



TELANGANA ELECTRICITY REGULATORY COMMISSION
'Vidyut Niyantran Bhavan', G.T.S. Colony, Kalyan Nagar, Hyderabad 500 045

O. P. No. 36 of 2023

And

I. A. Nos. 10 and 11 of 2023

Dated 28 .10. 2024

Present

Sri. T. Sriranga Rao, Chairman

Sri. M. D. Manohar Raju, Member (Technical)

Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s Kakatiya Cement Sugar & Industries Limited,

1-10-140 / 1, "GURUKRUPA", Ashok Nagar,

Hyderabad, Telangana – 500 020.

... Petitioner.

AND

Sothern Power Distribution Company of Telangana Limited,

H. No. 6-1-50, Mint Compound, Hyderabad – 500 063.

... Respondent.

The petition came up for hearing on 18.12.2023, 06.05.2024 and 06.06.2024. Sri. Vikram Pooserla, Senior Advocate along with Ms. Achala Siri, counsel for petitioner appeared on 18.12.2023, 04.04.2024 and, Ms. Achala Siri, counsel for petitioner along with Sri. Kaushik Soni, Advocate for petitioner appeared on 04.04.2024 and Ms. Achala Siri, counsel for petitioner appeared on 06.06.2024. Sri. Mohammad Bande Ali, Law Attaché being the representative of the respondents

appeared on 18.12.2023, 04.04.2024, 06.05.2024 and 06.06.2024. The matter having been heard and having stood over for consideration to this day, the Commission passed the following

ORDER

M/s. Kakatiya Cement Sugar & Industries Limited has filed a petition under section 86 (1) (f) of the Electricity Act, 2003 (Act, 2003) r/w TSERC Regulation No. 2 of 2015 questioning the recovery of wheeling charges and consequential reliefs.

- a. It is stated that the petitioner is a public limited company incorporated under the Companies Act, 1956, having its registered office at 1-10-140/1, Gurukrupa, Ashok Nagar, Hyderabad - 500 020 and is engaged in the production of cement, sugar and generation of power all of which are power intensive.
- b. It is stated that in view of certain encouraging incentives of the erstwhile Government of Andhra Pradesh as under the G. O. Ms. No. 93 dated 18.11.1997, the petitioner had proposed to set up a captive power plant (CPP) with a capacity of 16.7 MW for captive production and utilization of the electrical energy. Upon the sanction provided by NEDCAP vide its letter dated 09.06.2000, the petitioner had invested huge amounts for captive production and utilisation of the electrical energy for its own industrial purposes and set up a non-conventional energy plant with a capacity to generate 16.7 MW of power for consumption as well as sale.
- c. It is stated that thereafter, the petitioner entered into a power purchase and captive wheeling agreement dated 19.02.2002 (PPA) with the erstwhile Transmission Corporation of Andhra Pradesh Limited (now the Telangana State Transmission Corporation Limited that is TGTRANSCO), in accordance with the provisions of the Andhra Pradesh Electricity Reforms Act, 1998 (Reforms Act, 1998) and in line with the incentives allowed for wheeling and banking and charges for captive consumption in various government orders. The said agreements were valid from the commercial operation date to 30.06.2004. As under the PPA and CWA, the petitioner agreed to pay a compensation of 2% per kWh for the provision of wheeling service to the plant of the petitioner situated in Dondapadu Village, Chintalapalem Mandal, Suryapet District.

- d. It is stated that thereafter, in accordance with the provisions of the Reforms Act, 1998, the erstwhile Andhra Pradesh Transmission Corporation Limited (APTRANSCO) filed its tariff proposal for the year 2001-02, which included a proposal for levying wheeling charges. In consideration of the tariff proposal and the application made by APTRANSCO, the erstwhile Andhra Pradesh Electricity Regulatory Commission (APERC) vide order dated 24.03.2002 in O. P. No. 510 of 2001 fixed the wheeling charges for the year 2002-03 at 50 paise per kWh of energy transmitted through the network along with 28.4% of energy input by the project developer into the grid towards system loss. The charges were effective from 01.04.2002.
- e. It is stated that aggrieved by the order dated 24.03.2002 in O. P. No. 510 of 2001, the petitioner filed an appeal vide C. M. A. No. 1260 of 2002 before the erstwhile High Court of Andhra Pradesh. The Hon'ble High Court was pleased to pass an interim order dated 23.04.2002 suspending the operation of APERC's order dated 24.03.2002. It is pertinent to mention herein that similar appeals were filed by other generators against APERC's order dated 24.03.2002. The Hon'ble High Court had passed interim orders suspending the operation of APERC's order dated 24.03.2002 in all such appeals.
- f. It is stated that on 24.03.2003, APERC in a review of the tariff proposal for 2003-04 revised the wheeling charges for the financial year 2003-04 in O. P. Nos. 1 to 5 of 2003. However, APERC noted that wheeling charges would be collected as per the interim orders of the courts in the pending appeals till the same are disposed by the courts.
- g. It is stated that subsequently, the Hon'ble High Court vide order dated 18.04.2003 allowed all the appeals and writ petitions against APERC's order dated 24.03.2002 and the same was set aside. Aggrieved by the Hon'ble High Court's order dated 18.04.2003, APTRANSCO approached the Hon'ble Supreme Court in a batch of special leave petitions and civil appeals. The civil appeal and special leave petition in respect of the Petitioner were registered on 07.07.2003 as C. A. No. 5058 of 2003 and S. L. P. (C) No. 10404 of 2003 respectively.

- h. It is stated that while things stood thus, APTRANSCO issued a demand notice dated 23.07.2003 to the Petitioner demanding wheeling charges. Similarly, erstwhile APCPDCL issued a demand notice dated 28.07.2003 towards wheeling charges for the month of July 2003, and informed that a supplementary bill for the period 1st April 2002, to June 2003 would be issued in due course. Aggrieved by the aforesaid demand notices dated 23.07.2003 and 28.07.2003, the Petitioner filed W. P. No. 16521 of 2003 before the erstwhile High Court of Andhra Pradesh challenging the said demand notices. The Hon'ble High Court was pleased to pass interim order dated 07.08.2003 directing APTRANSCO and APCPDCL to levy and collect wheeling charges at 2% of the delivered energy.
- i. It is stated that thereafter, vide order dated 23.03.2004 in O. P. Nos. 495 to 499 of 2003, APERC revised the wheeling charges for the year 2004-05 in a review of the tariff proposal, subject to any order or directions issued by the Hon'ble High Court and the Hon'ble Supreme Court in pending proceedings.
- j. It is stated that the PPA and PP and CWA had expired on 30.06.2004, consequent to which the Petitioner sought for renewal of the Agreements. Insofar as the PP and CWA is concerned, APTRANSCO had agreed to continue the wheeling and banking facility to the petitioner if it furnishes an undertaking on Rs. -20 / NJS paper giving its consent for payment of wheeling charges and any other charges, as fixed by the APERC from time to time. The petitioner had accepted the offer of APTRANSCO and furnished an undertaking dated 21.09.2004. Accordingly, the APTRANSCO had continued the wheeling and banking to the petitioner.
- k. It is stated that as the PP and CWA with the petitioner came to an end on 30.06.2004, APCPDCL, APSPDCL and APTRANSCO began levying wheeling charges at the rate fixed by APERC for the year 2004-05. In this regard, APCPDCL issued revised bills for the months of July 2004 to October 2004, and APSPDCL issued revised bills for the months of July and August 2004. Several letters were also issued by the petitioner on one hand and the DISCOMs and APTRANSCO on the other

regarding the revised bills. However, as the parties could not reach an understanding, the petitioner approached the erstwhile Hon'ble High Court of Andhra Pradesh vide W. P. No. 21192 of 2004.

- l. It is stated that subsequently, pursuant to an amendment agreement dated 14.10.2004, the PPA was renewed for a further period and had expired on 11.04.2022.
- m. It is stated that thereafter, in W. P. No. 21192 of 2004, the Hon'ble High Court was pleased to suspend the operation of the proceedings in the letters dated 08.11.2004 and 11.11.2004 issued by APCPDCL and in the letters dated 16.08.2004 and 16.09.2004 issued by APSPDCL, and further directed the Respondents therein to levy and collect wheeling charges at 2% of the delivered energy vide interim order dated 19.11.2004. The said W. P. No. 21192 of 2004 is currently pending adjudication by the Hon'ble High Court of Telangana.
- n. It is stated that ever since the establishment of the power plant, the Petitioner had been generating power and utilizing the same as per the schedule approved. Further the petitioner, in terms of incentives given by the Government of India has been using the wheeling and banking facility through the grid for its cement factory. The delivered and unused energy of the petitioner company, after wheeling, will be banked (i.e. kept as reserve in the grid of the TRANSCO).
- o. It is stated that as things stood thus, the Commission had notified the regulation cited as Andhra Pradesh Electricity Regulatory Commission (Interim balancing & Settlement code) Regulation 2006 (2 of 2006) herein after referred to as Regulation No.2 of 2006, which is in complete disparity to the initiatives and incentives given by the Union and the State Governments. The said regulation specifies that no generators other than wind and mini-hydel power generators shall be allowed the facility of banking. In fact, apart from refusing the banking facility, the APTRANSCO and DISCOMs had withheld the petitioner's banked energy and refused to allow the petitioner to draw the same.
- p. It is stated that consequently, the petitioner was constrained to file W. P. No. 22670 of 2007 before the Hon'ble High Court challenging the said regulation. In the said writ petition, the petitioner had also filed a

miscellaneous petition seeking interim relief, wherein the Hon'ble High Court was pleased to pass an interim order dated 26.10.2007 directing APTRANSCO to maintain record of energy supplied by the petitioner. Pursuant to the interim order, the petitioner had been supplying energy to the APTRANSCO, who had been maintaining the record of the energy supplied by the petitioner. The petitioner has withdrawn the said W. P. No. 22670 of 2007 on 27.11.2008 as the APTRANSCO was maintaining the record of the energy supplied to it. Further, on receiving legal advice, the petitioner had filed miscellaneous application seeking restoration of W. P. No. 22670 of 2007 before the Hon'ble High Court, and the same was allowed on 07.04.2014.

- q. It is stated that some of the power generating companies had also questioned the denial of banking facility to them by APTRANSCO relying on the provisions of clause No. 12 of Regulation No.2 of 2006 through filing of W. P. No. 15313 of 2007 and batch before the Hon'ble High Court. The petitioners therein prayed the Hon'ble Court to direct APTRANSCO to permit them to use the banked energy ignoring Clause 12.1 of Regulation No. 2 of 2006. By virtue of a judgment dated 14.05.2008 in the said WPs, the Hon'ble High Court had exempted application of Clause 12.1 of Regulation 2 of 2006 to the cases of the petitioners therein till the disposal of the civil appeals pending before the Hon'ble Supreme Court in respect of the levy and determination of wheeling charges and directed the respondents therein to permit the petitioners to use the banked energy without insisting for a fresh agreement in terms of Regulation No. 2 of 2006.
- r. It is stated that thereafter, once again, APTRANSCO had refused to provide the facility of wheeling and banking to the petitioner placing reliance on regulation 2 of 2006, Hence, the petitioner was constrained to file another Writ Petition numbered as W. P. No. 26105 of 2008 challenging the refusal of APTRANSCO to wheel the energy banked by it. The Hon'ble High Court, vide an interim order dated 28.11.2008, directed APTRANSCO and DISCOMs to continue the wheeling and baking facility to the petitioner.

- s. It is stated that by virtue of the said interim order dated 28.11.2008, the APTRANSCO and DISCOMs were obligated to allow the petitioner to wheel power to its scheduled consumers from out of the unutilized / unallocated power banked by the petitioner with it and continue facility of banking to the petitioner. However, since the APTRANSCO and DISCOMs were sporadically trying to impose penal charges by relying on Regulation No. 2 of 2006 and attempting to bypass the interim order, the petitioner was constrained to file W. P. No. 17113 of 2009 before the Hon'ble High Court, wherein an interim order dated 19.08.2009 came to be passed directing the respondents therein not to take any coercive steps against the petitioner.
- t. It is stated that as things stood thus, the Hon'ble High Court vide order dated 21.12.2018 was pleased to dispose W. P. No. 16521 of 2003 in terms of the common order dated 18.04.2003 passed by the Hon'ble High Court in a batch of appeals and writ petitions filed against APERC's order dated 24.03.2002.
- u. It is stated that the TGTRANSCO, pursuant to the afore-mentioned interim orders of the High Court, had allowed the petitioner herein to wheel and bank its energy. While so, since 2018, the TSTRANSCO and the respondent herein had, once again, arbitrarily refused to continue the wheeling and banking facility to the petitioner and adjust the banked units in the power bills, leading to the filing of W. P. No. 18179 of 2019 before the Hon'ble High Court. Vide interim orders dated 09.09.2019 and 18.11.2019, the Hon'ble High Court had directed the TRANSCO and respondent herein not to take any coercive steps against the petitioner. Accordingly, wheeling and banking facility came to continued and the units of energy wheeled from November 2018 till March 2022 were duly given credit to in September 2022 through revised power bills.
- v. It is stated that subsequently, the Hon'ble Supreme Court was pleased to allow C.A. No. 5058 of 2003 and batch petitions vide judgment and order dated 29.11.2019 allowing the appeals filed by APTRANSCO and holding that APERC had the competence to determine the wheeling charges. The review petition filed by the Company vide R. P.(C) No. 1505 of 2020 against the Hon'ble Supreme Court's order dated

29.11.2019 was dismissed by an order dated 14.07.2020.

- w. It is stated that pursuant to the judgment and order of the Hon'ble Supreme Court dated 29.11.2019, the respondent herein issued two separate notices dated 27.06.2020 calling upon the Petitioner to pay an amount of Rs. 42,22,23,128/- and Rs. 1,60,70,675/- towards difference in wheeling charges and transmission charges respectively in cash and energy losses determined by the Commission allegedly payable by the petitioner as against HT SC No. SPT 427 belonging to the petitioner. In the said notices, the details pertaining to the amounts claimed were stated to have been provided in the annexure to the notice. However, no such annexure containing the details as alleged were provided along with the notices dated 27.06.2020 to the petitioner. The said notices dated 27.06.2020 were received by the petitioner only on 20.07.2020.
- x. It is stated that a reply letter dated 25.07.2020 was addressed by the petitioner to the respondent requesting to furnish complete details of the calculation data, calculation methodology, calculation formulae and references to the month-wise, year-wise tariff orders relied upon by the authority for deriving at the amount for examination and for providing appropriate response.
- y. It is stated that pursuant to the said letter, the officials of the petitioner had approached the officials of the respondent on 06.08.2021 and sought for details pertaining to the claims being made. It was brought to the knowledge of the petitioner at that time that the claims pertain to the difference in wheeling charges from the year 2002 to 2017. However, no clarifications or details were given in regard to the specifics of the amounts being claimed. As such, the claims for difference in the wheeling and transmission charges were never made against the petitioner till 27.06.2020. Thus, the claims were as such, barred by limitation.
- z. It is stated that without considering the petitioner's representation vide letter dated 25.07.2020, the Chief General Manager (Revenue), TGSPDCL, acting for the respondent, had issued a notice dated 24.08.2020 asking the petitioner to pay an amount of Rs. 43,82,93,803/- towards difference in transmission/wheeling charges in cash and energy

losses determined payable by the company, which amounts were alleged to have been detailed in the annexure. Once again, no annexure has been attached to the notice and no details pertaining to the claim were provided to the petitioner.

- aa. It is stated that thereafter, again, on 10.11.2020, the CGM (Revenue), TSSPDCL issued another notice asking the petitioner to pay an amount of Rs. 43,82,93,803/- towards difference in transmission / wheeling charges along with a statement showing the details of the wheeling charges which are allegedly payable by the petitioner. At this point in time, a statement showing details of the wheeling charges to be collected from the generators was annexed to the notice. As per the minimal break-up provided in the statement, the CGM (Revenue), TSSPDCL claimed an amount of Rs. 31,87,10,836.78/- payable as interest towards a sum of Rs. 13,52,30,382.30/- which is the alleged actual shortfall amount payable by the petitioner towards the difference in wheeling and transmission charges. Yet again, the calculation methodology, calculation formulae and references to the month-wise, year-wise tariff orders relied upon by the authority for deriving at the amount for examination has not been provided to the petitioner and the alleged claims were put forth without any basis.
- ab. It is stated that in response to the same, the petitioner addressed a letter dated 12.12.2020 to the the CGM (Revenue), TSSPDCL clearly stating that the claims made are barred by limitation, vague and unsustainable, that the demand notices are devoid of any particulars and the amounts were never claimed against the Petitioner prior to 27.06.2020, and that the interest charged is not liable to be paid as the interest claimed is unreasonable and without basis contractually or in law. Further, the CGM (Revenue), TSSPDCL was requested not to take any coercive steps or precipitative action against the petitioner.
- ac. While things stood thus, the petitioner had received two distinct notices, both dated 08.09.2021 issued by the respondent claiming the difference in wheeling and transmission charges. A total amount of Rs. 1,22,48,567/- and Rs. 46,78,31,895/- towards difference in transmission/wheeling charges was demanded to be paid by the

petitioner. The said notices were received by petitioner only on 21.09.2021 and 23.09.2021 respectively. The petitioner is now demanded a higher amount vide the afore-said notices and once again, no basis, break-up or calculation of whatsoever nature has been provided to the petitioner in regard to the claims made. Further, surprisingly, the said notices dated 08.09.2021 contained no reference to the earlier letters dated 25.07.2020 and 12.12.2020 addressed by the petitioner denying the liability. Ignoring the petitioner's replies and in complete isolation, such notices were issued threatening to disconnect the power supply to the petitioner's plant. As regards the said notices dated 08.09.2021, the petitioner addressed a detailed comprehensive letter dated 24.09.2021 to the respondent, denying any liability towards the claims made and requesting not to take any coercive steps for recovery of the claimed amounts in furtherance of their notices dated 08.09.2021.

ad. It is stated that thereafter, the petitioner filed Writ Petition vide WP No. 24862 of 2021 before the Hon'ble High Court of Telangana for challenging the said notices dated 08.09.2021. The Hon'ble Court was pleased to dispose of the said writ petition vide order dated 04.10.2021, directing the SE (Operations Circle), TGSPDCL to furnish the copy of the letter dated 17.06.2020 referred in both the notices dated 08.09.2021 and also in the explanation dated 24.09.2021 and pass appropriate orders by putting the petitioner on notice and affording him an opportunity of personal hearing. The SE (Operations Circle), TGSPDCL was further directed to complete this exercise within four weeks from the date of receipt of a copy of the order, and till such exercise is completed, respondent Nos. 2 to 5 therein were directed not to take further steps pursuant to both the notices dated 08.09.2021, including disconnection of the power supply to the petitioner.

ae. It is stated that subsequent to the above-mentioned order dated 04.10.2021 passed by the Hon'ble High Court, the petitioner once again received a notice dated 24.11.2021, vide email on 03.12.2021 from the respondent through the Superintending Engineer (SE), Operation Circle. As under the said notice, the respondent had demanded the petitioner

to pay an amount of Rs. 43,82,93,803 /- towards differential wheeling charges, including surcharge calculated up to January 2020 (with surcharge being raised until payment made by the consumer), failing which the supply of power to the petitioner at HT Service Connection No. SPT 427 would be disconnected without further notice.

af. It is stated that aggrieved that the directions of the Hon'ble High Court in order dt. 04.10.2021 have been summarily ignored by the respondent, the petitioner was constrained to file a contempt case vide C. C. No. 1531 of 2021. When the C. C. was taken up for hearing for the first time on 24.12.2021, the Ld. Judge of the Hon'ble High Court, upon hearing the submissions on behalf of the petitioner, was pleased to issue a show-cause notice to the SE (Operation Circle), TGSPDCL calling upon him to show-cause as to why action should not be taken against him.

ag. It is stated that subsequent thereto, the following instances took place:

i. It is stated that SE (Operation Circle), TGSPDCL issued a notice dated 11.01.2022 falsely alleging that an opportunity of personal hearing on 26.11.2021 was provided to the Petitioner vide notice dated 24.11.2021, bearing reference No. 111 /21 (which notice was never received by the petitioner).

ii. It is stated that thereafter, SE (Operation Circle), TSSPDCL issued another notice providing an opportunity of hearing on 05.02.2022. A personal hearing was conducted on 05.02.2022, wherein petitioner duly appeared and submitted a representation dated 02.02.2022.

iii. It is stated that SE (Operation Circle), TSSPDCL, Suryapet passed a speaking order dt. 12.02.2022 holding that the Petitioner is liable to pay the differential wheeling and transmission charges. In this regard, it is submitted that the observations of the SE (Operation Circle), TGSPDCL in the speaking order dt. 12.02.2022 are wholly erroneous and unsustainable in law.

ah. It is stated that it is pertinent to mention herein that while things stood as above, the claim for differential wheeling and transmission charges was bifurcated amongst the TSTRANSCO and the Respondent herein

pursuant to certain internal understanding between both, consequent to which, the respondent had only resorted to claiming differential wheeling charges as against the petitioner.

- ai. It is stated that thereafter, in view of an oral threat of disconnection received by the petitioner from the officials of the respondent, the petitioner, *under protest*, was constrained to deposit a total of sum of Rs. 11,95,82,966/-, being the entire principal sum claimed by the respondent towards differential wheeling charges. [The said sum of money was deposited in two parts – Rs. 8,00,00,000/- on 24.03.2022 and Rs. 3,95,82,966/- on 27.10.2022]. In this regard, it is stated that without prejudice to the contentions of the petitioner pertaining to deposit of the principal sum of differential wheeling charges, the levy of interest/surcharge on the said amount was vehemently disputed by the petitioner as being highly arbitrary and unreasonable. Thus, the petitioner did not make any deposit towards the same. Further, as a matter of fact, the respondent orally assured the petitioner that no coercive measures will be taken against the petitioner in respect of the interest that remained unpaid. On 25.01.2023, the W. P. No. 17113 of 2009 pending before the Hon'ble High Court of Telangana came to be dismissed as infructuous.
- aj. It is stated that while so, the contempt case in C. C. No. 1531 of 2021 was disposed of by the Hon'ble High Court through order dt. 09.06.2023 holding that the SE (Operation Circle), TSSPDCL, Suryapet had complied with the directions of the High Court and provided an opportunity of hearing to the Petitioner, though with a delay.
- ak. It is stated that thereafter, the SE (Operation Circle), TSSPDCL had issued a notice dt. 07.07.2023 demanding to be paid a sum of Rs. 42,36,86,659/- towards alleged balance differential wheeling charges (presumably interest / surcharge on the principal sum claimed) within 15 days from the date of receipt of the said notice, failing which the power supply to the HT service connection of the petitioner shall be disconnected.
- al. It is stated that the said notice dated 07.07.2023 was received by the petitioner only on 13.07.2023. It is pertinent to mention herein that no

break-up or calculation of whatsoever nature towards the balance amount claimed has been annexed to the impugned notice, and the impugned notice makes no reference to the amount deposited by the petitioner under protest. Thus, in response to the notice, the petitioner addressed a letter dt. 19.07.2023 informing that principal amount claimed towards differential wheeling charges had already been deposited by the petitioner and that the interest being levied is not payable under law. It was further contended that the power of disconnection is not available to the respondent as the amounts being demanded do not pertain to a period of two years prior to the date of issuance of the notice. The petitioner also sought for a break-up pertaining to the balance amount being claimed, but to no avail.

am. It is stated that it is pertinent to bring to the attention of the Commission that the said amount demanded by the respondent is being continuously shown as arrears pertaining to the petitioner in the books of accounts of the respondent, consequent to which the petitioner is denied permanent supply of power under HT Category – I by the Northern Power Distribution Company of Telangana Limited (TGNPDCL) as well as renewal of PP and CWA by the TGTRANSCO. It appears that the arrears are also reflected in the monthly HT C.C. bill raised by the respondent on the petitioner.

an. It is stated that the afore-said notice dated 07.07.2023 is vague, arbitrary, issued in a manner such that it is contrary to the principles of natural justice and is as such, illegal. The levy of interest / surcharge by the respondent on the alleged delayed payment of differential wheeling charges by the petitioner is wholly arbitrary and illegal. Further, it also appears that the respondent is purporting to charge interest on the surcharge / interest levied on the petitioner, which is without any basis under law and void.

ao. It is stated that the petitioner is constrained to approach the Commission on the following grounds.

A. That the levy of surcharge / interest on the differential wheeling charges for the period from FY 2002-03 till 2022-23 by the Respondent is manifestly arbitrary and illegal.

- B. That it is settled principle of law that interest is payable only after the dues are finally determined. It is further settled that interest would be payable only when there is a failure to pay as per crystallized liability. [Reliance is placed on ***NTPC Ltd. v. M.P. SEB, (2011) 15 SCC 580***, and ***CIT v. Ranchi Club Ltd., (2013) 15 SCC 545***]. It is submitted that as elaborated above, the liability to pay wheeling charges in cash was persistently disputed by the petitioner before the erstwhile APERC, the erstwhile Hon'ble High Court of Andhra Pradesh and the Hon'ble Supreme Court till the final judgment and order dated 29.11.2019 was passed in C.A. No. 5058 of 2003 and batch petitions upholding the power of the APERC to determine wheeling charges. Pursuant to such order, a demand for the differential wheeling charges was made against the Petitioner for the first time vide respondent's notice dated 27.06.2020, which was received on 20.07.2020. Such demand was further disputed by the Petitioner, which led to the filing of W.P. No. 24862 of 2021 and the speaking order dt. 12.02.2022 passed by the respondent, whereby the liability was finally determined by the respondent. Thus, the liability of the petitioner on differential wheeling charges came to be crystallized by the respondent only on 12.02.2022. Without prejudice to the contentions of the Petitioner in respect of the liability to pay the differential wheeling charges, the petitioner had duly deposited the principal sum of Rs. 11,95,82,966/- claimed towards differential wheeling charges in two parts – Rs. 8,00,00,000/- on 24.03.2022 and Rs. 3,95,82,966/- on 27.10.2022. Thus, there being no delay in payment of the principal sum claimed towards differential wheeling charges, no surcharge / interest is leviable against the petitioner. Thus, the levy of surcharge/interest on the principal sum claimed towards differential wheeling charges, calculated w.e.f. 2002 is wholly arbitrary and against the said principles of law.
- C. That the effect of the judgment and order dated 29.11.2019 passed by the Hon'ble Supreme Court in C. A. No. 5058 of 2003

and batch petitions is merely that the APERC had power to determine wheeling charges and thus, the wheeling charges set out in the tariff orders from 2002 till such date stood final. Accordingly, the liability to pay wheeling charges came to be determined. The same, cannot, in any way, be construed to have a retrospective effect so as to impose interest / surcharge on the wheeling charges so determined.

- D. That the interim order dt. 19.11.2004 passed by this Hon'ble Court in W. P. No. 21192 of 2004 is subsisting as of today and thus, the petitioner was only liable to pay wheeling charges in kind at the rate of 2% of the delivered energy. However, contrary to the directions of the Hon'ble High Court, the respondent purported to levy the differential wheeling charges in cash by way of notices dt. 27.06.2020, 08.09.2021, and 24.11.2021.
- E. That through the speaking order dated 12.02.2022, the respondent mechanically reiterated its demand for differential wheeling charges and interest thereon, without any consideration of the issues raised by the petitioner and without any application of mind. There has been no proper determination of the demand, which is wholly arbitrary, illegal, without jurisdiction, and in violation of the principles of natural justice. Thus, the speaking order dated 12.02.2022 holding that interest is payable with effect from 2002 and the notice dt. 07.07.2023 issued by the respondent claiming balance differential wheeling charges, presumably the interest component on the principal amount already deposited, is arbitrary and liable to be set aside.
- F. That without prejudice to the afore said, the interest / surcharge levied by the respondent appears to have been calculated at an exorbitant rate and the same is without any basis whatsoever, either under law or otherwise. The claim of the Respondent with reference to interest of Rs. 42 crores and above on the principal sum of Rs. 11.95 crores is excessive and unjust.
- G. That the claim of the respondent towards balance differential wheeling charges and the notice dated 07.07.2023 lacks

transparency to the extent that it does not refer to the payments made by the petitioner and does not disclose the break-up and basis of the amount demanded. It is settled proposition of law that the principles of natural justice are inbuilt in the statutory rules and require observance unless the same stand excluded by the rules itself. The respondent, while issuing the said notice demanding payment of alleged balance differential wheeling charges, ought to have provided a break-up of the alleged amount claimed to be due from the petitioner. Thus, the same is contrary to principles of natural justice.

H. That the respondent is raising arbitrary, vague, illegal and time-barred claims pertaining to surcharge / interest on alleged difference in wheeling charges payable by the petitioner so as to cause severe loss to the petitioner and make unlawful gains to themselves.

I. That the notice dt. 07.07.2023 issued by the respondent is particularly worrisome to the petitioner considering the exorbitant amount of INR 42,36,86,659/- demanded towards balance difference wheeling charges and shown in the arrears, subjecting the petitioner to great prejudice.

ap. It is stated that owing to the levy of surcharge / interest on differential wheeling charges and non-payment thereof (as the same is vehemently disputed by the petitioner for reasons stated above), the respondent had continuously shown an exorbitant amount exceeding Rs. 42 crores as arrears due from the petitioner, based upon which the petitioner is being arbitrarily denied permanent supply of power at its sugar plant in Kallur Village as well as renewal of the PP and CWA. It is stated that the petitioner also apprehends that the officials of the respondent will resort to unlawful methods for recovery of the surcharge / interest allegedly payable on differential wheeling charges, despite the deposit of the principal sum claimed.

2. The petitioner has sought the following prayers in the petition.

“a. To declare that the levy of surcharge / interest by the Southern Power

Distribution Company of Telangana Limited (TSSPDCL) on differential wheeling charges allegedly payable by the petitioner for the period from FY 2002-3 till FY 2016-17 is illegal, arbitrary and void.

- b. To consequently, direct that the petitioner is not liable to pay surcharge / interest on differential wheeling charges deposited by the petitioner, by setting aside the speaking order bearing Lr. SE / OP / SRPT / SAO / JAO / HT / D. No. 140 / 21 dated 12.02.2022 and the demand notice bearing Lr. No. SE / OP / SPT / SAO / JAO / HT / D. No. 75 / 23, dated 07.07.2023 issued by the respondent.”

3. The petitioner has also filed an interlocutory application under section 94 (2) of the Act, 2003 r/w TSERC Regulation No. 2 of 2015 seeking interim direction to the respondent not to take any coercive steps against the petitioner including disconnection of HT Service Connection No. SPT 427 belonging to the petitioner in pursuance to the notice bearing Lr. No. SE / OP / SPT / SAO / JAO / HT / D. No. 75 / 23, dated 07.07.2023 issued by the respondent pending disposal of the main O. P. The averments of the application are extracted below.

- a. It is stated that the petitioner is a public limited company incorporated under the Companies Act, 1956, having its registered office at 1-10-140/1, Gurukrupa, Ashok Nagar, Hyderabad 500 020 and is engaged in the production of cement, sugar and generation of power all of which are power intensive.
- b. It is stated that in view of certain encouraging incentives of the erstwhile Government of Andhra Pradesh as under the G. O. Ms. No. 93 dated 18.11.1997, the Petitioner had proposed to set up a Captive Power Plant (CPP) with a capacity of 16.7 MW for captive production and utilization of the electrical energy. Upon the sanction provided by NEDCAP vide its letter dated 09.06.2000, the petitioner had invested huge amounts for captive production and utilisation of the electrical energy for its own industrial purposes and set up a non-conventional energy plant with a capacity to generate 16.7 MW of power (plant) for consumption as well as sale.
- c. It is stated that thereafter, the petitioner entered into two agreements, namely a PPA dated 19.02.2002 and a power purchase and captive

wheeling agreement dated 19.02.2002 (PP & CWA) with the erstwhile Transmission Corporation of Andhra Pradesh Limited (now, the Telangana State Transmission Corporation Limited that is TGTRANSCO), in accordance with the provisions of the Andhra Pradesh Electricity Reforms Act, 1998 (Reforms Act, 1998), and in line with the incentives allowed for wheeling and banking and charges for captive consumption in various government orders. The said agreements were valid from the commercial operation date to 30.06.2004. As under the PP and CWA, the petitioner agreed to pay a compensation of 2% per KWH for the provision of wheeling service to the plant of the petitioner situated in Dondapadu Village, Chintalapalem Mandal, Suryapet District.

- d. Thereafter, in accordance with the provisions of the Reforms Act, 1998, the erstwhile Andhra Pradesh Transmission Corporation Limited (APTRANSCO) filed its tariff proposal for the year 2001-02, which included a proposal for levying wheeling charges. In consideration of the Tariff Proposal and the application made by APTRANSCO, the erstwhile APERC vide order dated 24.03.2002 in O. P. No. 510 of 2001 fixed the wheeling charges for the year 2002-03 at 50 paise per KWH of energy transmitted through the network along with 28.4% of energy input by the project developer into the grid towards system loss. The charges were effective from 01.04.2002.
- e. It is stated that aggrieved by the order dated 24.03.2002 in O. P. No. 510 of 2001, the petitioner filed an appeal vide C. M. A. No. 1260 of 2002 before the erstwhile Hon'ble High Court of Andhra Pradesh. The Hon'ble High Court was pleased to pass an interim order dated 23.04.2002 suspending the operation of APERC's order dated 24.03.2002. It is pertinent to mention herein that similar appeals were filed by other generators against APERC's order dated 24.03.2002. The Hon'ble High Court had passed interim orders suspending the operation of APERC's order dated 24.03.2002 in all such appeals.
- f. It is stated that on 24.03.2003, APERC in a review of the tariff proposal for 2003-04 revised the wheeling charges for the financial year 2003-04 in O. P. Nos. 1 to 5 of 2003. However, APERC noted that wheeling

charges would be collected as per the interim orders of the courts in the pending appeals till the same are disposed by the courts.

- g. It is stated that subsequently, the Hon'ble High Court vide order dated 18.04.2003 allowed all the appeals and writ petitions against APERC's order dated 24.03.2002 and the same was set aside. Aggrieved by the Hon'ble High Court's order dated 18.04.2003, APTRANSCO approached the Hon'ble Supreme Court in a batch of special leave petitions and civil appeals. The civil appeal and special leave petition in respect of the Petitioner were registered on 07.07.2003 as C.A. No. 5058 of 2003 and SLP(C) No. 10404 of 2003 respectively.
- h. It is stated that while things stood thus, APTRANSCO issued a demand notice dated 23.07.2003 to the petitioner demanding wheeling charges. Similarly, erstwhile APCPDCL issued a demand notice dated 28.07.2003 towards wheeling charges for the month of July 2003, and informed that a supplementary bill for the period 01 April 2002, to June 2003 would be issued in due course. Aggrieved by the aforesaid demand notices dated 23.07.2003 and 28.07.2003, the petitioner filed W. P. No. 16521 of 2003 before the erstwhile High Court of Andhra Pradesh challenging the said demand notices. The Hon'ble High Court was pleased to pass interim order dated 07.08.2003 directing APTRANSCO and APCPDCL to levy and collect wheeling charges at 2% of the delivered energy.
- i. It is stated that thereafter, vide order dated 23.03.2004 in O. P. Nos. 495 to 499 of 2003, APERC revised the wheeling charges for the year 2004-05 in a review of the tariff proposal, subject to any order or directions issued by the Hon'ble High Court and the Hon'ble Supreme Court in pending proceedings.
- j. It is stated that the PPA and PP and CWA had expired on 30.06.2004, consequent to which the petitioner sought for renewal of the agreements. Insofar as the PP and CWA is concerned, APTRANSCO had agreed to continue the wheeling and banking facility to the Petitioner if it furnishes an undertaking on Rs. -20/ NJS paper giving its consent for payment of wheeling charges and any other charges, as fixed by the APERC from time to time. The petitioner had accepted the offer of APTRANSCO and

- furnished an undertaking dated 21.09.2004. Accordingly, the APTRANSCO had continued the wheeling and banking to the petitioner.
- k. It is stated that as the PP and CWA with the petitioner came to an end on 30.06.2004, APCPDCL, APSPDCL and APTRANSCO began levying wheeling charges at the rate fixed by APERC for the year 2004-05. In this regard, APCPDCL issued revised bills for the months of July 2004 to October 2004, and APSPDCL issued revised bills for the months of July and August 2004. Several letters were also issued by the petitioner on one hand and the DISCOMs and APTRANSCO on the other regarding the revised bills. However, as the parties could not reach an understanding, the petitioner approached the erstwhile Hon'ble High Court of Andhra Pradesh vide W.P. No. 21192 of 2004.
- l. It is stated that subsequently, pursuant to an amendment agreement dated 14.10.2004, the PPA was renewed for a further period and had expired on 11.04.2022.
- m. It is stated that thereafter, in W. P. No. 21192 of 2004, the Hon'ble High Court was pleased to suspend the operation of the proceedings in the letters dated 08.11.2004 and 11.11.2004 issued by APCPDCL and in the letters dated 16.08.2004 and 16.09.2004 issued by APSPDCL, and further directed the respondents therein to levy and collect wheeling charges at 2% of the delivered energy vide interim order dated 19.11.2004. The said W. P. No. 21192 of 2004 is currently pending adjudication by the Hon'ble High Court of Telangana.
- n. It is stated that ever since the establishment of the power plant, the Petitioner had been generating power and utilizing the same as per the schedule approved. Further the petitioner, in terms of incentives given by the Government of India has been using the wheeling and banking facility through the grid for its cement factory. The delivered and unused energy of the petitioner company, after wheeling, will be banked (i.e. kept as reserve in the grid of the TRANSCO).
- o. It is stated that as things stood thus, the Commission had notified the Regulation cited as Andhra Pradesh Electricity Regulatory Commission (Interim balancing & Settlement code) Regulation 2006 (2 of 2006) herein after referred to as Regulation No.2 of 2006, which is in complete

disparity to the initiatives and incentives given by the Union and the State Governments. The said regulation specifies that no generators other than wind and mini-hydel power generators shall be allowed the facility of banking. In fact, apart from refusing the banking facility, the APTRANSCO and DISCOMs had withheld the petitioner's banked energy and refused to allow the petitioner to draw the same.

p. It is stated that consequently, the petitioner was constrained to file W. P. No. 22670 of 2007 before the Hon'ble High Court challenging the said regulation. In the said writ petition, the petitioner had also filed a miscellaneous petition seeking interim relief, wherein the Hon'ble High Court was pleased to pass an interim order dated 26.10.2007 directing APTRANSCO to maintain record of energy supplied by the petitioner. Pursuant to the interim order, the petitioner had been supplying energy to the APTRANSCO, who had been maintaining the record of the energy supplied by the Petitioner. The petitioner has withdrawn the said W. P. No. 22670 of 2007 on 27.11.2008 as the APTRANSCO was maintaining the record of the energy supplied to it. Further, on receiving legal advice, the petitioner had filed miscellaneous application seeking restoration of W. P. No. 22670 of 2007 before the Hon'ble High Court, and the same was allowed on 07.04.2014.

q. It is stated that some of the power generating companies had also questioned the denial of banking facility to them by APTRANSCO relying on the provisions of clause No. 12 of Regulation No.2 of 2006 through filing of Writ Petition No. 15313 of 2007 and batch before the Hon'ble High Court. The petitioners therein prayed the Hon'ble Court to direct APTRANSCO to permit them to use the banked energy ignoring clause 12.1 of Regulation No. 2 of 2006. By virtue of a judgment dated 14.05.2008 in the said writ petitions, the Hon'ble High Court had exempted application of clause 12.1 of Regulation 2 of 2006 to the cases of the petitioners therein till the disposal of the civil appeals pending before the Hon'ble Supreme Court in respect of the levy and determination of wheeling charges and directed the respondents therein to permit the petitioners to use the banked energy without insisting for a fresh agreement in terms of Regulation No. 2 of 2006.

- r. It is stated that thereafter, once again, APTRANSCO had refused to provide the facility of wheeling and banking to the petitioner placing reliance on regulation 2 of 2006, Hence, the petitioner was constrained to file another writ petition numbered as W. P. No. 26105 of 2008 challenging the refusal of APTRANSCO to wheel the energy banked by it. The Hon'ble High Court, vide an interim order dated 28.11.2008, directed APTRANSCO and DISCOMs to continue the wheeling and banking facility to the petitioner.
- s. It is stated that by virtue of the said interim order dt. 28.11.2008, the APTRANSCO and DISCOMs were obligated to allow the petitioner to wheel power to its scheduled consumers from out of the unutilized / unallocated power banked by the petitioner with it and continue facility of banking to the petitioner. However, since the APTRANSCO and DISCOMs were sporadically trying to impose penal charges by relying on Regulation No. 2 of 2006 and attempting to bypass the interim order, the Petitioner was constrained to file W. P. No. 17113 of 2009 before the Hon'ble High Court, wherein an interim order dated 19.08.2009 came to be passed directing the respondents therein not to take any coercive steps against the petitioner.
- t. It is stated that as things stood thus, the Hon'ble High Court vide order dated 21.12.2018 was pleased to dispose W. P. No. 16521 of 2003 in terms of the common order dated 18.04.2003 passed by the Hon'ble High Court in the batch of appeals and writ petitions filed against APERC's order dated 24.03.2002.
- u. It is stated that the TSTRANSCO, pursuant to the afore-mentioned interim orders of the High Court, had allowed the petitioner herein to wheel and bank its energy. While so, since 2018, the TSTRANSCO and the respondent herein had, once again, arbitrarily refused to continue the wheeling and banking facility to the petitioner and adjust the banked units in the power bills, leading to the filing of W. P. No. 18179 of 2019 before the Hon'ble High Court. Vide interim orders dated 09.09.2019 and 18.11.2019, the Hon'ble High Court had directed the TRANSCO and respondent herein not to take any coercive steps against the petitioner. Accordingly, wheeling and banking facility came to continued and the

units of energy wheeled from November 2018 till March 2022 were duly given credit to in September 2022 through revised power bills.

- v. It is stated that subsequently, the Hon'ble Supreme Court was pleased to allow C. A. No. 5058 of 2003 and batch petitions vide judgment and order dated 29.11.2019 allowing the appeals filed by APTRANSCO and holding that APERC had the competence to determine the wheeling charges. The review petition filed by the Company vide R. P. (C) No. 1505 of 2020 against the Hon'ble Supreme Court's order dated 29.11.2019 was dismissed by an order dated 14.07.2020.
- w. It is stated that pursuant to the judgment and order of the Hon'ble Supreme Court dated 29.11.2019, the respondent herein issued two separate notices dated 27.06.2020 calling upon the Petitioner to pay an amount of Rs. 42,22,23,128/- and Rs. 1,60,70,675/- towards difference in wheeling charges and transmission charges respectively in cash and energy losses determined by the Commission allegedly payable by the petitioner as against HT SC No. SPT 427 belonging to the petitioner. In the said notices, the details pertaining to the amounts claimed were stated to have been provided in the annexure to the notice. However, no such annexure containing the details as alleged were provided along with the notices dated 27.06.2020 to the petitioner. The said notices dated 27.06.2020 were received by the petitioner only on 20.07.2020.
- x. It is stated that a reply letter dated 25.07.2020 was addressed by the petitioner to the respondent requesting to furnish complete details of the calculation data, calculation methodology, calculation formulae and references to the month-wise, year-wise tariff orders relied upon by the authority for deriving at the amount for examination and for providing appropriate response.
- y. It is stated that pursuant to the said letter, the officials of the petitioner had approached the officials of the respondent on 06.08.2021 and sought for details pertaining to the claims being made. It was brought to the knowledge of the petitioner at that time that the claims pertain to the difference in wheeling charges from the year 2002 to 2017. However, no clarifications or details were given in regard to the specifics of the amounts being claimed. As such, the claims for difference in the

wheeling and transmission charges were never made against the petitioner till 27.06.2020. Thus, the claims were as such, barred by limitation.

- z. It is stated that without considering the petitioner's representation vide letter dated 25.07.2020, the Chief General Manager (Revenue), TSSPDCL, acting for the respondent, had issued a notice dated 24.08.2020 asking the petitioner to pay an amount of Rs. 43,82,93,803/- towards difference in transmission / wheeling charges in cash and energy losses determined payable by the company, which amounts were alleged to have been detailed in the annexure. Once again, no annexure has been attached to the notice and no details pertaining to the claim were provided to the petitioner.
- aa. It is stated that thereafter, again, on 10.11.2020, the CGM (Revenue), TGSPDCL issued another notice asking the petitioner to pay an amount of Rs. 43,82,93,803/- towards difference in transmission / wheeling charges along with a statement showing the details of the wheeling charges which are allegedly payable by the Petitioner. At this point in time, a statement showing details of the wheeling charges to be collected from the generators was annexed to the notice. As per the minimal break-up provided in the statement, the CGM (Revenue), TSSPDCL claimed an amount of Rs. 31,87,10,836.78/- payable as interest towards a sum of Rs. 13,52,30,382.30/- which is the alleged actual shortfall amount payable by the petitioner towards the difference in wheeling and transmission charges. Yet again, the calculation methodology, calculation formulae and references to the month-wise, year-wise tariff orders relied upon by the authority for deriving at the amount for examination has not been provided to the petitioner and the alleged claims were put forth without any basis.
- ab. It is stated that in response to the same, the petitioner addressed a letter dated 12.12.2020 to the the CGM (Revenue), TSSPDCL clearly stating that the claims made are barred by limitation, vague and unsustainable, that the demand notices are devoid of any particulars and the amounts were never claimed against the petitioner prior to 27.06.2020, and that the interest charged is not liable to be paid as the interest claimed is

unreasonable and without basis contractually or in law. Further, the CGM (Revenue), TGSPDCL was requested not to take any coercive steps or precipitative action against the petitioner.

ac. It is stated that while things stood thus, the petitioner had received two distinct notices, both dated 08.09.2021 issued by the respondent claiming the difference in wheeling and transmission charges. A total amount of Rs. 1,22,48,567/- and Rs. 46,78,31,895/- towards difference in transmission / wheeling charges was demanded to be paid by the petitioner. The said notices were received by petitioner only on 21.09.2021 and 23.09.2021 respectively. The petitioner is now demanded a higher amount vide the afore-said notices and once again, no basis, break-up or calculation of whatsoever nature has been provided to the petitioner in regard to the claims made. Further, surprisingly, the said notices dated 08.09.2021 contained no reference to the earlier letters dated 25.07.2020 and 12.12.2020 addressed by the petitioner denying the liability. Ignoring the petitioner's replies and in complete isolation, such notices were issued threatening to disconnect the power supply to the petitioner's plant. As regards the said notices dated 08.09.2021, the petitioner addressed a detailed comprehensive letter dated 24.09.2021 to the respondent, denying any liability towards the claims made and requesting not to take any coercive steps for recovery of the claimed amounts in furtherance of their notices dated 08.09.2021.

ad. It is stated that thereafter, the petitioner filed writ petition vide W. P. No. 24862 of 2021 before the Hon'ble High Court of Telangana challenging the said notices dated 08.09.2021. The Hon'ble Court was pleased to dispose of the said writ petition vide order dated 04.10.2021, directing the SE (Operations Circle), TGSPDCL to furnish the copy of the letter dated 17.06.2020 referred in both the notices dated 08.09.2021 and also in the explanation dated 24.09.2021 and pass appropriate orders by putting the petitioner on notice and affording him an opportunity of personal hearing. The SE (Operations Circle), TGSPDCL was further directed to complete this exercise within four weeks from the date of receipt of a copy of the order, and till such exercise is completed,

respondent Nos. 2 to 5 therein were directed not to take further steps pursuant to both the notices dated 08.09.2021, including disconnection of the power supply to the petitioner.

- ae. It is stated that subsequent to the above-mentioned order dt. 04.10.2021 passed by the Hon'ble High Court, the petitioner once again received a notice dated 24.11.2021, vide email on 03.12.2021 from the Respondent through the Superintending Engineer (SE), Operation Circle. As under the said notice, the respondent had demanded the petitioner to pay an amount of Rs. 43,82,93,803 /- towards differential wheeling charges, including surcharge calculated up to January 2020 (with surcharge being raised until payment made by the consumer), failing which the supply of power to the petitioner at HT SC No. SPT 427 would be disconnected without further notice.
- af. It is stated that aggrieved that the directions of the Hon'ble High Court in order dt. 04.10.2021 have been summarily ignored by the respondent, the Petitioner was constrained to file a contempt case vide CC No. 1531 of 2021. When the C.C. was taken up for hearing for the first time on 24.12.2021, the Ld. Judge of the Hon'ble High Court, upon hearing the submissions on behalf of the petitioner, was pleased to issue a Show-Cause Notice to the SE (Operation Circle), TSSPDCL calling upon him to show-cause as to why action should not be taken against him.
- ag. It is stated that subsequent thereto, the following instances took place:
 - i. SE (Operation Circle), TSSPDCL issued a notice dated 11.01.2022 falsely alleging that an opportunity of personal hearing on 26.11.2021 was provided to the petitioner vide notice dated 24.11.2021, bearing reference No. 111 / 21, which notice was never received by the petitioner.
 - ii. Thereafter, SE (Operation Circle), TGSPDCL issued another notice providing an opportunity of hearing on 05.02.2022. A personal hearing was conducted on 05.02.2022, wherein petitioner duly appeared and submitted a representation dated 02.02.2022.
 - iii. SE (Operation Circle), TSSPDCL, Suryapet passed a speaking order dt. 12.02.2022 holding that the Petitioner is liable to pay the

differential wheeling and transmission charges. In this regard, it is stated that the observations of the SE (Operation Circle), SPDCL in the speaking order dated 12.02.2022 are wholly erroneous and unsustainable in law.

- ah. It is stated that it is pertinent to mention herein that while things stood as above, the claim for differential wheeling and transmission charges was bifurcated amongst the TGTRANSCO and the respondent pursuant to certain internal understanding between the both, consequent to which, the respondent had only resorted to claiming differential wheeling charges as against the petitioner.
- ai. It is stated that thereafter, in view of an oral threat of disconnection received by the petitioner from the officials of the respondent, the petitioner, *under protest*, was constrained to deposit a total of sum of Rs. 11,95,82,966/-, being the entire principal sum claimed by the Respondent towards differential wheeling charges [The said sum of money was deposited in two parts – Rs. 8,00,00,000/- on 24.03.2022 and Rs. 3,95,82,966/- on 27.10.2022]. In this regard, it is stated that without prejudice to the contentions of the Petitioner pertaining to deposit of the principal sum of differential wheeling charges, the levy of interest / surcharge on the said amount was vehemently disputed by the petitioner as being highly arbitrary and unreasonable. Thus, the petitioner did not make any deposit towards the same. Further, as a matter of fact, the respondent orally assured the petitioner that no coercive measures will be taken against the petitioner in respect of the interest that remained unpaid.
- aj. It is stated that on 25.01.2023, the W. P. No. 17113 of 2009 pending before the Hon'ble High Court of Telangana came to be dismissed as infructuous.
- ak. It is stated that while so, the contempt case in C. C. No. 1531 of 2021 was disposed of by the Hon'ble Court through order dated 09.06.2023 holding that the SE (Operation Circle), TGSPDCL, Suryapet had complied with the directions of the Hon'ble High Court and provided an opportunity of hearing to the petitioner, though with a delay.

- al. It is stated that thereafter, the SE (Operations Circle), TGSPDCL had issued a notice dt. 07.07.2023 demanding to be paid a sum of Rs. 42,36,86,659/- towards alleged balance differential wheeling charges (presumably interest / surcharge on the principal sum claimed) within 15 days from the date of receipt of the said notice, failing which the power supply to the HT service connection of the petitioner shall be disconnected.
- am. It is stated that the said notice dated 07.07.2023 was received by the petitioner only on 13.07.2023. It is pertinent to mention herein that no break-up or calculation of whatsoever nature towards the balance amount claimed has been annexed to the impugned notice, and the impugned notice makes no reference to the amount deposited by the Petitioner under protest. Thus, in response to the notice, the petitioner addressed a letter dated 19.07.2023 informing that principal amount claimed towards differential wheeling charges had already been deposited by the petitioner and that the interest being levied is not payable under law. It was further contended that the power of disconnection is not available to the respondent as the amounts being demanded do not pertain to a period of two years prior to the date of issuance of the notice. The petitioner also sought for a break-up pertaining to the balance amount being claimed, but to no avail.
- an. It is stated that it is pertinent to bring to the attention of this Hon'ble Commission that the said amount demanded by the respondent is being continuously shown as arrears pertaining to the petitioner in the books of accounts of the respondent, consequent to which the petitioner is denied permanent supply of power under HT Category – I by the Northern Power Distribution Company of Telangana Limited (TGNPDCL) as well as renewal of PP and CWA by the TGTRANSCO. It appears that the arrears are also reflected in the monthly HT C.C. bill raised by the respondent on the petitioner.
- ao. It is stated that the afore-said notice dated 07.07.2023 is vague, arbitrary, issued in a manner such that it is contrary to the principles of natural justice and is as such, illegal. The levy of interest / surcharge by the Respondent on the alleged delayed payment of differential wheeling

charges by the petitioner is wholly arbitrary and illegal. Further, it also appears that the respondent is purporting to charge interest on the surcharge / interest levied on the petitioner, which is without any basis under law and void.

- ap. It is stated that the petitioner apprehends that the respondent, in pursuance to its notice dated 07.07.2023, would resort to coercive measures including disconnection of power at its HT service connection SPT No. 427 for non-payment of alleged balance differential wheeling charges.
- aq. It is stated that being left with no other alternate and efficacious remedy, the petitioner is constrained to approach the Commission for seeking urgent interim relief on the following:
- A. That the notice dated 07.07.2023 issued by the respondent threatening disconnection of power, failing payment of the balance wheeling charges by the petitioner is manifestly arbitrary and illegal.
 - B. That the power of disconnection under section 65 of the Act, 2003 is applicable only for the dues that relate to a period of two years prior to the date of issuance of the notice. Indisputably, the alleged balance amount does not relate to the period of two years prior to the notice dt. 07.07.2023. Thus, the threat of disconnection of power in the notice under reply is contrary to law that is section 56 of the Act, 2003.
 - C. That levy of surcharge / interest on the differential wheeling charges for the period from FY 2002-03 till 2022-23 by the respondent is manifestly arbitrary and illegal.
 - D. That it is settled principle of law that interest is payable only after the dues are finally determined. It is further settled that interest would be payable only when there is a failure to pay as per crystallized liability. [Reliance is placed on **NTPC Ltd. v. M.P. SEB, (2011) 15 SCC 580**, and **CIT v. Ranchi Club Ltd., (2013) 15 SCC 545**]. It is stated that as elaborated above, the liability to pay wheeling charges in cash was persistently disputed by the petitioner before the Commission, the erstwhile High Court of

Andhra Pradesh and the Hon'ble Supreme Court till the final judgment and order dated 29.11. 2019 was passed in C. A. No. 5058 of 2003 and batch petitions upholding the power of the APERC to determine wheeling charges. Pursuant to such order, a demand for the differential wheeling charges was made against the petitioner for the first time vide respondent's notice dated 27.06.2020, which was received on 20.07.2020. Such demand was further disputed by the petitioner, which led to the filing of W. P. No. 24862 of 2021 and the speaking order dated 12.02.2022 passed by the respondent, whereby the liability was finally determined by the respondent. Thus, the liability of the petitioner on differential wheeling charges came to be crystallized by the respondent only on 12.02.2022. Without prejudice to the contentions of the petitioner in respect of the liability to pay the differential wheeling charges, the petitioner had duly deposited the principal sum of Rs. 11,95,82,966/- claimed towards differential wheeling charges in two parts – Rs. 8,00,00,000/- on 24.03.2022 and Rs. 3,95,82,966/- on 27.10.2022. Thus, there being no delay in payment of the principal sum claimed towards differential wheeling charges, no surcharge/interest is leviable against the petitioner. Thus, the levy of surcharge / interest on the principal sum claimed towards differential wheeling charges, calculated with effect from 2002 is wholly arbitrary and against the said principles of law.

- E. That the effect of the judgment and order dated 29.11.2019 passed by the Hon'ble Supreme Court in C. A. No. 5058 of 2003 and batch petitions is merely that the APERC had power to determine wheeling charges and thus, the wheeling charges set out in the tariff orders from 2002 till such date stood final. Accordingly, the liability to pay wheeling charges came to be determined. The same, cannot, in any way, be construed to have a retrospective effect so as to impose interest/surcharge on the wheeling charges so determined.

- F. That the interim order dt. 19.11.2004 passed by this Hon'ble Court in W. P. No. 21192 of 2004 is subsisting as of today and thus, the Petitioner was only liable to pay wheeling charges in kind at the rate of 2% of the delivered energy. However, contrary to the directions of the Hon'ble High Court, the respondent purported to levy the differential wheeling charges in cash by way of notices dt. 27.06.2020, 24.08.2020, 08.09.2021, 24.11.2021, 12.02.2022 and 07.07.2023.
- G. That through the speaking order dated 12.02.2022, the respondent mechanically reiterated its demand for differential wheeling charges and interest thereon, without any consideration of the issues raised by the petitioner and without any application of mind. There has been no proper determination of the demand, which is wholly arbitrary, illegal, without jurisdiction, and in violation of the principles of natural justice. Thus, the speaking order dated 12.02.2022 holding that interest is payable with effect from 2002 and the notice dated 07.07.2023 issued by the respondent claiming balance differential wheeling charges, presumably the interest component on the principal amount already deposited, is arbitrary and liable to be set aside.
- H. That without prejudice to the afore said, the interest / surcharge levied by the respondent appears to have been calculated at an exorbitant rate and the same is without any basis whatsoever, either under law or otherwise. The claim of the respondent with reference to interest of Rs. 42 crores and above on the principal sum of Rs. 11.95 crores are excessive and unjust.
- I. That the claim of the respondent towards balance differential wheeling charges and the notice dated 07.07.2023 lacks transparency to the extent that it does not refer to the payments made by the petitioner and does not disclose the break-up and basis of the amount demanded. It is settled proposition of law that the principles of natural justice are inbuilt in the statutory rules and require observance unless the same stand excluded by the rules itself. The respondent, while issuing the said notice demanding

payment of alleged balance differential wheeling charges, ought to have provided a break-up of the alleged amount claimed to be due from the petitioner. Thus, the same is contrary to principles of natural justice.

J. That the respondent is raising arbitrary, vague, illegal and time-barred claims pertaining to surcharge / interest on alleged difference in wheeling charges payable by the petitioner so as to cause severe loss to the petitioner and make unlawful gains to themselves.

K. That the HT service connection SPT No. 427 belonging to the petitioner which is threatened to be disconnected pertains to the cement plant of the petitioner, which is highly power intensive. If the HT connection of the petitioner is disconnected, then the running of the plant would come to a stand-still, subjecting the petitioner to severe losses, and thousands of workers / employees of the petitioner employed at the cement plant would be left at bay.

L. That the Petitioner would be subjected to severe loss, if the urgent ad-interim reliefs sought herein are not granted.

ar. It is stated that owing to the levy of surcharge / interest on differential wheeling charges and non-payment thereof (as the same is vehemently disputed by the petitioner for reasons stated above), the petitioner apprehends that the officials of the respondent will resort to disconnection of power at its HT Service Connection No. SPT-427.

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

“Pending adjudication and disposal of the main O. P. filed by the petitioner, the Commission may be pleased to direct the respondent not to take any coercive steps against the petitioner, including disconnection of HT Service Connection No. SPT 427 belonging to the petitioner in pursuance to the notice bearing Lr. No. SE / OP / SPT / SAO / JAO / HT / D. No. 75 / 23, dated 07.07.2023 issued by the respondent.”

5. The petitioner has also filed an interlocutory application under section 94 (2) of the Act, 2003 r/w TSERC Regulation No. 2 of 2015 seeking interim direction to the respondent not to insist upon payment of the balance differential wheeling charges as demanded against the petitioner vide notice bearing Lr. No. SE / OP / SPT / SAO / JAO / HT / D. No. 75 / 23, dated 07.07.2023 issued by the respondent and consequently not to reflect the demanded amount as arrears in relation to the petitioner, pending disposal of the main original petition. The averments of the application are extracted below.

- a. It is stated that the petitioner is a public limited company incorporated under the Companies Act, 1956, having its registered office at 1-10-140/1, Gurukrupa, Ashok Nagar, Hyderabad 500 020 and is engaged in the production of cement, sugar and generation of power all of which are power intensive.
- b. It is stated that in view of certain encouraging incentives of the erstwhile Government of Andhra Pradesh as under the G. O. Ms. No. 93 dated 18.11.1997, the Petitioner had proposed to set up a Captive Power Plant (CPP) with a capacity of 16.7 MW for captive production and utilization of the electrical energy. Upon the sanction provided by NEDCAP vide its letter dated 09.06.2000, the petitioner had invested huge amounts for captive production and utilisation of the electrical energy for its own industrial purposes and set up a non-conventional energy plant with a capacity to generate 16.7 MW of power (plant) for consumption as well as sale.
- c. It is stated that thereafter, the petitioner entered into two agreements, namely a PPA dated 19.02.2002 and a power purchase and captive wheeling agreement dated 19.02.2002 (PP & CWA) with the erstwhile Transmission Corporation of Andhra Pradesh Limited (now, the Telangana State Transmission Corporation Limited that is TGTRANSCO), in accordance with the provisions of the Andhra Pradesh Electricity Reforms Act, 1998 (Reforms Act, 1998), and in line with the incentives allowed for wheeling and banking and charges for captive consumption in various government orders. The said agreements were valid from the commercial operation date to 30.06.2004. As under the PP and CWA, the petitioner agreed to pay a compensation of 2% per

- kWH for the provision of wheeling service to the plant of the petitioner situated in Dondapadu Village, Chintalapalem Mandal, Suryapet District.
- d. Thereafter, in accordance with the provisions of the Reforms Act, 1998, the erstwhile Andhra Pradesh Transmission Corporation Limited (APTRANSCO) filed its tariff proposal for the year 2001-02, which included a proposal for levying wheeling charges. In consideration of the tariff proposal and the application made by APTRANSCO, the erstwhile APERC vide order dated 24.03.2002 in O. P. No. 510 of 2001 fixed the wheeling charges for the year 2002-03 at 50 paise per kWH of energy transmitted through the network along with 28.4% of energy input by the project developer into the grid towards system loss. The charges were effective from 01.04.2002.
- e. It is stated that aggrieved by the order dt. 24.03.2002 in O. P. No. 510 of 2001, the Petitioner filed an appeal vide C. M. A. No. 1260 of 2002 before the erstwhile Hon'ble High Court of Andhra Pradesh. The Hon'ble High Court was pleased to pass an interim order dated 23.04.2002 suspending the operation of APERC's order dated 24.03.2002. It is pertinent to mention herein that similar appeals were filed by other generators against APERC's order dated 24.03.2002. The Hon'ble High Court had passed interim orders suspending the operation of APERC's order dated 24.03.2002 in all such appeals.
- f. It is stated that on 24.03.2003, APERC in a review of the tariff proposal for 2003-04 revised the wheeling charges for the financial year 2003-04 in O. P. Nos. 1 to 5 of 2003. However, APERC noted that wheeling charges would be collected as per the interim orders of the courts in the pending appeals till the same are disposed by the courts.
- g. It is stated that subsequently, the Hon'ble High Court vide order dated 18.04.2003 allowed all the appeals and writ petitions against APERC's order dated 24.03.2002 and the same was set aside. Aggrieved by the Hon'ble High Court's order dated 18.04.2003, APTRANSCO approached the Hon'ble Supreme Court in a batch of special leave petitions and civil appeals. The civil appeal and special leave petition in respect of the Petitioner were registered on 07.07.2003 as C.A. No. 5058 of 2003 and SLP(C) No. 10404 of 2003 respectively.

- h. It is stated that while things stood thus, APTRANSCO issued a demand notice dated 23.07.2003 to the petitioner demanding wheeling charges. Similarly, erstwhile APCPDCL issued a demand notice dated 28.07.2003 towards wheeling charges for the month of July 2003, and informed that a supplementary bill for the period 01 April 2002, to June 2003 would be issued in due course. Aggrieved by the aforesaid demand notices dated 23.07.2003 and 28.07.2003, the petitioner filed W. P. No. 16521 of 2003 before the erstwhile High Court of Andhra Pradesh challenging the said demand notices. The Hon'ble High Court was pleased to pass interim order dated 07.08.2003 directing APTRANSCO and APCPDCL to levy and collect wheeling charges at 2% of the delivered energy.
- i. It is stated that thereafter, vide order dated 23.03.2004 in O. P. Nos. 495 to 499 of 2003, APERC revised the wheeling charges for the year 2004-05 in a review of the tariff proposal, subject to any order or directions issued by the Hon'ble High Court and the Hon'ble Supreme Court in pending proceedings.
- j. It is stated that the PPA and PP and CWA had expired on 30.06.2004, consequent to which the petitioner sought for renewal of the agreements. Insofar as the PP and CWA is concerned, APTRANSCO had agreed to continue the wheeling and banking facility to the Petitioner if it furnishes an undertaking on Rs. -20/ NJS paper giving its consent for payment of wheeling charges and any other charges, as fixed by the APERC from time to time. The petitioner had accepted the offer of APTRANSCO and furnished an undertaking dated 21.09.2004. Accordingly, the APTRANSCO had continued the wheeling and banking to the petitioner.
- k. It is stated that as the PP and CWA with the petitioner came to an end on 30.06.2004, APCPDCL, APSPDCL and APTRANSCO began levying wheeling charges at the rate fixed by APERC for the year 2004-05. In this regard, APCPDCL issued revised bills for the months of July 2004 to October 2004, and APSPDCL issued revised bills for the months of July and August 2004. Several letters were also issued by the petitioner on one hand and the DISCOMs and APTRANSCO on the other regarding the revised bills. However, as the parties could not reach an

understanding, the petitioner approached the erstwhile Hon'ble High Court of Andhra Pradesh vide W.P. No. 21192 of 2004.

- I. It is stated that subsequently, pursuant to an amendment agreement dated 14.10.2004, the PPA was renewed for a further period and had expired on 11.04.2022.
- m. It is stated that thereafter, in W. P. No. 21192 of 2004, the Hon'ble High Court was pleased to suspend the operation of the proceedings in the letters dated 08.11.2004 and 11.11.2004 issued by APCPDCL and in the letters dated 16.08.2004 and 16.09.2004 issued by APSPDCL, and further directed the respondents therein to levy and collect wheeling charges at 2% of the delivered energy vide interim order dated 19.11.2004. The said W. P. No. 21192 of 2004 is currently pending adjudication by the Hon'ble High Court of Telangana.
- n. It is stated that ever since the establishment of the power plant, the Petitioner had been generating power and utilizing the same as per the schedule approved. Further the petitioner, in terms of incentives given by the Government of India has been using the wheeling and banking facility through the grid for its cement factory. The delivered and unused energy of the petitioner company, after wheeling, will be banked (i.e. kept as reserve in the grid of the TRANSCO).
- o. It is stated that as things stood thus, the Commission had notified the Regulation cited as Andhra Pradesh Electricity Regulatory Commission (Interim balancing & Settlement code) Regulation 2006 (2 of 2006) herein after referred to as Regulation No.2 of 2006, which is in complete disparity to the initiatives and incentives given by the Union and the State Governments. The said regulation specifies that no generators other than wind and mini-hydel power generators shall be allowed the facility of banking. In fact, apart from refusing the banking facility, the APTRANSCO and DISCOMs had withheld the petitioner's banked energy and refused to allow the petitioner to draw the same.
- p. It is stated that consequently, the petitioner was constrained to file W. P. No. 22670 of 2007 before the Hon'ble High Court challenging the said regulation. In the said writ petition, the petitioner had also filed a miscellaneous petition seeking interim relief, wherein the Hon'ble High

Court was pleased to pass an interim order dated 26.10.2007 directing APTRANSCO to maintain record of energy supplied by the petitioner. Pursuant to the interim order, the petitioner had been supplying energy to the APTRANSCO, who had been maintaining the record of the energy supplied by the Petitioner. The petitioner has withdrawn the said W. P. No. 22670 of 2007 on 27.11.2008 as the APTRANSCO was maintaining the record of the energy supplied to it. Further, on receiving legal advice, the petitioner had filed miscellaneous application seeking restoration of W. P. No. 22670 of 2007 before the Hon'ble High Court, and the same was allowed on 07.04.2014.

- q. It is stated that some of the power generating companies had also questioned the denial of banking facility to them by APTRANSCO relying on the provisions of clause No. 12 of Regulation No.2 of 2006 through filing of Writ Petition No. 15313 of 2007 and batch before the Hon'ble High Court. The petitioners therein prayed the Hon'ble Court to direct APTRANSCO to permit them to use the banked energy ignoring clause 12.1 of Regulation No. 2 of 2006. By virtue of a judgment dated 14.05.2008 in the said writ petitions, the Hon'ble High Court had exempted application of clause 12.1 of Regulation 2 of 2006 to the cases of the petitioners therein till the disposal of the civil appeals pending before the Hon'ble Supreme Court in respect of the levy and determination of wheeling charges and directed the respondents therein to permit the petitioners to use the banked energy without insisting for a fresh agreement in terms of Regulation No. 2 of 2006.
- r. It is stated that thereafter, once again, APTRANSCO had refused to provide the facility of wheeling and banking to the petitioner placing reliance on regulation 2 of 2006, Hence, the petitioner was constrained to file another writ petition numbered as W. P. No. 26105 of 2008 challenging the refusal of APTRANSCO to wheel the energy banked by it. The Hon'ble High Court, vide an interim order dated 28.11.2008, directed APTRANSCO and DISCOMs to continue the wheeling and baking facility to the petitioner.
- s. It is stated that by virtue of the said interim order dt. 28.11.2008, the APTRANSCO and DISCOMs were obligated to allow the petitioner to

wheel power to its scheduled consumers from out of the unutilized / unallocated power banked by the petitioner with it and continue facility of banking to the petitioner. However, since the APTRANSCO and DISCOMs were sporadically trying to impose penal charges by relying on Regulation No. 2 of 2006 and attempting to bypass the interim order, the Petitioner was constrained to file W. P. No. 17113 of 2009 before the Hon'ble High Court, wherein an interim order dated 19.08.2009 came to passed directing the respondents therein not to take any coercive steps against the petitioner.

t. It is stated that as things stood thus, the Hon'ble High Court vide order dated 21.12.2018 was pleased to dispose W. P. No. 16521 of 2003 in terms of the common order dated 18.04.2003 passed by the Hon'ble High Court in the batch of appeals and writ petitions filed against APERC's order dated 24.03.2002.

u. It is stated that the TSTRANSCO, pursuant to the afore-mentioned interim orders of the High Court, had allowed the petitioner herein to wheel and bank its energy. While so, since 2018, the TSTRANSCO and the respondent herein had, once again, arbitrarily refused to continue the wheeling and banking facility to the petitioner and adjust the banked units in the power bills, leading to the filing of W. P. No. 18179 of 2019 before the Hon'ble High Court. Vide interim orders dated 09.09.2019 and 18.11.2019, the Hon'ble High Court had directed the TRANSCO and respondent herein not to take any coercive steps against the petitioner. Accordingly, wheeling and banking facility came to continued and the units of energy wheeled from November 2018 till March 2022 were duly given credit to in September 2022 through revised power bills.

v. It is stated that subsequently, the Hon'ble Supreme Court was pleased to allow C. A. No. 5058 of 2003 and batch petitions vide judgment and order dated 29.11.2019 allowing the appeals filed by APTRANSCO and holding that APERC had the competence to determine the wheeling charges. The review petition filed by the Company vide R. P. (C) No. 1505 of 2020 against the Hon'ble Supreme Court's order dated 29.11.2019 was dismissed by an order dated 14.07.2020.

- w. It is stated that pursuant to the judgment and order of the Hon'ble Supreme Court dated 29.11.2019, the respondent herein issued two separate notices dated 27.06.2020 calling upon the Petitioner to pay an amount of Rs. 42,22,23,128/- and Rs. 1,60,70,675/- towards difference in wheeling charges and transmission charges respectively in cash and energy losses determined by the Commission allegedly payable by the petitioner as against HT SC No. SPT 427 belonging to the petitioner. In the said notices, the details pertaining to the amounts claimed were stated to have been provided in the annexure to the notice. However, no such annexure containing the details as alleged were provided along with the notices dated 27.06.2020 to the petitioner. The said notices dated 27.06.2020 were received by the petitioner only on 20.07.2020.
- x. It is stated that a reply letter dated 25.07.2020 was addressed by the petitioner to the respondent requesting to furnish complete details of the calculation data, calculation methodology, calculation formulae and references to the month-wise, year-wise tariff orders relied upon by the authority for deriving at the amount for examination and for providing appropriate response.
- y. It is stated that pursuant to the said letter, the officials of the petitioner had approached the officials of the respondent on 06.08.2021 and sought for details pertaining to the claims being made. It was brought to the knowledge of the petitioner at that time that the claims pertain to the difference in wheeling charges from the year 2002 to 2017. However, no clarifications or details were given in regard to the specifics of the amounts being claimed. As such, the claims for difference in the wheeling and transmission charges were never made against the Petitioner till 27.06.2020. Thus, the claims were as such, barred by limitation.
- z. It is stated that without considering the petitioner's representation vide letter dated 25.07.2020, the Chief General Manager (Revenue), TSSPDCL, acting for the respondent, had issued a notice dated 24.08.2020 asking the petitioner to pay an amount of Rs. 43,82,93,803/- towards difference in transmission / wheeling charges in cash and energy losses determined payable by the company, which amounts

were alleged to have been detailed in the annexure. Once again, no annexure has been attached to the notice and no details pertaining to the claim were provided to the petitioner.

- aa. It is stated that thereafter, again, on 10.11.2020, the CGM (Revenue), TGSPDCL issued another notice asking the petitioner to pay an amount of Rs. 43,82,93,803/- towards difference in transmission / wheeling charges along with a statement showing the details of the wheeling charges which are allegedly payable by the Petitioner. At this point in time, a statement showing details of the wheeling charges to be collected from the generators was annexed to the notice. As per the minimal break-up provided in the statement, the CGM (Revenue), TSSPDCL claimed an amount of Rs. 31,87,10,836.78/- payable as interest towards a sum of Rs. 13,52,30,382.30/- which is the alleged actual shortfall amount payable by the petitioner towards the difference in wheeling and transmission charges. Yet again, the calculation methodology, calculation formulae and references to the month-wise, year-wise tariff orders relied upon by the authority for deriving at the amount for examination has not been provided to the petitioner and the alleged claims were put forth without any basis.
- ab. It is stated that in response to the same, the petitioner addressed a letter dated 12.12.2020 to the the CGM (Revenue), TSSPDCL clearly stating that the claims made are barred by limitation, vague and unsustainable, that the demand notices are devoid of any particulars and the amounts were never claimed against the petitioner prior to 27.06.2020, and that the interest charged is not liable to be paid as the interest claimed is unreasonable and without basis contractually or in law. Further, the CGM (Revenue), TGSPDCL was requested not to take any coercive steps or precipitative action against the petitioner.
- ac. It is stated that while things stood thus, the petitioner had received two distinct notices, both dated 08.09.2021 issued by the respondent claiming the difference in wheeling and transmission charges. A total amount of Rs. 1,22,48,567/- and Rs. 46,78,31,895/- towards difference in transmission / wheeling charges was demanded to be paid by the petitioner. The said notices were received by petitioner only on

21.09.2021 and 23.09.2021 respectively. The petitioner is now demanded a higher amount vide the afore-said notices and once again, no basis, break-up or calculation of whatsoever nature has been provided to the petitioner in regard to the claims made. Further, surprisingly, the said notices dated 08.09.2021 contained no reference to the earlier letters dated 25.07.2020 and 12.12.2020 addressed by the petitioner denying the liability. Ignoring the petitioner's replies and in complete isolation, such notices were issued threatening to disconnect the power supply to the petitioner's plant. As regards the said notices dated 08.09.2021, the petitioner addressed a detailed comprehensive letter dated 24.09.2021 to the respondent, denying any liability towards the claims made and requesting not to take any coercive steps for recovery of the claimed amounts in furtherance of their notices dated 08.09.2021.

ad. It is stated that thereafter, the petitioner filed writ petition vide W. P. No. 24862 of 2021 before the Hon'ble High Court of Telangana for challenging the said notices dated 08.09.2021. The Hon'ble Court was pleased to dispose of the said writ petition vide order dated 04.10.2021, directing the SE (Operations Circle), TGSPDCL to furnish the copy of the letter dated 17.06.2020 referred in both the notices dated 08.09.2021 and also in the explanation dated 24.09.2021 and pass appropriate orders by putting the petitioner on notice and affording him an opportunity of personal hearing. The SE (Operations Circle), TGSPDCL was further directed to complete this exercise within four weeks from the date of receipt of a copy of the order, and till such exercise is completed, respondent Nos. 2 to 5 therein were directed not to take further steps pursuant to both the notices dated 08.09.2021, including disconnection of the power supply to the petitioner.

ae. It is stated that subsequent to the above-mentioned order dt. 04.10.2021 passed by the Hon'ble High Court, the petitioner once again received a notice dated 24.11.2021, vide email on 03.12.2021 from the Respondent through the Superintending Engineer (SE), Operation Circle. As under the said notice, the respondent had demanded the petitioner to pay an amount of Rs. 43,82,93,803 /- towards differential wheeling charges,

including surcharge calculated up to January 2020 (with surcharge being raised until payment made by the consumer), failing which the supply of power to the petitioner at HT SC No. SPT 427 would be disconnected without further notice.

- af. It is stated that aggrieved that the directions of the Hon'ble High Court in order dt. 04.10.2021 have been summarily ignored by the respondent, the Petitioner was constrained to file a contempt case vide CC No. 1531 of 2021. When the C.C. was taken up for hearing for the first time on 24.12.2021, the Ld. Judge of the Hon'ble High Court, upon hearing the submissions on behalf of the petitioner, was pleased to issue a Show-Cause Notice to the SE (Operation Circle), TSSPDCL calling upon him to show-cause as to why action should not be taken against him.
- ag. It is stated that subsequent thereto, the following instances took place:
- i. SE (Operation Circle), TSSPDCL issued a notice dated 11.01.2022 falsely alleging that an opportunity of personal hearing on 26.11.2021 was provided to the petitioner vide notice dated 24.11.2021, bearing reference No. 111 / 21 (which notice was never received by the petitioner).
 - iii. Thereafter, SE (Operation Circle), TGSPDCL issued another notice providing an opportunity of hearing on 05.02.2022. A personal hearing was conducted on 05.02.2022, wherein petitioner duly appeared and submitted a representation dated 02.02.2022.
 - iii. SE (Operation Circle), TSSPDCL, Suryapet passed a speaking order dt. 12.02.2022 holding that the Petitioner is liable to pay the differential wheeling and transmission charges. In this regard, it is stated that the observations of the SE (Operation Circle), TGSPDCL in the speaking order dt. 12.02.2022 are wholly erroneous and unsustainable in law.
- ah. It is stated that it is pertinent to mention herein that while things stood as above, the claim for differential wheeling and transmission charges was bifurcated amongst the TGTRANSCO and the respondent pursuant to certain internal understanding between the both, consequent to which,

the respondent had only resorted to claiming differential wheeling charges as against the petitioner.

- ai. It is stated that thereafter, in view of an oral threat of disconnection received by the petitioner from the officials of the respondent, the petitioner, *under protest*, was constrained to deposit a total of sum of Rs. 11,95,82,966/-, being the entire principal sum claimed by the Respondent towards differential wheeling charges [The said sum of money was deposited in two parts – Rs. 8,00,00,000/- on 24.03.2022 and Rs. 3,95,82,966/- on 27.10.2022]. In this regard, it is stated that without prejudice to the contentions of the Petitioner pertaining to deposit of the principal sum of differential wheeling charges, the levy of interest / surcharge on the said amount was vehemently disputed by the petitioner as being highly arbitrary and unreasonable. Thus, the petitioner did not make any deposit towards the same. Further, as a matter of fact, the respondent orally assured the petitioner that no coercive measures will be taken against the petitioner in respect of the interest that remained unpaid.
- aj. It is stated that on 25.01.2023, the W. P. No. 17113 of 2009 pending before the Hon'ble High Court of Telangana came to be dismissed as infructuous.
- ak. It is stated that while so, the contempt case in C. C. No. 1531 of 2021 was disposed of by the Hon'ble Court through order dated 09.06.2023 holding that the SE (Operation Circle), TGSPDCL, Suryapet had complied with the directions of the Hon'ble High Court and provided an opportunity of hearing to the petitioner, though with a delay.
- al. It is stated that thereafter, the SE (Operations Circle), TGSPDCL had issued a notice dt. 07.07.2023 demanding to be paid a sum of Rs. 42,36,86,659/- towards alleged balance differential wheeling charges (presumably interest / surcharge on the principal sum claimed) within 15 days from the date of receipt of the said notice, failing which the power supply to the HT service connection of the petitioner shall be disconnected.
- am. It is stated that the said notice dated 07.07.2023 was received by the petitioner only on 13.07.2023. It is pertinent to mention herein that no

break-up or calculation of whatsoever nature towards the balance amount claimed has been annexed to the impugned notice, and the impugned notice makes no reference to the amount deposited by the Petitioner under protest. Thus, in response to the notice, the petitioner addressed a letter dated 19.07.2023 informing that principal amount claimed towards differential wheeling charges had already been deposited by the petitioner and that the interest being levied is not payable under law. It was further contended that the power of disconnection is not available to the respondent as the amounts being demanded do not pertain to a period of two years prior to the date of issuance of the notice. The petitioner also sought for a break-up pertaining to the balance amount being claimed, but to no avail.

an. It is stated that it is pertinent to bring to the attention of this Hon'ble Commission that the said amount demanded by the respondent is being continuously shown as arrears pertaining to the petitioner in the books of accounts of the respondent, consequent to which the petitioner is denied permanent supply of power under HT Category – I by the Northern Power Distribution Company of Telangana Limited (TGNPDCL) as well as renewal of PP and CWA by the TGTRANSCO. It appears that the arrears are also reflected in the monthly HT C.C. bill raised by the respondent on the petitioner.

ao. It is stated that the afore-said notice dated 07.07.2023 is vague, arbitrary, issued in a manner such that it is contrary to the principles of natural justice and is as such, illegal. The levy of interest / surcharge by the Respondent on the alleged delayed payment of differential wheeling charges by the petitioner is wholly arbitrary and illegal. Further, it also appears that the respondent is purporting to charge interest on the surcharge/interest levied on the petitioner, which is without any basis under law and void.

ap. It is stated that the petitioner apprehends that the respondent, in pursuance to its notice dated 07.07.2023, would resort to coercive measures including disconnection of power at its HT service connection SPT No. 427 for non-payment of alleged balance differential wheeling charges.

aq. It is stated that being left with no other alternate and efficacious remedy, the petitioner is constrained to approach the Commission for seeking urgent interim relief on the following:

- A. That the notice dated 07.07.2023 issued by the respondent threatening disconnection of power, failing payment of the balance wheeling charges by the petitioner is manifestly arbitrary and illegal.
- B. That levy of surcharge / interest on the differential wheeling charges for the period from FY 2002-03 till 2022-23 by the respondent is manifestly arbitrary and illegal.
- C. That it is settled principle of law that interest is payable only after the dues are finally determined. It is further settled that interest would be payable only when there is a failure to pay as per crystallized liability. [Reliance is placed on ***NTPC Ltd. v. M.P. SEB, (2011) 15 SCC 580***, and ***CIT v. Ranchi Club Ltd., (2013) 15 SCC 545***]. It is stated that as elaborated above, the liability to pay wheeling charges in cash was persistently disputed by the petitioner before the Commission, the erstwhile High Court of Andhra Pradesh and the Hon'ble Supreme Court till the final judgment and order dated 29.11. 2019 was passed in C. A. No. 5058 of 2003 and batch petitions upholding the power of the APERC to determine wheeling charges. Pursuant to such order, a demand for the differential wheeling charges was made against the petitioner for the first time vide respondent's notice dated 27.06.2020, which was received on 20.07.2020. Such demand was further disputed by the petitioner, which led to the filing of W. P. No. 24862 of 2021 and the speaking order dated 12.02.2022 passed by the respondent, whereby the liability was finally determined by the respondent. Thus, the liability of the petitioner on differential wheeling charges came to be crystallized by the respondent only on 12.02.2022. Without prejudice to the contentions of the petitioner in respect of the liability to pay the differential wheeling charges, the petitioner had duly deposited the principal sum of Rs. 11,95,82,966/- claimed towards

differential wheeling charges in two parts – Rs. 8,00,00,000/- on 24.03.2022 and Rs. 3,95,82,966/- on 27.10.2022. Thus, there being no delay in payment of the principal sum claimed towards differential wheeling charges, no surcharge/interest is leviable against the petitioner. Thus, the levy of surcharge / interest on the principal sum claimed towards differential wheeling charges, calculated with effect from 2002 is wholly arbitrary and against the said principles of law.

- D. That the effect of the judgment and order dated 29.11.2019 passed by the Hon'ble Supreme Court in C. A. No. 5058 of 2003 and batch petitions is merely that the APERC had power to determine wheeling charges and thus, the wheeling charges set out in the tariff orders from 2002 till such date stood final. Accordingly, the liability to pay wheeling charges came to be determined. The same, cannot, in any way, be construed to have a retrospective effect so as to impose interest/surcharge on the wheeling charges so determined.
- E. That the interim order dt. 19.11.2004 passed by this Hon'ble Court in W. P. No. 21192 of 2004 is subsisting as of today and thus, the Petitioner was only liable to pay wheeling charges in kind at the rate of 2% of the delivered energy. However, contrary to the directions of the Hon'ble High Court, the respondent purported to levy the differential wheeling charges in cash by way of notices dated 27.06.2020, 24.08.2020, 08.09.2021, 24.11.2021, 12.02.2022 and 07.07.2023.
- F. That through the speaking order dated 12.02.2022, the respondent mechanically reiterated its demand for differential wheeling charges and interest thereon, without any consideration of the issues raised by the petitioner and without any application of mind. There has been no proper determination of the demand, which is wholly arbitrary, illegal, without jurisdiction, and in violation of the principles of natural justice. Thus, the speaking order dated 12.02.2022 holding that interest is payable with effect from 2002 and the notice dated 07.07.2023 issued by the

respondent claiming balance differential wheeling charges, presumably the interest component on the principal amount already deposited, is arbitrary and liable to be set aside.

- G. That without prejudice to the afore said, the interest / surcharge levied by the respondent appears to have been calculated at an exorbitant rate and the same is without any basis whatsoever, either under law or otherwise. The claim of the respondent with reference to interest of Rs. 42 crores and above on the principal sum of Rs. 11.95 crores are excessive and unjust.
- H. That the claim of the respondent towards balance differential wheeling charges and the notice dated 07.07.2023 lacks transparency to the extent that it does not refer to the payments made by the petitioner and does not disclose the break-up and basis of the amount demanded. It is settled proposition of law that the principles of natural justice are inbuilt in the statutory rules and require observance unless the same stand excluded by the rules itself. The respondent, while issuing the said notice demanding payment of alleged balance differential wheeling charges, ought to have provided a break-up of the alleged amount claimed to be due from the petitioner. Thus, the same is contrary to principles of natural justice.
- I. That the respondent is raising arbitrary, vague, illegal and time-barred claims pertaining to surcharge / interest on alleged difference in wheeling charges payable by the petitioner so as to cause severe loss to the petitioner and make unlawful gains to themselves.
- J. That the exorbitant amount arbitrarily demanded by the respondent imposes heavy financial burden on the petitioner and the petitioner would consequently be pushed into a financial turmoil, in which case, the petitioner may even be constrained to shut down its business, leaving several thousands of workers / employees of the petitioner at bay.
- K. That the Petitioner would be subjected to severe loss, if the urgent ad-interim reliefs sought herein are not granted.

- ar. It is stated that owing to the levy of surcharge / interest on differential wheeling charges and non-payment thereof (as the same is vehemently disputed by the petitioner for reasons stated above), the petitioner apprehends that the officials of the respondent will resort to disconnection of power at its HT Service Connection No. SPT-427.
6. The petitioner has sought the following prayer in the application.
“Pending adjudication and disposal of the main O. P. filed by the petitioner, the Commission may be pleased to direct the respondent not to insist upon payment of the balance differential wheeling charges as demanded against the petitioner vide notice bearing Lr. No. SE / OP / SPT / SAO / JAO / HT / D. No. 75 / 23, dated 07.07.2023 issued by the respondent and consequently not to reflect the demanded amount as arrears in relation to the petitioner.”
7. The respondent has filed its counter affidavit and the contents of the same are extracted below.
- a. It is stated that, the petitioner company M/s. Kakatiya Cement Sugar & Industries Limited entered into the two agreements namely PPA, PP and CWA with APTRANSCO on 19th February 2002 for Power purchase and wheeling of power generated from their non-conventional energy project with a capacity of 16.70 MW cogeneration plant based on bagasse at Peruvancha (V), Khammam District for captive consumption. The petitioner has availed wheeling service to his cement plant with H.T. SC No. SPT427 located in Suryapet District (erstwhile Nalgonda District).
- b. It is stated that, the Government of Andhra Pradesh (GoAP) issued G. O. Ms. No.93 dated 18.11.1997 to provide uniform incentives to the non-conventional energy generating projects and fixed the wheeling charges in kind at 2% of energy wheeled. Further, the GoAP amended the aforesaid G. O. issued vide G. O. Ms. 112 dated 22.12.1998 and mentioned that the incentives vide G. O. Ms. No. 93 dated 18.11.1997 scheme shall be watched for a period of 3 years and at the end of 3 years, the APSEB shall come up with suitable proposals for review for further continuance of the incentives in the present form or in a suitably

modified manner to achieve the objectives of promotion of power generation through non-conventional sources.

- c. It is stated that, as per clause 1.28 of the agreement, the wheeling charges means, the consideration payable for providing wheeling service as fixed by the commission from time to time. Further, as per clause 12.3 of the agreement, it was clearly mentioned that, the wheeling and banking and charges for captive consumption shall be reviewed by the APERC and till further orders of the commission, the wheeling and banking for captive consumption will continue to be regulated by G. O. Ms. No,93 Energy (RES) Department dated 18.11.1997.
- d. It is stated that, as per Article 8 of the agreement, the duration of the both the agreements is effective up to 30.06.2004. The agreement may be renewed for such further period of time and on such terms and conditions as approved by the commission and as agreed upon by the parties, 90 days prior to the expiry of the said period, subject to the consent of the APERC. Any and all incentives / conditions envisaged in the articles of this agreement are subject to modification from time to time as per the directions of APERC.
- e. It is stated that, the APERC has given consent for captive consumption to the petitioner from the power generation at cogeneration plant vide proceedings dated 20.11.2001.
- f. It is stated that the petitioner has given undertaking letter to the APCPDCL (now TGSPDCL) vide letter dated 24.09.2004 stating that they agreed to pay the wheeling charges and any other charges like cross subsidy surcharge and additional surcharges as fixed by the commission from time to time.
- g. It is stated that an amendment to the PPA dated 19.02.2002 was entered on 14.10.2004 duly amending certain clauses as per the prevailing provisions in vogue as on that date for a period of 20 years from COD that is 12.04.2002.
- h. It is stated that the Commission notified the wheeling charges applicable for wheeling of energy by the DISCOMs from the FY 2002-03 onwards and accordingly, the petitioner was requested to arrange payment the same. Disputing the levy of wheeling charges as notified by the

Commission, the petitioner filed various writ petitions before the Hon'ble High Court and obtained orders for continuation of wheeling of energy at 2% of energy wheeled.

- i. It is stated that respondents filed Civil Appeal No. 4569 of 2003 before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court vide orders dated 29.11.2019 allowed the appeals restored the orders passed by the Commission.
- j. It is stated that accordingly, notice was issued to the petitioner to arrange payment of difference of wheeling charges as per the provisions of Tariff orders of the Commission. The difference wheeling charges principal amount for Rs. 11,95,82,966/- and belated payment surcharge calculated up to Jan-2020 for Rs. 31,87,10,837/- Total Amount Rs. 43,82,93,803/- was requested to be paid.
- k. It is stated that the petitioner's averment at Para No: 2.13 that the W. P. No. 21192 of 2004 is pending for adjudication before Hon'ble High court of Telangana (wherein an interim direction was given to levy and collect the wheeling charges at 2 % of the delivered energy) is not tenable as the petition becomes infructuous in view of the Hon'ble Supreme court judgement restoring the orders of Regulatory Commission in determining the wheeling charges and as such the wheeling charges(in Kind) mentioned in the wheeling agreements (i.e 2 %) entered between the petitioner and the then APTRANSCO are overridden by the wheeling charges (in kind & Cash) as determined by the Regulatory Commission from time to time.
- l. It is stated that, the petitioner has arranged payment of Rs. 8 crores on 24.03.2022 and Rs. 3,95,82,960/- on 28.10.2022. The petitioner did not pay the belated payment surcharge amount disputing the levy of belated payment surcharge on the wheeling charges levied as per the tariff orders notified by the Commission. As the belated payment surcharge amount is not paid, further belated payment surcharge amount is being accumulated every month.
- m. It is stated that the amount due towards the payment of wheeling charges is payable in accordance with the tariff determined by the State Regulatory Commission. The said amount could not be recovered by

TGSPDCL in time due to the pendency of matter before various forums at different junctures. The DISCOMs are entitled to collect surcharge / interest on the amounts due as per the Court orders.

- n. It is stated that TGSPDCL, for its existence in the business has been availing loan from various financial institutions at prevailing rates of interest and on the portion of loan availed due to the under recovery of the wheeling charges / transmission charges as determined by the State Regulatory Commission the interest is being paid. The TGSPDCL cannot burden other categories of consumers with the extra interest paid due to under recovery of the wheeling charges / transmission charges of the scheduled consumers of the petitioner. Therefore, the respondent is within law to demand the surcharge from consumers for delayed payments.
- o. The Hon'ble Supreme Court in its judgement dated 05.06.2016 in Civil Appeal No. 5542 of 2016 related to levy of fuel surcharge adjustment directed the appellants therein to make payment along with interest and other charges for delay and granted liberty to the respondents (the then APDISCOMs) to take coercive steps to recover the amount. Therefore, the interest has to be levied on the amounts to be recovered from the petitioners.
- p. It is stated that in the light of the above, all the charges were levied as per the provisions of the tariff orders notified by the Commission from time to time. The belated payment surcharge is levied as per the tariff orders notified by the Commission. Hence, the petitioner is liable to pay the same. The petitioner may be directed to pay the belated payment surcharge at the earliest.
- q. It is stated that hence, it is prayed that the Commission may be pleased to dismiss the petition and direct the petitioner to pay the balance amount of belated payment surcharge at the earliest.

8. The Managing Director of the petitioner company herein and as such he is well acquainted with the facts of the case based on records. He stated that he is duly authorized and competent to depose this affidavit on behalf of the petitioner and filed rejoinder as under.

"I submit that the I have perused the counter affidavit filed by respondent - TGSPDCL and have understood the contents of the same. I hereby deny the contents of the counter affidavit except those that are a matter of record and fact, unless specifically or expressly admitted herein. It is further stated that none of the contents of the counter affidavit shall be deemed to be admitted by the Petitioner for want of specific traverse.

3. I submit that the petitioner reiterates all that has been stated in the above-captioned petition filed under section 86 (1) (f) of the Act, 2003, and the submissions made therein may be deemed to have been incorporated herein by reference and read as part and parcel of the submissions herein.

PARAGRAPH-WISE REPLY:

4. I submit that the paragraph-wise reply to the averments made by the respondent in the counter affidavit under reply is as follows:

- a. The averments in paragraphs No. 1 to 9 of the counter affidavit under reply are matters of fact and record and require no specific traverse from the petitioner.
- b. In reply to the averments in paragraph No. 10 of the counter affidavit under reply, it is stated that the petitioner is not liable to pay any belated payment surcharge. The levy of interest / surcharge by the respondent on the alleged delayed payment of differential wheeling charges by the petitioner is wholly arbitrary and illegal. It is settled principle of law that interest is payable only after the dues are finally determined. It is further settled that interest would be payable only when there is a failure to pay as per crystallized liability. Undisputedly, the petitioner had duly deposited the principal sum of Rs. 11,95,82,966/- claimed towards differential wheeling charges. Thus, there being no delay in payment of the principal sum claimed towards differential wheeling charges, no surcharge / interest is leviable against the petitioner. The levy of surcharge / interest on the principal sum claimed towards differential wheeling charges, calculated with effect from 2002 is wholly arbitrary and against the said principles of law.

- c. The averments in paragraph no. 11 of the counter affidavit under reply that the W. P. No. 21192 of 2004 pending before the Hon'ble High Court of Telangana has become infructuous and that the wheeling agreements entered between the Petitioner and the then APTRANSCO are overridden by the wheeling charges (in kind and cash) as determined by the Regulatory Commission from time to time are denied as being false, misleading and the respondent is put to strict proof of the same. Admittedly, the W. P. No. 21192 of 2004 is still pending before the Hon'ble High Court of Telangana and the interim order dated 19.11.2004 passed therein is still subsisting as of today.
- d. In reply to the averments in paragraph no. 12 and 13 of the counter affidavit under reply, it is reiterated that the levy of interest/surcharge by the respondent on the alleged delayed payment of differential wheeling charges by the Petitioner is wholly arbitrary and illegal. Further, the interest / surcharge levied by the respondent appears to have been calculated at an exorbitant rate and the same is without any basis whatsoever, either under law or otherwise. The claim of the respondent with reference to interest of Rs. 42 crores and above on the principal sum of Rs. 11.95 crores are excessive and unjust, and not liable to be paid.
- e. The averments in paragraph no. 14 and 15 of the counter affidavit under reply are untenable and have no bearing on the Petitioner. The petitioner cannot be subjected to arbitrary and unlawful claims by the respondent in order to serve the losses allegedly suffered by them for no fault of the petitioner.
- f. In reply to the averments in paragraph no. 16 of the counter affidavit under reply, the petitioner hereby reiterates and repeats all that has been stated in the above O. P.

5. It is stated that the petitioner is not liable to pay late payment surcharge / interest on differential wheeling charges which were duly deposited by the petitioner. It is submitted that the petitioner has made out a strong *prima facie*

case and the balance of convenience is in its favour. If the reliefs sought herein are not granted, the petitioner would suffer irreparable and irretrievable loss in light of the arbitrary claims. On the other hand, the Respondent shall not suffer any harm, loss or hardship, if reliefs are granted to the petitioner.

In view of the above-stated facts and circumstances, it is, therefore, prayed that the Commission may be pleased to allow the above petition by granting the reliefs sought therein, and pass such other order or orders as deemed fit and proper.”

9. The Commission has heard the counsel for petitioner and also considered the material available on record. The submissions made on several dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 18.12.2023:

...The counsel for petitioner stated that the petition is filed towards claims made by licensee on account of recovery of wheeling charges. He also stated that interlocutory applications have been filed seeking to restrain the respondent from taking any coercive steps as also not facilitating renewal of power wheeling & purchase agreement entered with the petitioner.

The counsel for petitioner stated that due to urgency the petitioner has sought interim orders as there is a threat of disconnection of power supply to the petitioner. Though claims have been made towards wheeling charges, they are hit by limitation as such claims were never raised during the relevant period. The counsel for petitioner through the correspondence made by the respondent have shown that the claims are made for the first time in the year 2021, which was questioned before the Hon'ble High Court. The Hon'ble High Court disposed of the writ petition with a direction to give opportunity and pass a detail order by the licensee.

The counsel for petitioner stated that as the licensee did not implement the order of the Hon'ble High Court the petitioner had moved a contempt petition before the Hon'ble High Court. However, the Hon'ble High Court disposed of the contempt petition upon perusal of disposal of the representation made by the petitioner. Now, the licensee is seeking to implement its orders and insisting on payment of the amounts by the petitioner. The petitioner has already paid the principal amount as claimed by the licensee.

The representative of the respondents stated that notice has been issued by the Commission only the other day and the matter is listed today. The respondent need time to file counter affidavit both in the original petition and the interlocutory applications. The Commission enquired with both the parties as to the real urgency, upon which the counsel for petitioner stated that the remand has been made for the first time in 2021 and reiteration is made only in the year 2022. Moreover, the licensee has adjusted the interest portion which the petitioner is not liable against the payments due to the petitioner. Thereby there are variations in the amounts claimed.

The representative of the respondent stated that the petitioner has no other alternative but to pay amount as the same is confirmed by Hon'ble Supreme Court. Even otherwise, the amount has been confirmed in the year 2022 itself and as such the petitioner cannot now claim urgency in the matter. The Commission agrees with the contention of the petitioner that there is likely power disconnection and not facilitating renewal of PPA. Accordingly, it is necessary that the interest of the petitioner has to be protected for the present. The Commission made it clear that the licensee shall not take any coercive steps against the petitioner. In this regard, Commission passes an item order as an ad-interim measure. Accordingly, the parties are directed to complete the pleadings by the next date of hearing in the original petition as well as interlocutory applications.”

Record of proceedings dated 04.04.2024:

“.... The counsel for petitioner stated that the counter affidavit on behalf of the respondent has been filed. She needs time for filing rejoinder in the matter. The Commission directed that the rejoinder if any be filed on or before 06.05.2024. The matter will be taken up for hearing.”

Record of proceedings dated 06.05.2024:

“....The counsel for petitioner stated that the matter arises out of the demand raised by the respondents towards wheeling charges for the period from 2002 onwards. The petitioner is put on notice for the first time in the year 2021 demanding payment of wheeling charges from the year 2002 onwards. The counsel for petitioner explained in detail the correspondence set forth between the petitioner and respondent with regard to the claim.

The counsel for petitioner stated that pursuant to the notice, the petitioner made

a representation towards dropping of surcharge and non-liability of wheeling charges, as the respondent has not considered the representation, the petitioner had approached the Hon'ble High Court. The Hon'ble High Court disposed of the writ petition filed by the petitioner with a direction that the petitioner may be given an opportunity of hearing in the matter, consider the representation made by it and then decide the matter.

The counsel for petitioner stated that the Hon'ble Supreme Court had already decided about the authority of the Commission to determine the levy of wheeling charges. The erstwhile APERC had in the year 2002 determined the wheeling charges for the first time in the year 2002. The consumers and generators being aggrieved by the determination approached the Hon'ble High Court questioning the said determination by way of appeals and writ petitions. By order dated 18.04.2003 the Hon'ble High Court of Andhra Pradesh had set aside the order of the APERC with regard to levy of wheeling charges. The respondent had preferred appeal before the Hon'ble Supreme Court questioning the order passed by the Hon'ble High Court of Andhra Pradesh as it then was. Ultimately, the Hon'ble Supreme Court upheld the determination of wheeling charges by the APERC on 29.11.2019.

The counsel for petitioner stated that from the correspondence, it is noticed that the present levy of wheeling charges is pursuant to the decision of the Hon'ble Supreme Court and accordingly notice has been issued to the petitioner. However, it is his case that the respondent ought to have issued notice in the year 2002 itself, which had never happened. The respondent now cannot seek to levy the original amount as also interest on the amount due in the guise of recovery of the wheeling charges. The respondent is demanding wheeling charges and the petitioner has no objection for the original amount as it is settled law by the Hon'ble Supreme Court, however, the levy of interest on the wheeling charges is the issue, as there was no notice earlier.

The counsel for petitioner stated that since the respondent has claimed the original amount belatedly, it has no right of claiming the interest thereon for the period from 2002 onwards. It is his case that notice ought to have been given in the year 2002 itself after the Commission had passed orders. Having failed to do so, the respondent has no right to claim the interest for the entire period. The petitioner has no knowledge of the levy of wheeling charges till the notice

was issued in the year 2021. In terms of the judgement of the Hon'ble Supreme Court, the respondent is entitled to recover the amount as per the determination made by the APERC as adopted by the Commission. However, had the respondent initiated the claim in time and if no payment is made, certainly the petitioner would be liable to pay the interest. The respondent having failed to issue notice, cannot now claim the principal amount towards wheeling charges along with interest for the amount thereof.

The counsel for petitioner relied on and referred to judgments of the Hon'ble Supreme Court in the matter of National Thermal Power Corporation Limited Vs. Madhya Pradesh State Electricity Board and others with regard to specific provision of payment of interest on amount that is crystallized and not otherwise. He has also referred to judgment of the Hon'ble Supreme Court in the matter of Commissioner of Income Tax and others Vs. Ranchi Club Limited, wherein it was held that unless tax liability is finally determined, interest is payable in future only. By citing the above judgments, he stated that the claims raised by the respondent is time barred. Therefore, he has sought for setting aside the claims made by the respondent.

The representative of the respondent stated that the claim is raised in the year 2021 after the decision of the Hon'ble Supreme Court. At the relevant time, the claim was not made owing to the fact that the order of the Commission had been stayed by the Hon'ble High Court. The respondent understood that it cannot bypass the Hon'ble High Court, which had stayed the order of the APERC. As such, action was initiated soon after the Hon'ble Supreme Court confirmed the order of the APERC. Since the petitioner has withheld the amount due to the respondent, as and when the claim is raised, the respondent has chosen to recover the amount along with interest thereon. As the matter was under adjudication and being sub-judice, the respondent did not initiate any action to recover the amount from the petitioner. It does not constitute a time barred debt for the reason that the issue is pending adjudication before the Hon'ble Supreme Court. The representative of the respondent would endeavour to submit that the petitioner cannot claim that it is not liable to pay the same, merely because it has not challenged the order of the APERC or that no claim was made by the licensee at the relevant time. Thus, the petitioner cannot seek any relief in the matter and is only trying to circumvent the order of

the Hon'ble Supreme Court and deny the payment.

The representative of the respondent stated that this petition is not maintainable for the reason that the petitioner had already approached the Hon'ble High Court and the Hon'ble High Court was pleased to direct disposal of the representation made by the petitioner. If at all, the petitioner is aggrieved by the decision of the respondent, then the Commission is not the appropriate forum for the reason that the decision is taken pursuant to the directions of the Hon'ble High Court and any issue can be decided by only the Hon'ble High Court, when the decision of the respondent is challenged. Therefore, the Commission may be pleased to dismiss the present petition as without jurisdiction.

The counsel for petitioner stated that the petitioner is not shirking away from the liability, but at the same time the respondent is estopped from claiming the same having not claimed immediately after the order of the APERC. Thus, neither the original claim nor the interest thereon would be liable to be recovered by the respondent. It is noticed that the respondent had no static figure as to the dues that are to be recovered in the context of wheeling charges or interest thereof. The correspondence shows that the respondent oscillated between several figures from one notice to other notice without crystalizing the actual figures. The petitioner in the face of threat of disconnection had paid part of the amount as per the directions of the Hon'ble High Court as also earlier to retain the connection. The Commission may consider the prayers in the petition. The counsel for petitioner sought for permission to file written arguments in the matter. Similar request is made by the representative of the respondent. The Commission directs the parties to file written submissions, if any on or before 06.06.2024.”

Record of proceedings dated 06.06.2024:

“...The counsel for petitioner stated that the written submissions have been filed today itself. The representative of the respondent stated that he had received the written submissions only today and needs time to file the written submissions on behalf of the respondent. The Commission is not inclined to grant any further time for the said purpose, however, liberty is given to the respondent to file written submission within six days. Accordingly, the matter is reserved for orders.”

10. The petitioner has submitted written submissions and the same are extracted below.

- a. It is stated that at the outset, the petitioner's grievance in the present matter pertains to the respondent's illegal and arbitrary levy / claim of interest / surcharge on the differential wheeling charges for the period FY 2002-03 to FY 2016-17 allegedly payable by the petitioner.

Brief Factual Background:

- b. It is stated that in the year 2020, the petitioner received a notice dated 27.06.2020 addressed by TGSPDCL / respondent claiming a sum of about INR 42 crores towards differential wheeling and transmission charges for the period FY 2002-03 to FY 2016-17, including interest calculated with effect from 2002. It is submitted that an exorbitant amount was demanded to be paid, and no break-up of the claim was given. The Petitioner sought for clarification on the claim, while disputing the same.
- c. It is stated that thereafter, vide notice dated 10.11.2020, the claim was reiterated, and a basic break-up was provided, distinguishing the principal component of INR 12 Crores and interest thereon as INR 31 Crores. It is stated that the interest claimed is absurd and has no basis, whatsoever. Thus, the claim was persistently disputed by the petitioner and the respondent was requested to provide a detailed break-up and particulars of the claim, but to no avail.
- d. It is stated that fearing disconnection of the Petitioner's HT service connection at SPT – 427, the petitioner approached the Hon'ble High Court for relief vide W. P. No. 24862 of 2021. Vide an order dated 04.10.2021, the Hon'ble High Court directed TGSPDCL to pass a speaking order.
- e. It is stated that a speaking order was passed on 12.02.2022, whereby the respondent mechanically reiterated its claim for differential wheeling and transmission charges along with interest at the exorbitant rate. In the said speaking order, the petitioner's contentions were rejected without any basis.

- f. It is stated that thereafter, under the threat of disconnection and as per the discussions with the officials of TGSPDCL, the petitioner has deposited the entire principal sum so as to settle the issue wholly. Reference may be made to the letter dated 28.10.2022.
- g. It is stated that it is pertinent to note that the said letter and deposit of the principal amount is not disputed by TGSPDCL and further, no response fore came from TGSPDCL about any further liability. Thus, the petitioner was under the impression that it is fully settled.
- h. It is stated that while so, petitioner received the impugned notice dated 07.07.2023, whereby TGSPDCL demanded balance differential wheeling charges of INR 42 Crores, which is arbitrary and illegal.
- No break-up or basis for the claim is provided. It appears that it pertains to interest/surcharge being claimed by TGSPDCL on the principal sum already deposited.
 - Disconnection of electricity is threatened. Upon oral persuasion, TGSPDCL refrained from such coercive steps. Nevertheless, the threat remains.
- i. It is stated that on account of the claims of alleged exorbitant dues of balance differential wheeling charges, the petitioner is being rejected permanent supply of electricity and renewal of PPA executed between petitioner and erstwhile APTRANSCO.
- j. It is stated that for the sake of convenience, the detailed factual background is set out in a tabular manner below.

S. No.	Date	Description of Event
1.	09.06.2000	The petitioner obtained a sanction from NEDCAP for setting up a captive power plant (CPP) with a capacity of 16.7 MW for captive production and utilization of the electrical energy.
2.		Pursuant to the sanction, the petitioner invested huge amounts for captive production and utilisation of the electrical energy for its own industrial purposes and set up a non-conventional energy plant with a capacity to generate 16.7 MW of power (plant) at

S. No.	Date	Description of Event
		Peruvancha Village, Kallur Mandal, Khammam District, Telangana State, for consumption as well as sale.
3.	19.02.2002	<p>A power purchase agreement dated 19.02.2002 (PPA) and a power purchase and captive wheeling agreement dated 19.02.2002 (PP&CWA) were entered into between the Petitioner and the erstwhile Transmission Corporation of Andhra Pradesh Limited (now, the Telangana State Transmission Corporation Ltd. (TGTRANSCO)), in accordance with the provisions of the Andhra Pradesh Electricity Reforms Act, 1998.</p> <p>As per the PP&CWA, Petitioner agreed to pay a compensation of 2% per kWh for the provision of wheeling service to the plant.</p>
4.	24.03.2002	<p>The Commission passed an order dated 24.03.2002 in O. P. No. 510 of 2001, whereby wheeling charges for the FY 2002-03 were fixed to be payable in cash at 50 paise per kWh of energy transmitted through network along with 28.4% of energy input by the project developer into the grid towards system loss.</p> <p>This order was challenged by the petitioner by way of an appeal vide C. M. A. No. 1260 of 2002 before the erstwhile Hon'ble High Court of Andhra Pradesh.</p>
5.	18.04.2003	<p>C.M.A. No. 1260 of 2002 and batch petitions were allowed by the erstwhile Hon'ble High Court of Andhra Pradesh, and the Commission's order dated 24.03.2002 was set aside.</p> <p>Aggrieved by this, APTRANSCO preferred an appeal before the Hon'ble Supreme Court vide C. A. No. 5058 of 2003 and SLP(C) No. 10404 of 2003.</p>

S. No.	Date	Description of Event
6.	07.08.2003	By way of interim orders dated 07.08.2003 in WP No. 16521 of 2003 filed by the petitioner challenging certain demand notices received by it, the Hon'ble High Court directed APTRANSCO and APCPDCL to levy and collect wheeling charges at 2% of the delivered energy.
7.	23.03.2004	Through an order dated 23.03.2004 in O. P. Nos. 495 to 499 of 2003, the Commission revised the wheeling charges for the year 2004-05 in a review of the tariff proposal, subject to any order or directions issued by the courts in pending proceedings.
8.	30.06.2004	The PPA and PP&CWA had expired. The petitioner sought for renewal of the said agreements.
9.		Consequent to the expiry of PP&CWA, the Respondent and other DISCOMs began levying wheeling charges in cash at the rate fixed by the Commission. This was challenged by the Petitioner before the erstwhile Hon'ble High Court of Andhra Pradesh vide W. P. No. 21192 of 2004.
10.	21.09.2004	Insofar as the PP&CWA is concerned, APTRANSCO had agreed to continue the wheeling and banking facility to the petitioner if it furnishes an undertaking on Rs.20/ NJS paper giving its consent for payment of wheeling charges and any other charges, as fixed by the APERC from time to time. The Petitioner had accepted the offer of APTRANSCO and furnished an undertaking dated 21.09.2004. Accordingly, the APTRANSCO had continued the wheeling & banking to the petitioner.

S. No.	Date	Description of Event
11.	14.10.2004	An amendment agreement dated 14.10.2004 was executed between the Petitioner and APTRANSCO, whereby the PPA was renewed for a further period of 20 years from 11 th April 2002.
12.	19.11.2004	Through an interim order dated 19.11.2004 passed by the Hon'ble High Court of Andhra Pradesh in W. P. No. 21192 of 2004, the DISCOMs were directed to levy and collect wheeling charges at 2% of the delivered energy.
13.	11.08.2006	The Commission had passed the Andhra Pradesh Electricity Regulatory Commission (Interim balancing & Settlement code) Regulation 2006 (2 of 2006) (herein after referred to as " Regulation No. 2 of 2006 "). As per this regulation, no generators other than wind and mini- hydel power generators shall be allowed the facility of banking. Based on this, APTRANSCO and DISCOMs had refused the banking facility and withheld the petitioner's banked energy and refused to allow the petitioner to draw the same, consequent to which petitioner filed W. P. No. 22670 of 2007 before the Hon'ble High Court challenging the said regulation.
14.	26.10.2007	Through an interim order dated 26.10.2007 in W. P. No. 22670 of 2007, the Hon'ble High Court had directed APTRANSCO to maintain record of energy supplied by the petitioner.
15.	14.05.2008	Certain power generating companies had questioned the denial of banking facility to them by APTRANSCO relying on the provisions of clause No. 12 of Regulation No. 2 of 2006 in Writ Petition No. 15313 of 2007 and batch before the Hon'ble High Court. By virtue of a judgment dated 14.05.2008 in the said

S. No.	Date	Description of Event
		WPs, the Hon'ble High Court had exempted application of Clause 12.1 of Regulation 2 of 2006 to the cases of the petitioners therein till the disposal of the civil appeals pending before the Hon'ble Supreme Court in respect of the levy and determination of wheeling charges and directed the respondents therein to permit the petitioners to use the banked energy without insisting for a fresh agreement in terms of Regulation No. 2 of 2006.
16.	28.11.2008	The petitioner was constrained to file another writ petition numbered as W. P. No. 26105 of 2008 challenging refusal of APTRANSCO to wheel the energy banked by it. The Hon'ble High Court, vide an interim order dated 28.11.2008, directed APTRANSCO and DISCOMs to continue the wheeling and banking facility to the petitioner.
17.	19.08.2009	APTRANSCO and DISCOMs were sporadically trying to impose penal charges by relying on Regulation 2 of 2006 and attempting to bypass interim orders mentioned above. The petitioner was constrained to file W. P. No. 17113 of 2009 before the Hon'ble High Court, wherein an interim order dated 19.08.2009 came to passed directing the respondents therein not to take any coercive steps against the petitioner.
18.	21.12.2018	The Hon'ble High Court vide order dated 21.12.2018 was pleased to dispose W. P. No. 16521 of 2003 in terms of the common order dated 18.04.2003 passed by the Hon'ble High Court in the batch of appeals and writ petitions filed against APERC's order dated 24.03.2002.

S. No.	Date	Description of Event
19.		TSTRANSCO and the respondent herein had, once again, arbitrarily refused to continue the wheeling and banking facility to the petitioner and adjust the banked units in the power bills, leading to the filing of W. P. No. 18179 of 2019 before the Hon'ble High Court.
20.	09.09.2019 18.11.2019	Vide interim orders dated 09.09.2019 and 18.11.2019 in W. P. No. 18179 of 2019, the Hon'ble High Court had directed the TRANSCO and respondent herein not to take any coercive steps against the petitioner.
21.	29.11.2019	A judgment and order was passed by the Hon'ble Supreme Court in C. A. No. 5058 of 2003 and batch petitions, whereby the appeal of APTRANSCO was allowed and held that APERC had the competence to determine the wheeling charges. Against this, a review petition was preferred by the Petitioner vide R. P. (C) No. 1505 of 2020.
22.	14.07.2020	The Review Petition vide R. P. (C) No. 1505 of 2020 came to be dismissed.
23.	27.06.2020	Two separate notices were issued by the respondent calling upon the Petitioner to pay an amount of Rs. 42,22,23,128/- and Rs. 1,60,70,675/- towards difference in wheeling charges and transmission charges respectively in cash and energy losses. In the said notices, the details pertaining to the amounts claimed were stated to have been provided in the annexure to the notice. However, no such annexure containing the details was provided.
24.	25.07.2020	The reply letter was addressed by the petitioner requesting to furnish complete details of the calculation data, calculation methodology, calculation formulae and references to the month-wise, year-wise tariff orders relied upon by the authority for

S. No.	Date	Description of Event
		deriving at the amount for examination and for providing appropriate response.
25.	24.08.2020	Notice was issued by the respondent asking the petitioner to pay an amount of Rs. 43,82,93,803/- towards difference in transmission / wheeling charges in cash and energy losses determined payable by the company, which amounts were alleged to have been detailed in the annexure. Once again, no annexure has been attached to the notice and no details pertaining to the claim were provided.
26.	10.11.2020	<p>The notice was issued by the respondent calling upon the petitioner to pay an amount of Rs. 43,82,93,803/- towards difference in transmission / wheeling charges. This time, a statement showing details of the wheeling charges to be collected from the generators was annexed to the notice.</p> <p>As per the minimal break-up provided, it appears that an amount of Rs. 31,87,10,836.78/- is claimed as interest towards the principal sum of Rs. 13,52,30,382.30/-, which is the alleged actual shortfall towards the difference in wheeling and transmission charges.</p>
27.	12.12.2020	The petitioner addressed a letter denying the demand made by the respondent as being time-barred, vague and unsustainable as the notices are devoid of particulars and amounts were never claimed prior to 2020. It was also stated that interest charges are not liable to be paid as the same is unreasonable and without any basis.
28.	08.09.2021	Two distinct notices were issued by the respondent, calling upon the petitioner to pay Rs. 1,22,48,567/- and Rs. 46,78,31,895/- towards difference in

S. No.	Date	Description of Event
		transmission/wheeling charges, failing which the HT service connection of the petitioner shall be disconnected. The petitioner is now demanded a higher amount vide such notice, with no particulars of the break-up.
29.	24.09.2021	The petitioner addressed a comprehensive letter to the respondent denying the liability and requesting not to take any coercive steps for recovery.
30.	04.10.2021	<p>The petitioner preferred W. P. No. 24862 of 2021 before the Hon'ble High Court of Telangana to challenge the notices dated 08.09.2021 issued by the respondent.</p> <p>The said W.P. was disposed by way of an order dated 04.10.2021, directing the respondent to furnish a copy of the letter dated 17.06.2020 referred in both the notices dated 08.09.2021 and also in the explanation dated 24.09.2021 and pass appropriate orders by putting the petitioner on notice and affording him an opportunity of personal hearing.</p>
31.	24.11.2021	A notice was issued by the respondent calling upon the petitioner once again to pay an amount of Rs. 43,82,93,803 /- towards differential wheeling charges, including surcharge calculated up to January 2020 (with surcharge being raised until payment made by the consumer), failing which the supply of power to the Petitioner at HT service connection No. SPT 427 would be disconnected without further notice.
32.		Aggrieved that the directions of the Hon'ble High Court in order dt. 04.10.2021 in W. P. No. 24862 of 2021 have been ignored, the petitioner was constrained to initiate contempt proceedings vide

S. No.	Date	Description of Event
		C. C. No. 1531 of 2021.
33.	11.01.2022	The respondent issued a notice dated 11.01.2022 falsely alleging that an opportunity of personal hearing on 26.11.2021 was provided to the petitioner vide notice dated 24.11.2021, bearing ref. no. 111 / 21 (which notice was never received by the Petitioner).
34.	21.01.2022	The respondent issued another notice providing an opportunity of hearing on 05.02.2022 and a meeting was convened on 05.02.2022.
35.	12.02.2022	A speaking order was passed by the respondent holding that the petitioner is liable to pay the differential wheeling and transmission charges, along with interest calculated with effect from 2002.
36.		The claim for differential wheeling and transmission charges was bifurcated amongst the TGTRANSCO and the respondent herein pursuant to certain internal understanding between both, consequent to which, the respondent had only resorted to claiming differential wheeling charges as against the petitioner.
37.	24.03.2022 27.10.2022	In view of the threat of disconnection from the respondent, the petitioner, <i>under protest</i> , was constrained to deposit a total of sum of Rs. 11,95,82,966/-, being the entire principal sum claimed by the respondent towards differential wheeling charges.
38.	11.04.2022	PPA had expired due to efflux of time.
39.	25.01.2023	W. P. No. 17113 of 2009 pending before the Hon'ble High Court of Telangana came to be dismissed as infructuous.

S. No.	Date	Description of Event
40.	09.06.2023	C. C. No. 1531 of 2021 was disposed of by the Hon'ble High Court holding that CGM (Revenue), TSSPDCL had complied with the directions of the High Court and provided an opportunity of hearing to the Petitioner, though with a delay.
41.	07.07.2023	The notice was issued by the respondent demanding to be paid a sum of Rs. 42,36,86,659/- towards alleged balance differential wheeling charges within 15 days from the date of receipt of the said notice, failing which the power supply to the HT service connection of the petitioner shall be disconnected.
42.	19.07.2023	The petitioner addressed a reply to the respondent denying the liability towards alleged balance differential wheeling charges, while seeking a break-up for the balance amount claimed. It was also contended that the power of disconnection is not available to the respondent.
43.	01.10.2023	Exorbitant amount of arrears are continuously shown in the HT CC bills raised by the respondent, presumably having included the claim towards balance differential wheeling charges alleged as payable by the petitioner.

Legal Submissions:

- k. It is stated that the Impugned notice is wholly arbitrary, vague, illegal and time barred.

Levy of surcharge / interest is wholly arbitrary and illegal –

- l. It is stated that it is settled principle of law that interest is payable only after the dues are finally determined. It is further settled that interest would be payable only when there is a failure to pay as per crystallized liability [Reliance is placed on ***NTPC Ltd v. M.P.SEB, (2011) 15 SCC 580*** and ***Ranchi Club Ltd. v. CIT & Others, 1995 SCC Online Pat 508***, (as affirmed in ***CIT v. Ranchi Club Ltd., (2013) 15 SCC 545***)]

- m. It is stated that the liability to pay wheeling charges in cash came to be determined by the Hon'ble Supreme Court in the judgment and order dated 29.11.2019 passed in Civil Appeal No. 5058 of 2003 and batch petitions, whereby the power of APERC to determine wheeling charges is upheld. Pursuant to said judgment, the demand for differential wheeling charges payable in cash was made against the petitioner for the first time only vide notice dated 27.06.2020, which was received on 20.07.2020. Such demand was further disputed by petitioner, which led to the filing of W. P. No. 24862 of 2021 and the speaking order dt. 12.02.2022 passed by the respondent, whereby the liability was finally determined by the respondent.
- n. It is stated that immediately thereafter, the petitioner, under protest, was constrained to deposit a total of sum of Rs. 11,95,82,966/- (The said sum of money was deposited in two parts – Rs. 8,00,00,000/- on 24.03.2022 and Rs. 3,95,82,966/- on 27.10.2022), being the entire principal sum claimed by the respondent towards differential wheeling charges.
- o. It is stated that there being no delay in payment of the principal sum claimed towards differential wheeling charges, no surcharge / interest is leviable against the petitioner. Thus, the levy of surcharge / interest on the principal sum claimed towards differential wheeling charges, calculated with effect from 2002 is wholly arbitrary and against the said principles of law.
- p. It is stated that further, without prejudice to the above, it appears that the interest/surcharge levied is calculated at an exorbitant rate and the same is without any basis whatsoever, either under law or otherwise. The claim of the respondent with reference to interest of Rs. 42 crores and above on the principal sum of Rs. 11.95 crores are excessive and unjust.

Respondent is acting in violation of Interim order dated 19.11.2004

- q. It is stated that the interim order dated 19.11.2004 passed by the Hon'ble Court in W. P. No. 21192 of 2004 is subsisting as of today and the Petitioner was only liable to pay 2% of the delivered energy. However, contrary to directions of Hon'ble Court and in violation of the said interim order dt. 19.11.2004, the respondent purported to levy the differential wheeling charges in cash by way of notice dt. 27.06.2020, 08.09.2021,

24.11.2021. Thus, the levy of interest/surcharge on differential wheeling charges deposited by the petitioner is illegal.

Notice dated 07.07.2023 lacks transparency:

- r. It is stated that the claim of the respondent towards differential wheeling charges and the notice dated 07.07.2023 lacks transparency to the extent that it does not refer to the payments made by the petitioner and does not disclose the break-up and basis of the amount demanded.
- s. It is stated that it is settled proposition of law that the principles of natural justice are inbuilt in the statutory rules and require observance unless the same stand excluded by the rules itself. The respondent, while issuing the said notice demanding payment of alleged balance differential wheeling charges, ought to have provided a break-up of the alleged amount claimed to be due from the petitioner. Thus, the same is contrary to principles of natural justice.
- t. The respondent had continuously shown an exorbitant amount exceeding Rs. 42 crores as arrears due from the petitioner, based upon which the petitioner is arbitrarily being denied permanent supply of power at its sugar plant in Kallur Village as well as renewal of the PP and CWA.
- u. It is stated that the respondent is raising arbitrary, vague, illegal and time-barred claims pertaining to surcharge / interest on alleged difference in wheeling charges payable by the petitioner so as to cause severe loss to the petitioner and make unlawful gains to themselves.
- v. It is stated that the petitioner has made out a prima facie case and the balance of convenience is in its favour for the Commission to intervene and exercise its powers.
- w. It is stated that in view of the afore said, the Commission may be pleased to declare that levy or surcharge / interest by the Southern Power Distribution Company of Telangana Limited (TGSPDCL) on differential wheeling charges allegedly payable by the Petitioner for the period from FY 2002-03 till FY 2016-17 is illegal arbitrary and void and pass any other or further order as deemed fit and proper in the interest of justice.

12. The respondent has filed its written submissions as extracted below.
- a. It is stated that in its written submissions in principle admitted its liability to pay the amount towards differential wheeling for the period FY 2002-03 to FY 2016-17. The contention of the petitioner from the beginning is that breakup of the claim was not provided and hence the petitioner sought clarification. The other contention of the petitioner is that the amount of interest claimed by the respondent is absurd and has no basis, whatsoever. Therefore, the petitioner stated to have persistently disputed the same and requested to provide a detailed breakup and particulars of claim.
 - b. It is stated that while the matter stood thus the petitioner filed Writ Petition No. 24862 / 2021 seeking to declare the action of the fourth respondent / Superintending Engineer /Op / Suryapet in issuing notice dated 08.09.2021 demanding an amount of Rs.1,22,48,567 and notice dated 08.09.2021 demanding an amount of Rs.46,78,31,895/- towards difference in wheeling and transmission charges and threatening to disconnect the HT service connection belonging to the petitioner, as illegal.
 - c. It is stated that the Hon'ble High Court by order dated 04.10.2021 disposed of W. P. No. 24862 / 2021 directing the fourth respondent to furnish the copy of the letter dated 17.06.2020 referred in both the notices dated 08.09.2021 and also in the explanation dated 24.09.2021 and pass appropriate orders by putting the petitioner on notice and affording him an opportunity of personal hearing.
 - d. It is stated that the respondent in compliance of the direction of the Hon'ble High Court passed speaking order dated 12.02.2022, whereby the petitioner was called upon to pay an amount of Rs.43,82,93,803/- (Principal: 11,95,82,966/-, interest: 31,87,10,837/-) towards difference in wheeling charges.
 - e. It is stated that the petitioner did not challenge the speaking order dated 12.02.2022 passed by the fourth respondent / Superintending Engineer / Op / Suryapet. On the other hand, the petitioner paid an amount of Rs. 11,95,82,966/- (Rs. 8,00,000/- on 24.03.2022 and Rs. 3,95,82,966/- on 27.10.2022). The petitioner claimed to have paid the said amount of

Rs.11,95,82,966/- towards principal but in view of the settled principle of law the said amount was deducted towards interest.

- f. It is stated that the balance amount towards differential wheeling charges remained unpaid. Therefore, the respondent issued impugned notice dated 07.07.2023 calling upon the petitioner to pay the balance amount of Rs. 42,36,86,659/- towards differential wheeling charges and if the petitioner fails to pay the same within 15 days, the respondent will be constrained to disconnect the power supply.
- g. It is stated that the petitioner filed the present petition seeking to declare the levy of surcharge / interest by the respondent on differential wheeling charges for FY 2002-03 to 2016-17 as arbitrary and illegal.
- h. It is stated that payment of the so-called principal amount of Rs. 11,95,82,966/- as ordered in the speaking order dated 12.02.2022 clearly denotes that the petitioner admitted its liability to pay the difference in wheeling charges. The petitioner having failed to challenge the speaking order dated 12.02.2022 and having paid part of the amount towards differential wheeling charges is estopped from filing the present petition. Hence, the relief sought in the present petition becomes misconceived and untenable. Therefore, the present petition is liable to be dismissed.
- i. It is stated that the consequential relief sought by the petitioner is nothing but the repetition of the main relief. The petitioner having failed to challenge the speaking order dated 12.02.2022 and having paid part of the amount towards differential wheeling charges before the Hon'ble High Court, cannot now seek to set aside the speaking order dated 12.02.2022 in the present petition. The petitioner has cleverly added this relief as a consequential relief since the petitioner is very much aware that it cannot seek such relief from the Commission. In such view of the matter the petitioner cannot pray the Hon'ble Court to set aside the speaking order dated 12.02.2022 and the impugned notice.
- j. It is stated that in the circumstances mentioned above, the petitioner is not entitled to seek the reliefs sought by it in the present petition and hence this petition is liable to be dismissed with exemplary cost for

abusing the process of law and for wasting the precious time of the Commission.

Reply to Legal Submissions:

- k. It is stated that there is absolutely no dispute regarding the settled principles of Law that interest is payable only after the dues are finally determined; and that interest would be payable only when there is a failure to pay as per crystallized liability.
- l. It is stated that in the present case the claim of the respondent is in respect of the crystallized and determined dues and it is an admitted fact that the petitioner failed to pay the same. Therefore, the petitioner is liable to pay the amount claimed by the respondent through the impugned notice with surcharge/interest up to the date of payment. Hence, the cited decisions in NTPC Ltd v. M.P.SEB, (2011) 15 SCC 580 and Ranchi Club Ltd. v. CIT & Others, 1995 SCC Online Pat 508, (as affirmed in CIT v. Ranchi Club Ltd., (2013) 15 SCC 545)] cannot be made applicable to the present case.
- m. It is stated that it is pertinent to mention here that the petitioner while relying upon the cited decisions did not choose to take a firm stand that the dues payable by it are not determined and crystallized. Without taking such stand the petitioner proceeded to rely upon the aforementioned settled principle of Law.
- n. It is stated that however, the respondent submits brief facts of the case to substantiate its contention that the claim of the respondent is in respect of the crystallized and determined dues and the fact that the petitioner failed to pay the same and the same is as follows: -
- o. It is stated that the petitioner has entered into PP and CWA with the then APTRANSCO on 19.02.2002. The then APTRANSCO agreed to provide wheeling service to the petitioner for wheeling of delivered energy from the interconnection point to its scheduled consumers (Captive Consumers). As a compensation for providing of wheeling service, the then APTRANSCO was entitled to deduct the wheeling charges, in kind @ 2% from the delivered energy.
- p. It is stated that in the year 2002-03 the erstwhile APERC by order dated 24.03.2002 in O. P. No. 510 of 2001 had determined the wheeling and

transmission charges payable by all private generators / NCE developers / HT consumers, availing power from their captive power plants or from 3rd parties under power wheeling agreements, by introducing a two part tariff, (i) payable at 28.4% in kind towards energy loss in the transmission network and distribution (T&D) network depending on the voltage level plus (ii) Rs 0.50 Paise per kWh on gross generation of units for recovery of Investment made in the T&D network superseding the wheeling charges as agreed in the existing wheeling agreements, where under only concessional (Incentives) charges in kind (in percentage energy injected) was provided.

- q. It is stated that aggrieved by the said order the petitioner preferred CMA before the Hon'ble High court. The same was numbered as CMA. No. 1260 of 2002. The Hon'ble High court by order dated 18.04.2003 set aside the impugned order dated 24.03.2002 of the then APERC, which was challenged by the then APTRANSCO before Supreme court in Appeal No. 5058 of 2003.
- r. It is stated that meanwhile the then APERC continued to determine the Wheeling / transmission charges to be levied for providing wheeling service by DISCOMs / TRANSCO for the years 2003-2004 and 2004-2005 and so on for further years also. The respondents have raised demand for wheeling / transmission charges to be paid by the petitioner accordingly. The petitioner filed W. P. No. 16521 of 2003 and W. P. No. 21192 of 2004 before the High Court against the notices demanding wheeling and transmission charges. W. P. No. 16521 of 2003 was allowed by order dated 18.04.2003.
- s. It is stated that subsequently, the Hon'ble Supreme court by order dated 29.11.2019 has disposed of the Civil Appeal No. 5058 of 2003 and batch setting aside the order of the High court dated 18.04.2003 in CMA 1260 of 2002 and batch holding that the State Regulatory Commission is empowered and has jurisdiction to determine the wheeling charges.
- t. It is stated that in view of the judgement dated 29.11.2019 of the Hon'ble Apex court the petitioner and others are liable to pay the wheeling charges determined by the then APERC in O. P. No. 510 of 2001 for the years 2002-2003; and for the years 2003-2004 and 2004-2005 and so

on for further years. Therefore, the respondent DISCOM issued notice to the petitioner demanding differential wheeling charges from the FY 2002-03 till 2016-17 vide letter dated 27.06.2020 for an amount of Rs. 43,82,93,803/- (Principal: 11,95,82,966/-, interest: 31,87,10,837/-). It thus become very much clear that the dues are determined and that the liability of the petitioner stood crystallized.

Reply to the contention of the petitioner that respondent is acting in violation of interim order dated 19.11.2004:

- u. It is stated that the petitioner filed W. P. No. 21192 / 2004 seeking to declare the action of the respondents in seeking to levy and collect enhanced wheeling charges at 6.4% in kind and 0.45 Paise in cash that is 24% as against the previous rate as arbitrary illegal and in violation of Article 14 of the Constitution of India and consequently to direct the respondents to desist from levying and collecting wheeling charges in excess of 2% of the delivered energy in kind.
- v. It is stated that the Hon'ble High court by interim order dated 19.11.2004 in W. P. No. 21192 of 2004 directed to levy the wheeling charges @ 2 % as per the wheeling agreement as against the charges determined by the then APERC.
- w. It is stated that the respondent calculated wheeling charges as per the orders of APERC in O. P. No. 510 / 2001 which order was challenged by the petitioner and other developers / consumers etc. It is submitted that the matter in issue in W. P. No. 21192 of 2004 was the matter in issue in Civil Appeal No. 5058 of 2003 and batch. The Hon'ble Supreme Court by judgement dated 29.11.2019 allowed the appeals restoring the order passed by APERC, holding that the State Regulatory Commission is empowered to determine the wheeling charges and that wheeling charges are part of tariff. Therefore, the relief sought by the petitioner in W. P. No. 21192 of 2004 becomes infructuous and hence the interim order dated 19.11.2004 in W.P.No.21192 of 2004 becomes non-est in Law. In these circumstances the contention raised by the petitioner that the respondent is acting in violation of interim order dated 19.11.2004 holds no water and hence the same deserves no consideration.

- x. It is stated that the contention raised by the petitioner in respect of notice dated 07.07.2023 that the said notice lacked transparency is absolutely false and baseless. The petitioner was made aware of the dues of wheeling charges payable by it by a detailed speaking order with enclosure of year-wise breakup figures. Moreover, the petitioner being consumer was/is very much aware of the fact that it did not pay wheeling charges and that it had to pay the same as discussed in the speaking order. The petitioner on being satisfied with the speaking order did not chose to challenge the same and hence it should not lie in the mouth of the petitioner to contend that notice dated 07.07.2023 lacked transparency. Therefore, this contention deserves no consideration.
- y. It is stated that hence, it is prayed that the Commission may be pleased to dismiss the petition with exemplary cost for wasting the precious time of the Hon'ble Commission by abusing the process of Law.
13. The petitioner has filed further written submissions in furtherance to the written submissions filed on 15.06.2024 by the respondent as extracted below.
- a. It is stated that at the outset, the written submissions dated 15.06.2024 filed by the respondents has been filed at a belated stage and are not in compliance with the Commission's order dated 06.05.2024 wherein both the parties were directed to file their written submissions on or before 06.06.2024.
- b. It is stated that on 06.06.2024, the Commission was not inclined to grant any further time to the respondent, however, liberty was given to the Respondent to file written submission within six days that is on or before 12.06.2024. However, the present written submissions have been filed with a delay of three days without seeking condonation of delay from the Commission.
- c. It is stated that at the further outset, the contentions raised in the written submission dated 15.06.2024 have neither been pleaded in the counter nor during the oral arguments by the respondent before the Commission. Thus, the petitioner did not have adequate opportunity to contest such contentions. It is a settled principle that the parties are barred from raising new contentions at the stage of the written submissions. Thus,

on this basis alone the Written Submissions dated 15.06.2024 filed by the respondent ought not to be considered and rejected by the Commission.

- d. It is stated that the petitioner has made out a prima facie case and the balance of convenience is in its favour for the Commission to intervene and exercise its powers. It is further stated that the petitioner will suffer irreparable loss and injury, if the written submissions dated 15.06.2024 filed by the respondent are taken on record and considered by the Commission.
- e. It is stated that it is in the interest of justice and equity that these written submissions filed by respondent ought not to be allowed.
- f. It is stated that in view of the afore said, the Commission may be pleased to reject the written submissions dated 15.06.2024 filed by the respondent.

14. The petitioner in this case is questioning the recovery of wheeling charges sought, claimed and to be enforced by the distribution licensee originally wheeling charges have been levied by orders dated 08.02.2002 in O.P. No. 1 of 1999. The said order had been challenged before the Hon'ble High Court vide CMA No. 1104 of 2002 which was disposed of on 02.05.2003. further appeal has been filed in Civil Appeal No. 8969 of 2003 and batch the said batch of appeals came to be disposed of on 29.11.2019 These facts are agreed by the parties and basis, or the impugned proceedings is the continuation of decision of the Hon'ble Supreme Court. It is noticed that the petitioner has not stated anywhere that it is not liable for the levy of wheeling charges, however the main grievance appears to be the imposition of the surcharge for nonpayment over the years. It is not clear from the record whether the licensees have issued no notice prior to the year 2021 as claimed by the petitioner.

15. Several contentions have been raised on behalf of parties adverting to the claim being barred by limitation as also contrary to section 56 of the Act, 2003. It is not out of place to state that the petitioner if it had availed the facility of standby operation otherwise known as parallel operation of the captive power plant established by it, then the petitioner is bound to pay the charges in that context. The petitioner ought to have

diligently paid the amount even if there was no notice or demand having availed the services of the distribution licensee.

16. Since the petitioner has due towards payment of wheeling charges and contra is entitled to payments for the energy supplied, the licensee in order to facilitate itself to recover the wheeling charges dues had adjusted the same against the power purchase cost payable to the petitioner.

17. The licensee sought to rely on the principle that the claims made by it by raising the demand notice is sustainable as the issue of wheeling charges had been sub-judice before Hon'ble Supreme Court. The Commission finds this argument to be reasonable as the petitioner assuming that it has availed the facility of parallel operation thus bound to pay the same even if proper invoices have been raised by the distribution licensee. Having paid the amounts, the petitioner has caused financial stress to the licensees by withholding the amount due including wheeling charges. Therefore, the petitioner is liable for payment of the interest apart from the original charges due to the distribution licensee

18. From the pleadings it is noticed that the distribution licensee referred to two Judgements in respect of limitation aspect rendered by the Hon'ble Supreme Court in the matter of M/s Prem Cottex Vs Uttar Harayana Bijili Vitran Nigam (decided on 5th October, 2021) and M/s K.C Ninan Vs Kerala Electricity Board & Ors . In both the cases section 56 of the act,2003 stood interpreted and the issue of limitation has been explained with reference to start date. Paragraph 26 of the judgements of M/s Prem Cottex clearly explains when the limitation starts rolling against the debtor. The judgement in the matter of K.C Ninan Vs Kerala Electricity Board & Ors has pointed out that section 56 restricts the remedy of disconnection, as otherwise it leaves way for other remedies being perceived by the licensees to recover the amounts due them. Thus, in this case it is appropriate to state though notice has not been issued earlier, it would not make the demand raised towards principal and interest of wheeling charges unrecoverable as the distribution licensee raised the bill only in the year 2021 from where the limitation starts.

19. Per contra the petitioner sought to rely on the following judgements

- (i) NTPC Ltd Vs M.P SEB (2011) 15 SCC 580

(ii) CIT Vs Ranchi Club Ltd & Others, (2013) 15 SCC 545

20. In the matter of NTPC Ltd Vs M.P SEB the petitioner sought to rely on that interest is payable only when there is substantive provision in the governing act, rule and regulation. Also, the Hon'ble Supreme Court was considering the levy of interest in context of tariff revision which is not the case with the instant petition. In the instant petition the charges have been already decided and affirmed by the Hon'ble Supreme Court. Since the petitioner has not paid the amount by equity it is liable to pay the same.

21. In the matter of CIT Vs Ranchi Club Ltd & Others the core issue in the appeal decided by the Hon'ble Supreme Court by affirming the judgement of Hon'ble High Court of Patna arising out of the Income Tax Act where specific provision is made towards the payment of interest for noncompliance of particular provision relating to filing of tax return or delayed payment of advance tax. Neither the situations are envisaged on the case on hand. In the matters of taxation, it is a thumb rule that that courts have no discretion in interpreting the provisions under relevant tax laws. Therefore, the findings rendered in the judgment is of no avail to the petitioner.

22. The distribution licensee contended that in the matter of fuel surcharge adjustment vide Civil Appeal No. 5542 of 2016 decided on 05.07.2016, held that interest is payable and if no rate is decided at 8% for the delay caused in payment. Therefore, in this case also the petitioner is liable to pay interest as demanded by the distribution licensees since it has failed to pay the wheeling charges claims in time.

23. It is at this stage appropriate to state that nonreceipt of claims, invoice, demand notice or bills towards amount due for the supply made or services availed is no excuse for nonpayment of the same. If the claim is not questioned or disputed within time the entity availing such supply or service is bound to pay the amount due even if it has not received any intimation without any demur. In that view of the matter also the petitioner cannot sustain that the wheeling charges cannot be claimed by the distribution licensee.

24. The Commission notices the judgement rendered by the Hon'ble High Court of Andhra Pradesh as it then was, had decided a matter on the issue of levy interest and

surcharge filed by M/s. Venkateshwara Rice Mill Vs Superintending Engineer, APSEB, Hyderabad and others. as reported in 1998 (4) ALD 101. It has been held by raising the following points-

- “(1) When the electricity charges are permitted to be paid in instalments, whether in addition to interest under para 34 of the Terms and Conditions of Supply, additional charge (also called as 'surcharge') as contemplated by para 32.2.1 is payable simultaneously on the outstanding amount ?
- (2) How and in what manner the interest has to be calculated under para 34 i.e., whether the entire amount payable on the date of grant of instalments should bear interest and surcharge at the prescribed rate till the last date of payment or whether it should be calculated with reference to the remaining amount payable after deducting the amount paid in instalments from time to time ?”

It has been observed as follows in the findings.

“The learned Counsel for the petitioners have cited certain decisions in a bid to make good their submission that the contracts entered into by the State or its instrumentalities especially the contracts superimposed by the statutory provisions are not immune from attack on the ground of infraction of [Article 14](#), that is to say, on the ground that the contractual clause is arbitrary and unreasonable. We are spared of the necessity to probe into this aspect as we are not in a position to say that an element of arbitrariness or unreasonableness will be writ large on the face of clause 34 if we reject the interpretation placed by the learned Counsel on the said clause.

In this context, we must bear in view the nature of functions and modus operandi of the Electricity Board as highlighted by the Supreme Court in [Ferro Alloys](#) case (supra) apart from other considerations adverted to supra. An infraction of [Article 14](#) does not arise merely because a customer is visited with a penalty or extra liability of being called upon to pay interest and surcharge which together works out to a high-rate to enable him to defer the payment and at the same time avail of the electricity supply without interruption. The reasonableness of such extra payment cannot be judged from the stand point of a set formula or uniform yardstick. It is pointed out that under the terms and conditions of the supply of Tamil Nadu State Electricity Board, the liability to pay surcharge on the amounts allowed to be paid in instalments is not fastened

on the consumer. But, the degree of fairness with which a consumer is treated may vary from State to State and would also depend upon the peculiar problems of the particular Board. The fact that the A.P.S.E.B. could have been more fair to the consumer by falling in line with its counter-part in Tamil Nadu does not per se give rise to violation of [Article 14](#). The reasonableness of the impugned clause cannot, in our view, be judged by the Law Court on its own notions or relative standards of fairness. It is not necessary for us to go into the question whether unreasonableness by itself, without a potential for discrimination would be a ground of attack under Article 14 as we have not been able to perceive an element of palpable unreasonableness in clause 34 as interpreted by us.

.....
In the result, we answer question No.1 formulated by us against the writ petitioners and Question No.2 as per the discussion in the judgment. The bills impugned in the writ petitions shall be duly revised taking into account the legal position enunciated by us with reference to Question No.2.”

25. Taking cues from the judgement rendered by the Hon'ble High Court as extracted above if instalments properly granted would attract interest, there is no gain say in imposing surcharge for nonpayment of the wheeling charges which was not the making of the TGTRANSCO or TGSPDCL but due to the litigation kept pending by the petitioner itself or otherwise. Inasmuch as imposition of surcharge is sort of a penalty as the revenue which was due long ago stood withheld by the petitioner. The levy of surcharge is prime facie the loss of revenue caused by the petitioner at the relevant time, thus it has become a carrying cost for the delay in payment of the original penalty. Accordingly, for the reasons set out and the explanations given including the interpretation made out supra, the Commission is not inclined to interfere in the claims made by the distribution licensee both towards principal and interest claimed thereof.

26. Lastly, the petitioner has referred to a decision rendered by the present APERC by the petitioner herein. It is appropriate to state that the said decision is neither binding nor required to be followed by the Commission. It is at the best considered as a persuasive value. However, even if considered the finding rendered appears to be per incurium.

27. Since the original petition itself has been taken up and is being disposed by the instant order, nothing survives in respect of the interlocutory applications filed along with this main petition, as such they stand closed.

28. Keeping in view the findings arrived the petition fails and is accordingly dismissed, but in the circumstances without any cost.

This order is corrected and signed on this the 28th day of October, 2024.

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