdrawn as significant capacity addition is needed in Telangana State.*

88. *The WtE plant being set up by M/s Hyderabad MSW Energy Solutions Pvt. Ltd. is not entitled for any Tipping Fee from any urban local body and Greater Hyderabad Municipal Corporation. Hence, the proposal of reimbursement of impact of Tipping Fee to the Distribution Licensee(s) does not apply in the case of M/s Hyderabad MSW Energy Solutions Pvt. Ltd.*

89. *The WtE plant being set up by M/s Sri Venkateswara Green Power Projects Ltd. is not entitled for any Tipping Fee as per its agreement with GHMC. However, as per the G.O.Ms.No.413 dated 11.06.2018, the state level official committee shall decide the Tipping Fee/processing*

fee. As of now, M/s Sri Venkateswara Green Power Projects Ltd. does not have any incoming revenue from the municipal corporation, rather royalty is being paid to the municipal corporation.

90. *The impact of Tipping Fee as determined by the Commission may be deducted upfront from the tariff payable by the Distribution Licensee(s).*

Commission's view

91. *The Commission has gone through the stakeholders' submission regarding the Tipping Fee. The Commission does not subscribe to the stakeholders' submission that the Tipping Fee is to cover the difference between the sum of revenue from sale of all products and the O&M expenses. Tipping Fee means a fee or support price determined by the local authorities or any state agency authorised by the State Government to be paid to the concessionaire or operator of waste processing facility or for disposal of residual solid waste at the landfill. When the cost-plus tariff for electricity generated from waste is determined under Section 62 of the Electricity Act, 2003 by allowing all the legitimate expenses plus Return on Equity, the benefit of Tipping Fee should be passed on to the ultimate consumers of electricity as otherwise it would amount to double recovery for the same expenses through electricity tariff and Tipping Fee. Therefore, the Commission directs that the Tipping Fee should be reimbursed to the Distribution Licensee(s) by the generator on receipt of the same under the provisions of its Concession Agreement. The impact of Tipping Fee cannot be directed to be deducted upfront in the tariff as there may be a time gap between the developer's claim for Tipping Fee and the actual receipt from the authorities and the generator should not be subject to financial stress during this period.*

92. *The Commission is not expressing any opinion on some of the stakeholders' submission that their projects are not entitled to any Tipping Fee. It is the responsibility of the Distribution Licensee(s) to verify the facts and make claims for the implementation of the Commission's directions regarding the reimbursement of Tipping Fee.*

h) The 19.8 MW RDF based Waste to Energy power plant of the petitioner has achieved COD on 20.08.2020.

i) The respondent has issued a notice dated 16.07.2021 to the petitioner seeking reimbursement of tipping fee.

j) GHMC has informed vide letter dated 18.05.2021 that tipping fee being paid for the FY 2020-21 is Rs.2045.75 per metric ton of MSW. However, GHMC is paying to HIMSW only 40% as part tipping fee towards treatment and disposal as the Collection and Transportation activities are not fully handed over the HIMSW except for a few areas. Therefore, at present part tipping fee of Rs.818.30 per metric ton is being paid to HIMSW towards Treatment and Disposal facility.

k) The petitioner is responded that it did not receive any tipping fee from any authority/GHMC, to that extent placed their bank account statement to the respondent. Also, furnished undertaking stating and affirming that it does not receive any grant from either GHMC or GoTS in setting up the 19.8 MW RDF based Waste to Energy plant at Jawaharnagar.

17. In the generic tariff order dated 18.04.2020 in O.P.No.14 of 2020, the Commission made it clear at para 91 that "*when the cost-plus tariff for electricity generated from waste is determined under Section 62 of the Electricity Act, 2003 by allowing all the legitimate expenses plus Return on Equity, the benefit of Tipping Fee should be passed on to the ultimate consumers of electricity as otherwise it would amount to double recovery for the same expenses through electricity tariff and Tipping Fee. Further the Commission held that the impact of Tipping Fee cannot be directed to be deducted upfront in the tariff as there may be a time gap between the developer's claim for Tipping Fee and the actual receipt from the authorities and the generator should not be subject to financial stress during this period*." Further the electricity consumers should not be unduly burdened with the higher tariffs, the preamble of the Electricity Act, 2003 enjoins upon the Commission to ensure that the consumer interest is protected. On the other side the Commission is also to ensure environmentally benign polices and to balance the interest of the industry and the consumers. Thus, the Commission determined that any incentives, including but not limited to tipping fees, interest rates, Government grants, generation based incentives shall be passed on to the Distribution Companies. Further, the Commission held that the tipping fee is liable to be paid only in the circumstances when the generator has received the same from the Government or competent authority.

18. It is very much clear from the above facts that the State Government vide G.O.Ms.No.13 dated 18.03.2017 has issued permission to HIMSW (on request of HIMSW and not that of HMESPL) for establishment of 19.8 MW WTE plant. Further, in the eyes of GHMC (vide its authentication letter dated 29.01.2019 issued upon request of REEL and HIMSW) that the petitioner (HMESPL) is SPC incorporated by REEL for setting up and operation & maintenance of Waste to Energy facility under the IMSWM project of GHMC, and in relation to Concession Agreement dated 21.02.2009 it is **permitted assign of REEL/HIMSW**. This authentication letter and its

subsequent Novation agreement dated 08.04.2019 between REEL & HMESPL, whereby the REEL **assigned** the construction and Operation & Maintenance of RDF based Waste to Energy plants to HMESPL, is the basic documents of the petitioner (developer as mentioned by TSREDCO) in getting sanction on 06.08.2018 from TSREDCO for setting up of 19.8 MW RDF based Waste to Energy power plant at Jawaharnagar, Hyderabad and in turn facilitating TSDISCOM (TSSPDCL, Respondent) to enter into a PPA dated 19.02.2020, whereby applicability of the generic tariff Suo Moto determined by the Commission in its order dated 18.04.2020 in O.P.No.14 of 2020.

19. Further, the Commission is of the view that the tipping fee is paid by the GHMC in the context of the CA entered by them and because the concessionaire is undertaking environmental protection activity on behalf of the GHMC.

20. In view of the foregoing discussion, the Commission is of the view that the respondent claim is within the provisions of the PPA dated 19.02.2020 and in terms of generic tariff order dated 18.04.2020 in O.P.No.14 of 2020. The petitioner being the assignee of REEL and HIMSW, is liable to reimburse the tipping fee being paid by GHMC under the concession agreement.

21. The original petition is disposed of in terms of the observations in the preceding paragraphs but in the circumstances without any costs.

22. Since the Commission has disposed of the original petition by passing final orders, there is no necessity of adverting to the contentions raised in the Interlocutory Applications. Accordingly, the same are stands closed.

This order is corrected and signed on this the 28th day of June, 2023.

Sd/-	**Sd/-**	**Sd/-**
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

//CERTIFIED COPY//