Before the

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

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CASE No. 70 of 2020

Case of Ghatge Patil Industries Limited seeking directions against MSEDCL on non-compliance of Orders of the Commission including Orders dated 9 April 2019 in Case No. 22 of 2019 read with the Order dated 7 November 2017 in Case No. 77 of 2017

M/s Ghatge Patil Industries LimitedPetitioner

V/s

Maharashtra State Electricity Distribution Co. Ltd

Maharashtra Energy Development AgencyRespondents

Appearance

For the Petitioner :Smt. Dipali Sheth (Adv.)
For the Respondent No.1 :Shri. Ashish Singh (Adv.)
For the Respondent No.2 :Shri. Dr. J.V. Torane (Rep.)

Coram

I.M. Bohari, Member Mukesh Khullar, Member

ORDER

Date: 25 August 2020

- 1. M/s Ghatge Patil Industries Limited (**GPIL**) has filed this Case dated 5 March 2020 against Maharashtra State Electricity Distribution Company Ltd. (**MSEDCL**) on non-compliance of Orders of the Commission including Orders dated 9 April 2019 in Case No. 22 of 2019 read with the Order dated 7 November 2017 in Case No. 77 of 2017
- 2. Main Prayers of GPIL are as follows:
 - a) Direct MSEDCL to forthwith comply with the Order dated April 9, 2019 of this Hon'ble Commission in Case No. 22 of 2019 and pay the Petitioner DPC amounting to of Rs.

- 37,88,324 (Rupees Thirty Seven Lakhs Eighty Eight Thousand Three Hundred Twenty Four Only) as admitted by MSEDCL;
- b) Direct MSEDCL to pay the Petitioner the differential DPC amount of Rs. 4,24,883/-(Rupees Four Lakh Twenty Four Thousand Eight Hundred and Eight Three Only) as detailed Annex D;
- c) Direct MSEDCL to pay interest of Rs.18,03,565 (Rupees Eighteen Lakhs Three Thousand Five Hundred Sixty Five Only) [which is calculated at the rate of 1.25% p.a. on sum of Rs. 2,31,99,627 (Rupees Two Crores Thirty One Lakhs Ninety Nine Thousand Six Hundred Twenty Seven Only) from due date till payment or realization] as per the above-captioned orders of the Hon'ble Commission;
- d) Direct MSEDCL to make payment for the 41,79,414 units injected into the grid from July 03, 2018 to July 31, 2018 within specified time and adjust in immediately ensuing bills of the Petitioner notwithstanding the contentions in Appeal 315 of 2019;

3. **GPIL** in its Petition has stated as under:

3.1 GPIL had entered into following EPAs with MSEDCL for the sale of power generated by its wind power projects of total capacity of 15 MW.

Sr. No.	Date of EPAs	Commissioning Date	Location No./ Project Site/ Location	Capacity (MW)
1.	December 31, 2005	September 30, 2005	ВН01-ВН08,	6
2.	February18, 2006	December 31, 2005	A-5 Dhule	0.75
3.	May 02, 2006	March 27, 2006 and March 31, 2006 respectively	L11, BB5, Dhule	3.30
4.	December 13, 2006	September 29, 2006 September 29, 2006 & September 30, 2006	C5, XX1, AD1, Dhule	4.95
Total				

3.2 Due to failure on the part of MSEDCL to make timely payments towards the invoices raised by GPIL, it had approached the Commission in Case No. 68 of 2016. The Commission by its Order dated 16 March, 2017 directed MSEDCL to pay outstanding dues expeditiously and Delayed Payment Charges (**DPC**) within 30 days from the date of the said Order. When MSEDCL neglected to make entire outstanding payments as required to be made as per Order dated 16 March, 2017, GPIL again approached the Commission by way of a Contempt Petition in Case No. 77 of 2017. The Commission by its Order dated 7 November 2017 has held as under:

"20. In these circumstances, the Commission directs MSEDCL to show cause, within 21 days, why the provisions of Section 142 of the EA, 2003 should not be invoked against it and a penalty imposed for contravening the directions of the Commission cited above,

MSEDCL's response will be considered and appropriate action taken separately by the Commission."

- 3.3 Subsequent to this Order, MSEDCL made partial payment on 27 November 2017 and neglected to make further outstanding payments despite numerous reminders. Due to this negligent behaviour of MSEDCL, GPIL was compelled to issue termination notice dated 2 January 2018 stating that the termination of the EPAs was with effect from 1 February 2018. Along with the aforesaid termination notice, GPIL submitted self-use Short Term Open Access (STOA) applications to MSEDCL for wheeling power from its power projects from 1 February 2018. MSEDCL vide its email dated 30 January 2018 rejected the STOA applications submitted by GPIL for self-use of wind energy on the untenable ground that GPIL was already engaged in WEPAs with MSEDCL and hence STOA could not be granted from the same generation location.
- 3.4 GPIL being aggrieved by the action of MSEDCL, filed a Petition in Case No. 83 of 2018 against the arbitrary denial of STOA applications by MSEDCL. The Commission by its Order dated 2 July 2018 has held that EPAs of GPIL stand terminated with immediate effect and directed GPIL to raise bills along with DPC for the power injected till the termination of EPAs.
- 3.5 GPIL by various letters requested MSEDCL to either immediately release the outstanding dues or to adjust the same towards the power bills of GPIL's plant in Kolhapur and reconcile the differential amounts noted by GPIL in the DPC calculations. Due to substantial amount due and payable from MSEDCL, GPIL again approached the Commission in Case No. 22 of 2019 for the amount of energy injected into grid from 3 July 2018 to 31 July 2018 and payment of dues towards outstanding amount of Rs. 43.05 lakh and towards DPC within specified time. The Commission in its Order dated 9 April 2019 directed GPIL and MSEDCL to amicably resolve the dispute within 2 months and to submit compliance report.
- 3.6 Pursuant to the Order dated 9 April 2019 and after submitting all documents, no communication was received from MSEDCL hence GPIL requested the Commission vide letter dated 25 June 2019 to take notice of the non-compliance of the Order dated 9 April 2019 by MSEDCL and initiate suo-motu action against MSEDCL.
- 3.7 After continuous follow-up, reconciliation as per the Commission's Order dated 9 April 2019 was undertaken by MSEDCL on 19 September 2019. In reconciliation, MSEDCL admitted the liability to pay Rs. 37.88 lakh. However, as per GPIL, such amount is Rs. 42.13 lakh. Despite admitting the liability, MSEDCL has failed to pay such amount to GPIL till date.
- 3.8 In the reconciliation statement MSEDCL also mentioned that the delay on account of Generation Credit Note (**GCNs**) is as per Order dated 7 November 2017 of the Commission and not as per EPA. Such disobedience of Orders of the Commission in the first place and denying the liability despite Order of the Commission is an act of contempt. The Order dated 7 November 2017 is valid and subsisting and therefore, MSEDCL ought to comply with the same.
- 3.9 Aggrieved by the Order dated 9 April 2019 to the extent of denial of purchase of units

generated by GPIL for the month of July 2019, GPIL has approached the APTEL on 6 June 2019 challenging the Order dated 9 April 2019 in Case No. 22 of 2017 vide Appeal No. 315 of 2019

- 3.10 Without prejudice to the issues raised in Appeal No. 315 of 2019 for denial of STOA application for the month of July, 2018 by MSEDCL, it has supplied 41,79,414 units of wind power to MSEDCL and it is entitled to receive the payment as per the EPAs as GPIL had applied for open access permission well in time.
- 3.11 GPIL vide letter dated 18 February 2020 once again called upon MSEDCL to pay the outstanding DPC and interest at 1.25% per month on delay in DPC payments as per the Orders. However, MSEDCL has neither paid nor replied to such letter till date.
- 3.12 The outstanding and differential DPC amount is Rs. 42.13 Lakh. In addition, a sum of Rs. 18.03 Lakh calculated up to date of payment is payable as interest at 1.25% per month on failure to pay DPC within 30 days from date of the Order dated 7 November 2017.
- 3.13 Period and amount of Dispute is as tabulated below:

Sr. No	Particulars	Claimed as per Petition	
1	Outstanding DPC amount (Rs. in lakh)	37.88	
2	Differential DPC amount (Rs. in lakh)	4.24	
3	Period of DPC	4/2015 to 7/2018	
4	Outstanding Interest on DPC amount (Rs. in lakh)	18.03	
5	Period of interest on DPC	3/2016 to 4/2017 and 2/2018 to 7/2018	
6	Payment on account of 4.17 MUs injected during 3.7.2018 to 31.7.2018	Amount not mentioned	
7	Total outstanding amount (Rs. In Lakh)	60.16	

3.14 The present case is a fit case whereby the Commission ought to initiate stringent action against MSEDCL under the relevant provisions of the EA, including but not limited to Sections 142, 146 and 149 of the EA.

4. MSEDCL in its reply dated 11 May 2020 has stated that:

- 4.1 The Commission vide its Order dated 7 November 2017 in Case No 77 of 2017 directed MSEDCL to show cause, within 21 days, as to why the provisions of Section 142 of the EA, 2003 should not be invoked against it and a penalty imposed for contravening the directions of the Commission. Pursuant to the Commission's Order, till the end of December 2017, MSEDCL has paid amount of Rs. 8.97 Cr. including DPC amount of Rs.0.85 Cr. and complied with the Commission's Order as far as payment of Principal amount and DPC is concerned as raised in Case No. 68 of 2016.
- 4.2 Pursuant to the Order dated 2 July 2018 in Case No 83 of 2018, MSEDCL has terminated the EPA with GPIL with effect from the midnight of 2 July 2018 and all the outstanding

- dues of Rs. 9.82 Cr. from July 2017 to 2 July 2018 have been paid on 10 August 2018, 20 August 2018, 18 September 2018 and 30 October 2018. Apart from Principal amount, MSEDCL had also paid the DPC of Rs. 1.47 Cr. on 10 August 2018 as per EPA.
- 4.3 In the instant Case GPIL has claimed differential DPC of Rs.4.24 Lakh. As per the terms of EPA, MSEDCL has paid the entire amount of DPC till the date of termination of EPA. Total amount of DPC paid by MSEDCL is Rs.2.32 Cr.
- 4.4 On the issue of additional DPC on account of delay by MSEDCL in JMR/meter reading, the Commission vide its Order dated 9 April 2019 in Case No 22 of 2019 had directed that GPIL should submit the following details as requested by MSEDCL and to sit together to resolve the issues in question amicably within two months from the date of Order
 - i) Necessary proof of delay on the part of MSEDCL in conducting JMR or issuing GCN.
 - ii) Necessary proof of date of raising of invoice by GPIL.
 - iii) Calculation of difference between DPC calculated and paid by MSEDCL and difference in DPC calculation according to GPIL.
 - iv) Rate at which such calculation is made
- 4.5 As per the direction of the Commission, GPIL has submitted the required documents as requested by MSEDCL and reconciliation statement for the same was signed on 19 September 2019. The delay in preparation of reconciliation of DPC was because some of the data pertains to 5 to 6 years old and therefore it took time.
- 4.6 On the issue of payment of penal interest at 1.25% per month on DPC amount, MESDCL has filed the appeal before APTEL against MERC Order dated 2 August 2019 in Case No 105 of 2019 of M/s Rajlaxmi Mineral Ltd and appeal is still pending before tribunal for final judgement.
- 4.7 With reference to prayer at point (d), on the issue of power injected by GPIL during 3 July 2018 to 31 July 2018 without any valid PPA or STOA permission, The Commission in its Order dated 9 April 2019 in Case No. 22 of 2019 has already ruled that without STOA and EPA, GPIL should not have injected its power into MSEDCL Grid and if it had done so, it did it on its own risks. In fact, because of injection of this unscheduled, infirm energy by GPIL in the grid and with the present system of Energy accounting and DSM at state level, MSEDCL has managed this deviation in drawal from grid and GPIL should be penalized for not maintaining Grid discipline. Further, GPIL has already filed an appeal against the Commission's Order dated 9 April 2019 before the APTEL as Appeal No 315 of 2019. The matter is still sub-judice hence it is not tenable before the Commission and GPIL should not have prayed for this issue.
- 4.8 The prayer of GPIL should be rejected and further suitable action should be initiated against GPIL for asking relief in a sub-judice matter before APTEL and payments for unauthorized injection of energy into grid and creating threat to grid security.

- 5. GPIL in its Rejoinder dated 21 May 2020 in reply to MSEDCL's reply dated 21 May 2020 has stated as under:
- 5.1 MSEDCL has failed to clarify its position on calculation of differential amount of Rs. 4.24 Lakh nor has MSEDCL provided any evidence or basis on which it refuses to pay the differential amount.
- 5.2 Despite having highly sophisticated software and computerised records of invoices and other records, the argument of MSEDCL that it took time for it to comply with the Order of the Commission is difficult to comprehend. MSEDCL is giving such reasons to justify contempt of the Commission's Order.
- 5.3 Regarding Appeal related to penal interest on DPC, mere filing of appeal does not amount to stay. MSEDCL should submit the exact case status with daily order of such appeal rather than making such passing statement.
- 5.4 GPIL has supplied 41,79,414 units of wind power to MSEDCL and it is entitled to receive the payment as per the EPAs as GPIL had applied for open access permission for July 2018 well in time and as such energy is consumed by MSEDCL. GPIL is entitled to the payments for such power or in the alternate it should be given credit adjustment for such units. GPIL has duly disclosed filing of Appeal No. 315 of 2019 while making such prayer.
- 6. At the hearing held on 4 August 2020 the Advocate of the Petitioner reiterated its submission and insisted that the Cases should be disposed of only after time bound commitment for paying all outstanding amount is received from MSEDCL. The Advocate of MSEDCL reiterated submission made in its reply and has further stated that as part of financial support requested from Financial Institutions on account of financial crunch due to Covid-19, it has included outstanding payments of RE generators. The outstanding dues of RE generators will be directly paid by these Financial Institute from amount approved to the MSEDCL. The Commission directed MSEDCL to submit its written submission within two days mentioning the details of outstanding payments and when it is proposed to be cleared. The representative of MEDA stated that MEDA is not directly involved in matter, hence it has not submitted its say.

7. MSEDCL in its additional submission dated 5 August 2020 has stated that:

- 7.1 At present there is no outstanding Principal amount to be paid because MSEDCL has already paid all the Principal and DPC amount to GPIL till the date of termination of EPA.
- 7.2 In pre-Covid-19 period when MSEDCL revenue was in the range of Rs 4500-5000 Cr per month, the revenue dropped to around 2000-2500 Cr per month during this lockdown period, hence MSEDCL was not in position to make timely payment to its generator.
- 7.3 MSEDCL has approached various Financial Institutions for borrowing money in order to repay the outstanding payments of various Renewable energy generators. MSEDCL has applied for loans and it is expected that it will be sanctioned by Financial Institutions in a month's time.

8. GPIL in its additional submission dated 7 August 2020 in reply to MSEDCL's submission dated 5 August 2020 has stated as under:

A sum of Rs. 37.88 lakh has been admitted by MSEDCL belatedly on 19 September 2019 which is still not paid. After admitting the payment of liability during the e-hearing dated 4 August 2020 before the Commission, MSEDCL now cannot deny its liability.

Commission's Analysis and Ruling:

- 9. The Commission notes that in the recent past GPIL had approached the Commission four times, either for seeking direction to MSEDCL for making payment of its outstanding amount, for compliance of the Commission's Order, for relief after its STOA application was denied and lastly for the outstanding dues on account of energy injected after termination of EPA and outstanding DPC etc. The Commission has provided the dispensation in all these Cases filed by GPIL. Now GPIL has filed this Case alleging non-compliance of the Order dated 9 April 2019 in Case No. 22 of 2019. The Order dated 9 April 2019 issued by the Commission was in fact on the Petition filed by GPIL claiming payment for energy injected into the grid post termination of EPA and payment of outstanding DPC as per EPA. The Commission in the said Order has ruled as under:
 - 9.8 The Commission allowed the Petitioner its request for termination of its EPA with MSEDCL as there was default from MSEDCL for payment of EPA bills to the Petitioner. On the other side, STOA was also not allowed by MSEDCL owing to the subsisting EPA. Hence, the Commission made the Petitioner free from the subsisting EPA with immediate effect so that it can avail open access in future.
 - 9.9 In view of the above, the Commission finds no merit in the contentions of Petitioner and the action of MSEDCL in rejection of STOA for July, 2018 is justified.

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- 10.4 The Commission observes that Petitioner in its rejoinder has not substantiated the details regarding the DPC claimed by it and has only re-iterated the similar submission as stated in the Petition and MSEDCL has also stated that it has paid all dues including DPC.
- 10.5 Considering the material placed on record, and the disagreement between the Petitioner and MSEDCL on claim of DPC, the Commission thinks it fit to direct GPIL to submit the details as mentioned at para. 10.3 above and both the parties to sit together to resolve the issues in question amicably within two months from the date of Order.
- 10. GPIL in the present Case has contended that MSEDCL has failed to comply with Commission's above directives to reconcile outstanding amount within stipulated period and reconciled the amount on 19 September 2019. GPIL has claimed direction for payment of outstanding DPC amount, interest on such DPC amount and payment on account of 4.17 MUs injected by it from 3 July 2018 to 31 July 2018.

- 11. MSEDCL in its Reply has stated that it has paid all outstanding Principal and DPC amount till the date of termination of EPA. MSEDCL has further stated that the Commission in its Order dated 9 April 2019 in Case No. 22 of 2019 has held that without STOA and EPA, GPIL should not have injected its power into MSEDCL's Grid. MSEDCL has managed the deviation in drawal from grid and GPIL should be penalized for injecting energy during the period 3 July 2018 to 31 July 2018 without any valid PPA or STOA permission and for not maintaining Grid discipline.
- 12. The Commission notes the amount claimed by GPIL and payments to be made by MSEDCL which is summarized as under:

Sr.	Particulars	Claimed as per Petition	MSEDCL's
No			submission
1	Outstanding DPC amount (Rs. in lakh)	37.88	0.00*
2	Differential DPC amount (Rs. in lakh)	4.24	Not agreed.
3	Period of DPC	4/2015 to 7/2018	
4	Outstanding Interest on DPC amount (Rs. 18.03		-
	in lakh)	16.03	
5	Period of interest on DPC	3/2016 to 4/2017 and	-
	Terrod of interest on Di C	2/2018 to 7/2018	
6	Payment on account of 4.17 MUs injected.	Amount not mentioned	0.00
7	Total outstanding amount (Rs. In Lakh)	60.16	_

^{*} Reconciled but not considered for payment

The Commission notes that still there is disagreement in amount of DPC of Rs.37.88 lakh and differential DPC of Rs. 4.24 Lakh submitted by both parties. Pursuant to the Order 9 April 2019 in Case No 22 of 2019 both the parties reconciled the amount on 19 September 2019.

- 13. From the document placed on record it is observed that MSEDCL in the reconciliation statement has not agreed to the differential DPC of Rs. 4.24 lakh claimed on account of delay due to difference in the date of receipt of payment. However, MSEDCL has not submitted justification or reasons for such disagreement or explained how claims of GPIL relating to differential DPC amount are incorrect. Such approach of MSEDCL is not appropriate and in future it should ensure that Reply is filed covering all aspects of issues raised in the Petition. Notwithstanding that the above observation, the Commission notes that such dispute of rejection of claim of the Petitioner by MSEDCL was not raised separately in the original Petition. It cannot be dealt with through the non-compliance proceeding and GIPL is at liberty to approach the Commission under Section 86 (1)(f) of the EA for adjudication of this dispute which will be dealt according to the said provisions.
- 14. The Commission also notes that DPC amount of Rs. 37.88 lakhs on account of interest for delay in issuance of GCN at 15%, has been computed by both parties in reconciliation statement, however, a Note in reconciliation statement says that " Above GCN DPS statement is reconciled as per MERC Common Order for Case No 77 of 2017. However, there is no such clause in EPA. Hence above reconciled liability is subject to change as per any future MERC/APTEL Orders." Therefore, even after reconciling the amount, MSEDCL

has not paid such DPC amount of Rs 37.88 lakh. In this regard, the Commission notes that in its common Order dated 7 November 2017 in Case Nos 77,81,90 and 91 of 2017, the Commission has provided following dispensation in case GCNs have been delayed:

"23. Considering the principle already settled in these Orders and the time frames stipulated in the EPAs (submitted in the original proceedings), MSEDCL has to conduct the JMRs on the first day of the month for the preceding month, and the Petitioners have to raise its bill within the first 15 days. Thus, MSEDCL has to issue the GCNs at the latest within 15 days from the JMRs (undertaken on the first of the month). Thus, wherever GCNs have been delayed or have not been issued as a result of which bills could not be raised in time, the 15th day from the JMR shall be taken to be the date of the monthly invoice. MSEDCL has to make the payment within 45 or 60 days thereafter (depending on the provisions of the respective EPAs), after which DPC would be attracted.

Thus, as per above Order of the Commission, delay in issuance of GCN will attract DPC on outstanding payment for corresponding period. Both parties have arrived at same amount, but MSEDCL has not considered it for payment as EPA does not provide for it. In its reply, MSEDCL has not disclosed whether it has challenged this Order before the APTEL. Such approach of the MSEDCL towards compliance of the Commission's Order is not acceptable.

- 15. The Commission doesn't understand what else GPIL should do to get its legitimate dues. Liability to pay DPC of 38 lacs is admitted by MSEDCL but is shown with a caveat in the reconciliation statement that the dues have not accrued under EPA but are pursuant to order of the Commission. It is not understood with this caveat how MSEDCL is discharged from its liability to make payment. The Commission would have proceeded under Section 142 of EA for such default. However, considering the adverse impact of ongoing Covid pandemic on the normal operations of MSEDCL, the Commission is giving one last chance to MSEDCL to forthwith make the payment as agreed in the reconciliation statement.
- 16. For justifying non-payment of interest on DPC, MSEDCL has stated that it has filed appeal against Commission's Order granting interest on DPC. In this regard, the Commission notes that no stay has been granted by the Hon'ble APTEL. Hence, MSEDCL is duty bound to comply with that order of the Commission. Hence, during the process of reconciliation/payment of the amount as stated above, interest on DPC shall also be included.
- 17. On the issue of payment claimed by GPIL on account of 4.17 MUs injected by it during the period from 3 July 2018 to 31 July 2018, the Commission notes that, the Commission by its Order dated 2 July 2018 in Case No. 83 of 2018 has allowed termination of EPAs of GPIL with MSEDCL with effect from 2 July 2018. Further, the Commission in its Order dated 9 April 2019 in Case No 22 of 2019, has held that MSEDCL's action of rejecting GIPL's Short Term OA application for month of July 2018 was correct and the request of the Petitioner for compensation of power injected during 3 July 2018 to 31 July 2018 was disallowed. The said disallowance was through a reasoned order. Therefore, it is not appropriate for this Commission to consider this issue afresh. Further, GPIL has also

- challenged the Commission's Order dated 9 April 2019 before the APTEL. Hence, the Commission cannot again re-consider this relief as sought by the GPIL.
- 18. On the issue of payment of outstanding amount, the Commission notes the financial difficulties pointed out by MSEDCL due to reduction in the revenue collection on account of Covid-19 and its submission that while approaching Financial Institutions for loans to mitigate financial crunch arisen due to Covid-19, it has included outstanding payments of RE generators in that and once the amount is sanctioned by Financial Institutions (which is expected within a month), RE Generators will be paid directly by Financial Institutions without routing such amount through MSEDCL.
- 19. In view of the above submission made by MSEDCL, The Commission notes that it has paid all outstanding amount till the termination of EPA with GPIL, except for DPC amount. As ruled in paragraph 15 and 16 above, the Commission is giving one last chance to MSEDCL to forthwith clear the amount as per reconciliation statement and is desisting from invoking any action against MSEDCL under Section 142, 146 and 149 of the EA 2003. Instead of penalizing MSEDCL, GPIL will be better served if outstanding amount, is paid to it as committed by MSEDCL.
- 20. As regards request of GPIL to keep the case pending until the entire amount is cleared, Commission notes the submissions of MSEDCL that it is not the MSEDCL but the Financial Institutions which would be directly making payment of the outstanding amount of all the generators and other parties. Therefore, keeping the case pending won't serve any purpose.
- 21. Hence, the following Order:

ORDER

- 1. The Case No. 70 of 2020 is partly allowed.
- 2. Maharashtra State Electricity Distribution Company Limited is directed to forthwith clear or include the outstanding amount as per reconciliation statement in the proposal to Financial institutions for directly making payment to Petitioner.
- 3. Petitioner's claim for payment towards energy injected during the period of 3 July to 31 July 2018 without any valid EPA or OA permission has already been rejected earlier in Case No. 22 of 2019.

Sd/-(Mukesh Khullar) Member Sd/-(I. M. Bohari) Member

