

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 71 of 2020

**Case of Ghatge Patil Industries Limited on non-compliance of the Commission's Order
dated 9 September, 2019 in Case No. 132 of 2019**

Coram

I. M. Bohari, Member
Mukesh Khullar, Member

Ghatge Patil Industries LimitedPetitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) Respondent

Appearance:

For the Petitioner : Ms. Deepali Sheth (Adv.)

For MSEDCL : Shri Ashish Singh (Adv.)

ORDER

Dated: 28 August, 2020

1. Ghatge Patil Industries Limited (**GPIL**) has filed a Case on 5 March, 2020, under Section 142, 146 and 149 of the Electricity Act, 2003 (**EA**) and MERC (Distribution Open Access) Regulations, 2016 (**DOA Regulations, 2016**) on non-compliance of the Order dated 9 September, 2019 passed by the Commission in Case No. 132 of 2019 (**Order**). Through this Petition, GPIL is seeking directions against Maharashtra State Electricity Distribution Co. Ltd. (**MSEDCL**) claiming that inspite of clear directions in Case No. 132 of 2019, MSEDCL has failed to provide credit adjustment of the banked Units generated from GPIL's Wind Generating Plant during the months of May and June, 2019.
2. **Petitioner's main prayers are as follows:**
 - i. *Direct the Respondent to forthwith comply with the Order dated September 9,*

2019 and give the Petitioner credit for 19,35,793 (Nineteen Lakhs Thirty Five Thousand Seven Hundred and Ninety Three Only) units banked in the months of May and June, 2019 as per the Order dated September 9, 2019 in Case No. 132 of 2019;

- ii. Direct the Respondent to adjust such credit of banked units for the months of May and June, 2019 in immediately ensuing bills of the Respondent and also allow to carry forward even after expiration of FY 2019-20;

OR

- iii. Direct the Respondent to pay compensation of Rs. 1,66,47,819.80/- (Rupees One Crore Sixty Six Lakhs Forty Seven Thousand Eight Hundred and Nineteen and Eighty Paise Only) for such banked units for the months of May and June 2019;
- iv. Initiate proceedings against the Respondent and its officers under provisions of the EA, 2003 including Sections 142 and 146 of the EA 2003, for willful disobedience and for securing compliance of the Orders passed by this Hon'ble Commission;
- v. Refer the matter to the Hon'ble High Court for initiation of contempt proceedings against the directors and officers of the Respondent;
- vi. Order Interim and Ad-interim reliefs in terms of prayer above;
- vii. Award costs for these proceedings against the Respondent and in favour of the Petitioner;

3. Petitioner has stated as follows:

- 3.1 Ghatge Patil Industries Limited (**GPIL**) is engaged in the business of foundry, manufacturing of graded grey iron and nodular iron castings and is a consumer of MSEDCL with a Contract Demand of 7 MVA.
- 3.2 GPIL is also having Wind Generating Plant of 15 MW capacity located at Dhule District. After commissioning of the Wind Generating Plant, GPIL was selling power to MSEDCL in accordance with Wind Energy Purchase Agreements (**WEPAs**). After termination of the WEPAs in FY 2018, GPIL started consuming power from these windmills under Short Term Open Access (**STOA**) for self-use.
- 3.3 MSEDCL issued a circular dated 28 November 2018 for mandatory implementation of uniform Special Energy Metering (**SEM**) policy for Solar and Wind generators installed in Solar or Wind Parks, to facilitate proper billing in respect of Open Access (**OA**) consumers.
- 3.4 Pursuant to the issuance of the aforesaid circular, GPIL took necessary steps for SEM installation. However, same was delayed on the part of MSEDCL. Subsequently, MSEDCL rejected GPIL's STOA applications for May 2019 on the ground that SEM was not installed at the generation end by GPIL.
- 3.5 The Commission vide Order dated 5 April, 2019 in Case No. 34 of 2019 had directed MSEDCL to grant OA in the intervening period for six (6) months once the process for installation of SEM has started. In view of this Order, GPIL requested MSEDCL to

grant OA for the month of May 2019. However, MSEDCL, vide its email dated 24 May 2019 rejected STOA for June 2019 also, on the same ground of non-installation of SEM meter.

- 3.6 As per MERC (Distribution Open Access) (First Amendment) Regulations, 2019 (**DOA First Amendment Regulations**), installation of individual SEMs prior to its applicability of such amendment i.e. on or before 7 December , 2019 is not mandatory and therefore GPIL requested MSEDCL to grant the STOA for the month of May and June, 2019.
- 3.7 However, inspite of the clear provision of DOA First Amendment Regulations and follow up made by GPIL with MSEDCL informing it of various steps taken by GPIL for installation of SEM, MSEDCL rejected the STOA Applications for the months of May and June 2019 on the ground that SEM was not installed at the generation end by GPIL. Hence, GPIL was constrained to file a Petition in Case No. 132 of 2019.
- 3.8 DOA First Amendment Regulations provide that the provision relating to banking of the MERC (Distribution Open Access) Regulations, 2016 (**Principal DOA Regulations**) shall continue to apply to the existing OA permissions.
- 3.9 Had MSEDCL approved the STOA applications for the months of May and June, 2019 in a timely manner, GPIL's STOA approvals would have come within the ambit of the Principal DOA Regulations as it was prior to the amendment and hence in view thereof, the banking provisions prior to the amendment, would have been applicable to the STOA permissions for the months of May as well as June 2019 (as permission was ought to have been granted prior to 8 June, 2019).
- 3.10 GPIL vide its letter dated 13 August, 2019 intimated MSEDCL of the events that had transpired during the hearing in the Case No. 132 of 2019, wherein the Commission directed both the parties to arrive at mutual agreement with respect to the adjustment of injected units in the months of May and June, 2019 within a period of ten days. GPIL also stated that the bill dated 9 August, 2019 for the month of July 2019, had not provided any credit for units injected in the months of May 2019 and June 2019 which were to the tune of 68,35,222 units. It also recorded that in view of the amendment of the DOA Regulations 2016, MSEDCL had granted approvals to the STOA applications for the months of May 2019 and June 2019 to GPIL.
- 3.11 However, MSEDCL has not given credit for units injected by GPIL in the months of May and June, 2019 prior to the grant of such OA. Moreover, MSEDCL prior to the grant of OA had raised bills for the months of May and June 2019 amounting to Rs. 4, 20,18,070/- which was paid by GPIL within the due date. GPIL also stated that owing to May and June being high wind season, any adjustment granted in the ensuing bills would last until October or November 2019, any amount if paid by GPIL would lead to the blocking of the GPIL's working capital and in view thereof, GPIL reiterated its request to credit the amount of Rs. 4, 20,18,070/- and set off the banked units of GPIL.
- 3.12 Thereafter, vide Order dated 9 September 2019 in Case No. 132 of 2019, the Commission directed MSEDCL to issue OA permissions, Generation Credit Notes (**GCN**) for such period for which OA was wrongly denied further directing MSEDCL

to adjust such units in ensuing bills.

- 3.13 Despite repeated reminders from GPIL, MSEDCL did not comply with the directions issued in Case No. 132 of 2019.
- 3.14 The units banked for the month of May and June, 2019 are 19,35,793 MUs for which the GPIL was not given credit in ensuing bills in terms of Principal DOA Regulations prior to the amendment. Therefore, GPIL is entitled to credit as per the Order dated 9 September 2019 in Case No. 132 of 2019.
- 3.15 The period for which the OA was wrongly withheld was prior to amendment and therefore MSEDCL's interpretation that the banking is only on monthly basis is untenable. The Regulation 20 of the Principal DOA Regulations provides that the banking is permitted for all twelve (12) months of the year. It further provides that the credit of the banked energy shall not be permitted in the month of May, however, the credit of such banked power is available in the next month. Therefore, GPIL is eligible to avail credit of the banked units in the subsequent month.
- 3.16 The Commission vide its Order dated 13 November 2019 in Case No. 196 of 2019 held that the provision relating to banking of the Principal DOA Regulations shall continue to apply for the existing OA Agreements or contracts till the expiry of the approved period for such OA transactions/contracts/agreements.

4. **MSEDCL filed its reply on 27 April 2020 stating as under:**

- 4.1 MSEDCL has complied with the Order dated 9 September 2019 in Case No. 132 of 2019 in its entirety.
- 4.2 GPIL has filed the present "Contempt/Non-Compliance Petition" seeking action against MSEDCL for contempt of Order in Case No. 132 of 2019. This Order has attained finality and is being relied upon by GPIL to prosecute MSEDCL in the present matter.
- 4.3 It is an admitted position that as on date of notification of the DOA First Amendment Regulations i.e. 7 June 2019, no existing contract/agreement for OA was in place for the months of May and June, 2019 as STOA for these months were already rejected by MSEDCL vide emails dated 2 May and 24 May 2019 respectively.
- 4.4 It is also an admitted position that STOA for May and June, 2019 was allowed on 8 July 2019 by MSEDCL only under and in pursuance of the DOA First Amendment Regulations.
- 4.5 While GPIL has selectively sought to rely upon the operative part of the Order in Case No. 132 of 2019, it has chosen not to rely upon the basis/reasoning/background for the operative part of the Order. MSEDCL seeks to rely upon following part of the Order in Case No. 132 of 2019 which lays down the basis on which the operative part of the Order was passed:

"11.4. Petitioner in Case No. 132 of 2019 in its Rejoinder has stated that MSEDCL has approved and allowed OA for May and June, 2019 in pursuance of DOA Regulations (First Amendment) 2019, which were denied.

- 4.6 Based on the above, the Commission, in the operative portion of the Order directed

MSEDCL to issue the GCNs (if not done already) and adjust them in the ensuing bills of the Petitioners, within a month from the date of the Order.

- 4.7 Hence, a holistic reading and perusal of the operative part of the Order in Case No. 132 of 2019 along with Para 11.4 which lays down the basis behind the Order, evidences that the OA for May and June 2019 was allowed on 8 July, 2019 by MSEDCL only under and in pursuance of the DOA First Amendment Regulations. Hence, any treatment of energy w.r.t “Banking” has to be as per the DOA First Amendment Regulations and not otherwise.
- 4.8 Having accepted this position and admitted the same which has been duly recorded under Para 11.4 of the Order, GPIL cannot now claim carry forward of “Banked Units beyond a month” which is prohibited under the DOA First Amendment Regulations.
- 4.9 There was no existing contract/agreement for OA in place for May and June, 2019. STOA for these months was allowed on 8 July 2019 by MSEDCL which is an admitted position and has not been challenged till date by GPIL that same is only in pursuance of the DOA First Amendment Regulations. Hence, no relief can be claimed under the Principal DOA Regulations.
5. **GPIL filed its rejoinder on 4 May 2020 stating as under:**
 - 5.1 Though it is true that as on 7 June 2019, MSEDCL had not granted OA approvals to GPIL for the months of May and June, 2019, this fact merely reflects the recurrent behavior of MSEDCL to disregard the Orders passed by the Commission.
 - 5.2 When the OA applications made by GPIL for May and June, 2019 were belatedly rejected by MSEDCL on 2 May and 24 May 2019, respectively, the Order dated 5 April, 2019 passed by the Commission in the matter of Case No. 34 of 2019 was already in force (**Arvind Cotsyn Order**). Vide this Order, the Commission had directed MSEDCL not to deny OA to consumers/ generators who have opted for installation of SEMs for the intervening period of six (6) months.
 - 5.3 Thus, MSEDCL has disregarded the timelines provided under Principal DOA Regulations for processing of the STOA applications, the Arvind Cotsyn Order passed by the Commission and the efforts made by GPIL for installation of SEMs. Now, MSEDCL is attempting to take advantage of its own mistake by merely highlighting the date on which the OA approvals were granted to GPIL. Despite being aware of the Arvind Cotsyn Order, MSEDCL initially rejected the STOA applications for May and June, 2019 and granted the same subsequent to notification of the DOA Amendment Regulations.
 - 5.4 The Commission after holistically considering the sequence of events leading to the filing of the Case No. 132 of 2019 as well as all the submissions made by both the Parties including the belated grant of OA approval by MSEDCL during the course of the proceedings, had passed a clear Order wherein it directed MSEDCL to issue GCNs and adjust them in ensuing bills of GPIL. Thus, the Order consisted of two directions to MSEDCL, one being to issue the GCNs for the months of May and June, 2019 and second being the adjustment of those units in ensuing bills. The usage of the word bills (in plural) makes the intention of the Commission abundantly clear with respect to

banking period allowed to GPIL.

- 5.5 After not having taken any steps towards the compliance of the Order, MSEDCL is now attempting to interpret the Order in such a way so as to defeat the very purpose of the Order. The paragraph No.11.4 of the Order relied upon by MSEDCL solely records the fact (as submitted by GPIL in its Rejoinder) that during the course of the proceedings before the Commission in Case No. 132 of 2019, MSEDCL had granted the OA approvals subsequent to the notification of DOA First Amendment Regulation. The extractive excerpt from the Order which records submissions of GPIL in its Rejoinder is not canvassing the argument of MSEDCL in any manner.
- 5.6 Despite the fact that the Commission ruled in its favour, GPIL is still being denied of its right in disregard of the Order passed by the Commission as MSEDCL has chosen to interpret the Order so as to suit its convenience. The OA approvals for the months of May and June 2019 were not in force as on date of notification of DOA First Amendment Regulation, solely because of delay on part of MSEDCL.
6. **At the e-hearing through video conferencing held on 14 August 2020:**
- 6.1 The Advocate for GPIL re-iterated its submission as made out in the Petition and further stated that:
- i. GPIL in its Case No. 132 of 2019 had prayed for direction to MSEDCL to issue GCNs for energy generated which was not adjusted in the bills of GPIL and GPIL's Petition was allowed by the Commission.
 - ii. MSEDCL, has delayed granting the OA permission to GPIL and cannot take benefit of its own wrongdoing to deprive GPIL of the banking benefits.
- 6.2 Advocate appearing for MSEDCL reiterated its submission as made out in its reply and further stated that:
- i. There is no case of contempt against MSEDCL as the Order in Case No. 132 of 2019 has recorded that OA had already been granted by MSEDCL.
 - ii. The period of OA contract should not be the criteria for deciding the applicable Regulations and applicable Regulations should be decided based on existence of the ongoing contracts in terms of the provisions of DOA First Amendment Regulations.
 - iii. As recorded in Paragraph 6.1.5 of the Order in Case No. 132 of 2019, GPIL had specifically requested the Commission that the units banked and in surplus for the months of May and June, 2019 should be dealt with in accordance with the Principal DOA Regulations and specific direction in respect thereof should be given to MSEDCL in order to avoid further litigation. However, at no part of the Order, directions of the Commission on this specific request can be seen. Rather, at Paragraph 11.4 of the Order, it is recorded that MSEDCL has approved and allowed OA for May and June, 2019 in pursuance of DOA First Amendment Regulations.
 - iv. Now, since GPIL has filed a contempt Petition seeking compliance of the Order, GPIL has now lost the right of seeking the review of the Order which would have

been the appropriate option.

- v. GPIL has accepted the Commission's Order and therefore it has also accepted OA permission granted by MSEDCL under DOA First Amendment Regulations.

6.3 In response, Advocate for GPIL stated that:

- i. Its Petition was allowed by the Commission and MSEDCL ought to have allowed the credit adjustment for the energy banked in May and June, 2019.
- ii. The portion of the Order referred by MSEDCL was just an observation made by the Commission.
- iii. MSEDCL has been allowing the OA permissions on retrospective basis, based on the Orders of the Commission.

7. **In its written submission dated 14 August 2020, GPIL, in addition to its earlier submissions, further stated that:**

7.1 Despite the clear direction of not denying OA for installation of SEM under Order dated 5 April 2019 in Case No. 34 of 2019, MSEDCL rejected the OA Applications of GPIL on 2 and 24 May 2019 on the ground that SEM was not installed at the generation end by GPIL.

7.2 GPIL approached the Commission in Case No. 132 of 2019 against this wrongful denial of OA permissions and during the course of the proceedings before the Commission, the DOA First Amendment Regulations was notified on 8 June, 2019. Regulation 11 of these Regulations provided that the SEMs had to be installed within a period of six (6) months from the notification of the DOA First Amendment Regulations i.e. on or before 7 December 2019. On account of these Regulations, MSEDCL belatedly granted OA approvals for the months of May and June, 2019 only in July 2019.

7.3 The Commission vide the Order in Case No. 132 of 2019, had allowed the Petition filed by GPIL and directed MSEDCL to issue GCNs for the units injected for the months of May and June, 2019 and to adjust the same in the ensuing bills. As the Petition was allowed, GPIL has to be restituted in same position.

7.4 After having wrongfully denied the OA applications, MSEDCL is attempting to avoid compliance of the Order by taking advantage of the DOA First Amendment Regulations which provide that banking of energy shall be permitted only on monthly basis.

7.5 The OA applications, if they had been timely processed by MSEDCL in accordance with Principal DOA Regulations, would have been issued prior to the notification of the DOA First Amendment Regulations and would have been issued within the ambit of the Principal DOA Regulations. Hence, the banking period applicable to the units injected in the months of May and June, 2019 would be a financial year and not just a month.

7.6 In view of the above, MSEDCL's attempt to avoid compliance of the Order and to take advantage of its own wrongdoing, ought to be condemned. Further, MSEDCL ought to

be directed to forthwith give credit for 19,35,793 units banked in the months of May and June, 2019 and adjust the same in the ensuing bills or in the alternate pay compensation of Rs.1,66,47,819.80/- (Rupees One Crore Sixty Six Lakh Forty Seven Thousand Eight Hundred Nineteen and Eighty Paise Only) towards such banked units. MSEDCL should not be allowed to unjustly enrich itself at the cost of the Petitioner. It is pertinent to note that the Hon'ble Supreme Court in the matter of *Indian Council for Enviro –Legal Action v. Union of India & Ors, (2011) 8 SCC 161* held that the courts have wide powers to grant restitution and more so where it relates to misuse or non-compliance with court orders. The Apex Court has also ruled that one can take advantage of his own wrong.

Commission's Analysis and Ruling:

8. On going through the submissions of the Parties, the Commission notes that core issue that has emerged through present Petition is whether the adjustment of GCNs for STOA granted for the month of May and June 2019 in pursuant to Commission's Order dated 9 September 2019 in Case No. 132 of 2019 is as per banking provisions of DOA First Amendment Regulations or Principal DOA Regulations. As per GPIL's submission, the applicable Regulations for deciding such treatment is the Principle DOA Regulations and MSEDCL has not complied with the specific directions of the Commission in Case No. 132 of 2019 regarding adjustment of GCNs in the Petitioner's ensuing bills.
9. On the other hand, MSEDCL has highlighted Paragraph 11.4 of the Order which acknowledges the fact that the OA permissions had been granted by MSEDCL under DOA First Amendment Regulations and therefore, as per MSEDCL, it has duly complied with the directions of the Commission. MSEDCL has further stated that as on date of notification of DOA First Amendment Regulations, no subsisting contract/agreement for OA was in place for May and June, 2019 and therefore GPIL cannot claim yearly banking for the energy injected during May and June, 2019.
10. Since the present Petition has been filed alleging non-compliance of the Commission's Order in Case No. 132 of 2019, it is imperative to examine the prayers made by the GPIL in Case No. 132 of 2019 and directions passed by the Commission in the aforesaid Order.
11. GPIL's prayers in Case No. 132 of 2019 were as under:
 - a. Quash the emails dated May 2, 2019 May 24, 2019 and letters dated May 15, 2019 and direct the Respondent to approve and allow the STOAs to the Petitioner for the months of May and June, 2019 and for the intervening period till the installation of SEMs is complete;*
 - b. Direct Respondent to give credit notes for power generated which is not adjusted in the bills of the Petitioner;***
12. Further, the Commission vide Order dated 9 September 2019 has allowed the Petition with the following directions:
 - 1. Case No. 132, 133, 137, 138 and 139 of 2019 are allowed.***

2. MSEDCL is directed to issue the Generation Credit Notes (GCNs) (if not done already) and adjust them in the ensuing bills of these Petitioners, within a month from the date of this Order.

3. MSEDCL is directed to issue/grant OA permission (if not already done) and issue the Generation Credit Notes (GCNs) (if not done already) and adjust them in the ensuing bills of these Petitioners on similar lines as in other Petitioners in Case No. 132 of 2019 and 139 of 2019, within a month from the date of this Order”

13. Thus, the operative part of the Order is very clear and as per Annexures submitted in the present Petition, it appears that MSEDCL has given credit in the consumer's bills, however, the excess injected energy after set-off with the consumer's consumption i.e. Units banked in May and June, 2019 have not been allowed by MSEDCL. MSEDCL has stated that at Paragraph 11.4 of the Order, it is recorded that MSEDCL has approved and allowed STOA for May and June, 2019 in pursuance of DOA First Amendment Regulations and therefore yearly banking as per Principal DOA Regulations cannot be permitted.
14. The Commission does not find any merit in the aforesaid submission of MSEDCL as Paragraph 11.4 of the Order is just an observation of by the Commission as regards grant of OA as pointed out by GPIL in its rejoinder dated 6 August, 2019. However, operative part of the Order is very clear and has specifically directed MSEDCL to give credit adjustment to GPIL. The Commission is of the view that the Order has to be read in toto and not in isolation. Further, MSEDCL while relying on Paragraph 11.4 has ignored that the dispute in that proceeding was regarding rejection of STOA Application on the issue of non-installation of SEM Meters. Paragraph 11.4 of the Order needs to be read in that context. By allowing the OA by MSEDCL and acknowledging the same at Paragraph 11.4 it just records the subsequent development upon grant of OA permission by MSEDCL leading to the dispute resolution to that extent, in view of the generic relief of additional six months granted for SEM installation through the DOA First Amendment Regulations. Thus, the Commission is of the view that MSEDCL has incorrectly linked the above observation to the banking settlement for the STOA period prior to the DOA First Amendment Regulations.
15. MSEDCL has also cited absence of OA contracts/agreements with GPIL for the months of May and June , 2019 as on date of notification of DOA First Amendment Regulations. STOA for these months was allowed by MSEDCL on 8 July 2019. As per MSEDCL, the period of contract should not be the criteria for deciding the applicable Regulations and applicable Regulations should be decided based on existence of the ongoing contracts. As required under DOA First Amendment Regulations, no contracts existed for May and June, 2019. Hence, any treatment of energy w.r.t “Banking” has to be as per the DOA First Amendment Regulations, i.e. on monthly basis and not on yearly basis as per the Principal DOA Regulations as claimed by GPIL.
16. In this context, it is relevant to examine the relevant provisions of DOA Regulations. The treatment of surplus energy from the RE Generating Stations is provided in the Regulation 20 of the Principle DOA Regulations which is reproduced below:

“ 20. Banking of Renewable Energy Generation

.....

20.2 The surplus energy from a ‘non-Firm’ Renewable Energy Generating Station after set-off shall be banked with the Distribution Licensee.

20.3 **The banking year shall be the financial year from April to March.**

20.4 Banking of energy shall be permitted during all twelve months of the year; ”

17. The DOA First Amendment Regulations provide the following treatment for banking of excess energy:

“ 20.3. **Banking of energy shall be permitted only on monthly basis.**

Provided that the credit for banked energy shall not be permitted to be carried forward to subsequent months and the credit for energy banked during the month shall be adjusted during the same month as per the energy injected in the respective Time of Day (‘TOD’) slots determined by the Commission in its Orders determining the Tariffs of the Distribution Licensees ;”

18. Further, the DOA First Amendment Regulations saves the existing contracts on banking issue. The Relevant extract is given below:

“ **16. Amendment in Regulation 38 of the Principal Regulations :**

The provisos of existing Regulation 38.3 shall be amended as under :

“Provided that the provisions of these regulation, as amended from time to time relating to Banking under Regulation 20, the definition of Billing Demand, change in injection or drawal point under Regulation 26 and revision in Contract Demand under Regulation 4.2 with amendments thereof shall be applicable to existing Open Access Agreements or contracts ;

Provided further that provision relating to Banking of the Principal Regulations shall continue to apply for existing Open Access Agreements or contracts as on date of notification of the first amendment of the Principal Regulations, till the expiry of the approved period for such OA transactions, beyond which provision relating to Banking under Regulation 20 of the first amendment of the Principal Regulations shall apply.

19. Thus, the provision relating to Banking of the Principal Regulations are applicable for existing OA Agreements or contracts as on date of notification of the first amendment of the Principal Regulations i.e. 7 June, 2019, till the expiry of the approved period for such OA transactions. The OA for May and June, 2019 has been granted by MSEDCL only on 8 July, 2019, i.e. when the proceeding in Case No. 132 of 2019 was underway. With this, the OA Agreements with GPIL for May and June, 2019 came into existence only on 8 July, 2019 much later than the date of notification of the first amendment of the Principal DOA Regulations. However, the Commission agrees with the contention of GPIL where it has stated that the STOA applications, if they had been timely processed by MSEDCL in accordance with Principal DOA Regulations, would have been issued prior to the notification of the DOA First Amendment Regulations and

would have been issued within the ambit of the Principal DOA Regulations. If MSEDCL's contention regarding existence of contracts is accepted for present case, same would mean that the DOA First Amendment Regulations is implemented retrospectively which is not permissible under the prevailing law.

20. Further the Statement of Reasons for the DOA First Amendment Regulations has clarified the issue of applicability of amended Regulations as under:

*“ It may be noted that the changes proposed herein with respect to Banking, eligible capacity, Contract demand reduction, etc., are proposed thorough suitable amendments to Regulations and the changes can be made squarely applicable to new as also existing contracts albeit with prospective effect. Therefore, Commission has decided to apply the amendments prospectively to new and existing OA transactions. **However, it is clarified once again that applicability of the amended regulations for ongoing transactions shall be purely on prospective basis and shall not affect past settlements made under the said transactions. Further, as clarified in the earlier paragraphs, that banking provision as per the Principal DOA Regulations, 2016 shall continue to apply for existing OA transactions till expiry of the approved period for such OA transactions. The revised banking related provisions as per the present amendment shall apply thereafter.**”*

21. Hence, the Commission does not find merit in the stand taken by MSEDCL that since no contracts were in place for May and June, 2019, banking on yearly basis cannot be allowed to GPIL as per Principal DOA Regulations.
22. In light of the aforesaid discussions, the Commission deems it appropriate to direct MSEDCL to allow the treatment of banked units for the months of May and June, 2019 in accordance with the Principal DOA Regulations. As the banking year is financial year from April to March, the applicable financial year for May and June 2019 is FY 2019-20 which has already expired. However, this should not come in way of adjustment of the banked units for May and June, 2019 considering the time lost in litigations.
23. GPIL has also sought to initiate proceedings against MSEDCL under Sections 142 and 146 of the EA for non-compliance of the Order passed by the Commission. However, the Commission is of the view that there has been substantial compliance of the directions issued in Case No. 132 of 2019 as MSEDCL has already given credit adjustment in the consumer's bills. However, the excess injected energy after set-off with the consumer's consumption i.e. Units banked in May and June, 2019 was not allowed by MSEDCL due to its own understanding of Commission's order and interpretation of the relevant regulations. The Commission, in present Order, has clarified the position and has accordingly passed necessary directions to MSEDCL on the banking issue after detailed analysis of the relevant provisions of Principal DOA Regulations and DOA First Amendment Regulations. In light of the above circumstances, the Commission is not inclined to pass any direction against MSEDCL under Section 142 and 146 of EA.

24. Hence the following Order:

ORDER

1. **Case No. 71 of 2020 is allowed.**
2. **The Commission directs Maharashtra State Electricity Distribution Company Ltd. to allow the treatment of banked units for the months of May and June, 2019 in accordance with the MERC (Distribution Open Access) Regulations, 2016.**

**Sd/-
(Mukesh Khullar)
Member**

**Sd/-
(I. M. Bohari)
Member**

