

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No 24 of 2017**

**Compliance of the Hon'ble Appellate Tribunal of Electricity Judgment in Appeal No.77 of 2018 & IA Nos. 318 of 2018& 125 of 2019 dated 27 April, 2021**

**Coram**

**Sanjay Kumar, Chairperson  
I.M.Bohari, Member  
Mukesh Khullar, Member**

Maharashtra State Electricity Distribution Company Ltd:-	... Petitioner
Vs	
1. Adani Power Maharashtra Limited:-	...Respondent No. 1
2. JSW Energy Limited :-	...Respondent No. 2
3. RattanIndia Power Limited:-	...Respondent No. 3
4. GMR Warora Energy Limited:-	...Respondent No. 4

**Appearance**

For Petitioner: -	...Shri Ravi Prakash (Adv)
For Respondent No. 1:-	...Shri. M.R.Krishna Rao (Rep)
For Respondent No. 2:-	...Shri. Aman Anand (Adv)
For Respondent No. 3:-	...Shri. Ashutosh Srivastav (Adv.)
For Respondent No. 4:-	...Shri. Ambrish Khare (Rep)

**ORDER**

**Date: 28 July, 2021**

1. Present proceeding has been initiated in compliance of the judgment of the Hon'ble Appellate Tribunal of Electricity (APTEL) dated 27 April 2021 in Appeal No.77 of 2018 & IA Nos. 318 of 2018 & 125 of 2019.
2. Background to above said APTEL Judgment is summarised below:
  - 2.1 Post competitive bidding process under Section 63 of the Electricity Act, 2003 (EA, 2003), Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) entered into

Power Purchase Agreement (**PPA**) with various Independent Power Producers (**IPP**). Provision relating to Late Payment Surcharge (**LPS**) in that PPA is linked to Benchmark Prime Lending Rate (**PLR**). As the Reserve Bank of India (**RBI**) has introduced the Base Rate system (**BRS**) and thereafter the Marginal Cost of Funds-based Lending Rate (**MCLR**) system for deciding interest rates in place of PLR, MSEDCL had filed a Petition on 2 February 2017 (registered as Case No. 24 of 2017), before this Commission seeking relief under the Change in Law provisions of the PPA for replacing PLR linked LPS with BRS/MCLR linked LPS.

2.2 The Commission vide its Order dated 16 November, 2017 in Case No. 24 of 2017 had rejected MSEDCL's petition with following rulings:

*"15. The PPAs provide that notices of Change in Law events are to be issued along with their precise effect by the Seller, failing which MSEDCL may do so. While the changes cited by MSEDCL were effected by RBI from July, 2010 and April, 2016 and notified in advance, MSEDCL issued Notices of Change in Law to the Respondents only in September, 2016, i.e. more than 6 years after RBI introduced the Base Rate system in place of the BPLR system. The Respondents have contended that the claim is barred by limitation. The Commission notes that the PPAs require that such claims be raised*

*"as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law."*

*MSEDCL could not have been unaware of the revision effected by the RBI at that time, nor has it explained this inordinate delay in raising its claim.*

*16. The Commission also notes that the PPAs with APML were signed in August, 2010 and February, 2013, after the RBI had introduced the Base Rate system. Nevertheless, MSEDCL chose to enter into these PPAs with the LPS provisions based on the SBI PLR.*

*17. In the guise of Change in Law events, MSEDCL is in effect seeking that the LPS provision for delayed payments in the PPAs be modified or read as based on the one-year SBI PLR from July, 2010, and on the one-year SBI MCLR from April, 2016 (which is lower than the SBAR referred to in the PPAs). In this context, the Commission notes that, since the SBI continues to notify the SBAR which determines the LPS rate, recourse cannot be had to the provision in the PPAs that*

*"In the absence of such rate, SBAR shall mean any other arrangement that substitutes such prime lending rate as mutually agreed to by the Parties;..."*

*Moreover, the Case 1 Stage 2 PPAs provide that*

*"15.3 This Agreement may only be amended or supplemented by a written agreement between the Parties and after obtaining the approval of the Appropriate Commission, where necessary."*

*Article 18.1 of the other PPAs has a similar provision. However, none of the Respondents have agreed to the change in the LPS provision sought by MSEDCL.”*

2.3 MSEDCL challenged the above Order of the Commission in the APTEL on the basis that RBI replaced the PLR method of interest fixation with the Base Rate Method in 2010, and the MCLR method in 2016 for bringing transparency in lending rates and therefore instead of computing LPS on the basis of the Prime Lending Rate, it should be linked to the RBI circulars. The enforcement of LPS at the PLR rate has been resulting in unjust enrichment of the generating companies.

2.4 The APTEL vide its judgment dated 27 April, 2021 has rejected the appeal and upheld the Commission’s Order. In the same judgment, the APTEL has issued following directives:

*“35. In present case, we do find that the issue involved in the dispute was of rate at which LPS is payable. There has been no denial at any stage by the appellant that it had committed series of defaults in timely payments. This indisputably rendered it liable to pay LPS. In the name of having the determination of rate, it statedly has not paid LPS even at the rate its pleadings would admit it to be liable for. The initial orders on this appeal would show that it engaged the respondent suppliers in negotiations. It is not explained as to what was the result of, or stalemate in, such negotiations. Be that as it may, the failure of the appellant to account for its liability under LPS clause is something that does not behove its status as a licensee operating in the State. **The least that we would expect it to do now is to pay the liability on account of LPS to the contesting respondents forthwith, not later than four weeks from the date of this judgment. We order accordingly.***

*36. **The Maharashtra State Electricity Regulatory Commission is directed to take up the matter after four weeks to ascertain if the appellant has discharged its liability towards LPS unto the second to fifth respondents for the period in question in compliance with above directions, pass all necessary orders in such regard and make a report to this tribunal within three months. Needless to add, if the amount payable requires to be quantified, the Commission shall take out appropriate proceedings and determine the liability in accordance with law expeditiously so as to conclude not later than two months from now.***”

Thus, to comply with above Judgment of the APTEL, following needs to be undertaken:

- a. MSEDCL to pay LPS to four generators (who were party before the Commission & APTEL) within a period of four weeks from the date of Order of APTEL.
- b. After period of above said 4 weeks, the Commission has to initiate the proceedings to verify compliance of APTEL judgment.

- c. In case LPS amount needs to be quantified, the Commission shall do that within a further period of two months.
  - d. The Commission shall submit report on compliance of above judgement to the APTEL within three months.
3. **RattanIndia Power Limited (RPL) in its submission dated 28 May,2021 has stated as follows:**
  - 3.1 LPS payable by MSEDCL is Rs. 171.08 Crore (calculated till 28 April 2021).
  - 3.2 RPL wrote to MSEDCL on 29 April, 2021 and 24 May, 2021 requesting that payment be made in compliance with the timeline of 4 weeks as directed by the APTEL. Despite the same, MSEDCL has neither responded nor paid the outstanding LPS amount. The four-week time limit imposed by the APTEL has expired.
  - 3.3 On account of MSEDCL's failure, RPL approached the APTEL by way of an Execution Petition (Diary No. 202 of 2021) and mentioned the same on 27 May, 2021. Upon mentioning, the APTEL observed that as directed in Judgment dated 27 April, 2021, MERC ought to take up the matter expeditiously and ensure compliance with the directions in Judgment dated 27 April, 2021.
  - 3.4 In view of the APTEL's observations and directions in Judgment dated 27 April, 2021, RPL requested this Commission to take up the matter on an urgent basis and pass orders accordingly.
4. Accordingly, for verifying the compliance of APTEL judgment, vide notice dated 2 June, 2021 all parties were directed in. this case to file their submissions in the matter by 10 June 2021 and hearing in the matter was scheduled on 11 June, 2021.
5. **JSW Energy Limited (JSW) in its submission dated 2 June, 2021 has stated that**
  - 5.1 MSEDCL has not made LPS payment as directed by APTEL within four weeks and has not responded to its letters.
  - 5.2 LPS payable by MSEDCL to JSW is Rs. 101.62 Crore. Quantification of the outstanding amount has been done in accordance with PPA and has never been disputed by MSEDCL.
6. **MSEDCL in its submission dated 10 June, 2021 has stated as follows:**
  - 6.1 MSEDCL has challenged the APTEL Judgment dated 27 April, 2021 by the way of Civil Appeal No 1843 of 2021 before the Hon'ble Supreme Court along with an application for urgent listing and the matter is scheduled for hearing on 11 June 2021.

- 6.2 It is settled position of Law that once the appeal is filed before the Hon'ble Supreme Court and the same is entertained; the judgement of High Court or the Tribunal is in jeopardy. The subject matter of the lis unless determined by the last court cannot be said to have attained finality. Grant of stay on operation of the judgment may not be of much relevance once the Hon'ble Supreme Court grants special leave and decides to hear the matter on merit.
- 6.3 If present case is permitted to proceed before the Civil Appeal is heard by the Hon'ble Supreme Court, the entire appeal become infructuous and it is therefore in the interest of justice to permit MSEDCL a reasonable opportunity to avail remedy of Appeal before the Hon'ble Supreme Court as per Section 125 of EA, 2003.
- 6.4 Therefore, present Petition should be kept for consideration after the Civil Appeal filed before the Hon'ble Supreme Court scheduled to be heard on 11 June 2021 has been heard. MSEDCL has good case on merits and if the present case is heard /disposed of, MSEDCL shall be put to grave losses and prejudice.

**7. At the E-hearing held on 11 June, 2021:**

- 7.1 Advocate of MSEDCL apprised the Commission about filing of appeal before the Supreme Court challenging APTEL judgment dated 27 April, 2021. At the same time, he admitted that since Hon'ble Supreme Court has not yet granted a Stay on the SLP filed by MSEDCL, the payment LPS has to be effected in compliance of APTEL judgment which is in force. He however requested one week's time for reconciliation of the LPS amounts.
- 7.2 Advocates of APML/ JSW/ RPL/ GMR have stated that the computations of LPS have already been submitted to MSEDCL. MSEDCL has neither responded to letters nor released payments towards LPS. Already four weeks' time has lapsed and no further extension is required to be granted for reconciliation. MSEDCL should release the payments of LPS urgently.
- 7.3 Having heard the parties, the Commission observed that MSEDCL should have complied with the APTEL Judgment at least towards LPS amount that is undisputed and is admitted by it and thereafter the balance amount could be reconciled. Therefore, the Commission directed MSEDCL to file a submission stating the timelines about complying with APTEL Judgment dated 27 April, 2021.

**8. Accordingly, vide its letter dated 11 June, 2021, MSEDCL has made following submission:**

- 8.1 Till date MSEDCL has made payment of Rs. 912 Crs based on Base rate + 2% upto Mar-16 and MCLR+ 2% from Apr-16 onwards to the generators as follows:

Generator	APML	JSW	RPL	GMR	Total
Rs Cr	660	84	135	33	912

8.2 Further, as per the directives of the APTEL, MSEDCL has calculated the differential LPS and balance LPS payable upto Mar-21 at the rate of 2% in excess of applicable SBAR i.e. PLR. Said amount is to the tune of Rs. 426 Crs. as follows:

Generator	APML	JSW	RPL	GMR	Total
Rs Cr	210.31	95.58	112.93	7.56	426.38

8.3 Covid-19 circumstances have adversely impacted financial situation of MSEDCL. Total loan and payables as on 31 March, 2021 is Rs. 57757 Cr which includes loans of about Rs 43000 Cr and payables of around Rs.14757 Cr. The arrears/receivables from consumers including DPC is around Rs.66193 Cr. MSEDCL has crossed the normative level of working capital loan to reduce the burden of Delayed Payment Charges (DPC). Moreover, the total interest on working capital is also not allowed as pass through in tariff by MERC, which in turn aggravates the financial position of MSEDCL.

8.4 MSEDCL is in precarious financial position, however, since the Commission has directed MSEDCL to submit payment plan of LPS on undisputed claim, MSEDCL is taking efforts for payment of LPS amount of around Rs. 426 Crs. taking into consideration the undertaking submitted by generator regarding waiver/concession/relief of LPS if any.

8.5 It is requested to grant period of 3 weeks for payment of LPS on undisputed claims as per MSEDCL, without prejudicing its right available under PPA and/or statute and subject to the outcome of Civil Appeal No. 1843 of 2021 filed before Hon'ble Supreme Court.

8.6 The generators have claimed LPS on disputed liabilities also which are still under litigation in various forums. Therefore, the LPS cannot be paid as per demand from the generators and the same needs to be reconciled. The details of LPS as per MSEDCL and Generators is as follows:

Particulars	APML	JSW	RPL	GMR	Total
LPS as per Generators in Rs Cr	550.15	101.62	171.08	14.00	836.85
LPS as per MSEDCL in Rs Cr	210.31	95.58	112.93	7.56	426.38

9. Considering above submissions and mandate given by the APTEL, the Commission issued Interim Order dated 17 June ,2021 in this matter directing as follows:

*14. Considering above observations and directives of the APTEL, the Commission is of the opinion that it has to adjudicate on the difference of the amount claimed by the generators and the amount acceptable to MSEDCL. This differential LPS amount thus needs to be quantified so as to comply with APTEL directives. Therefore, instead of closing this proceeding by leaving it to parties to reconcile the amount, the Commission thinks it fit to issue following directives through this **Interim Order**:*

*a. MSEDCL to pay LPS amount as per its calculation to the generators immediately so as to comply with APTEL directives.*



- b. MSEDCL to share its LPS computation to generators immediately if not yet shared already (within 2 days of this order).*
- c. Generators shall file their comments on MSEDCL's computation, details & justification of their LPS claim within three days.*
- d. Thereafter, MSEDCL and generators shall reconcile the claims and counter claims and submit agreed amount of LPS within two days.*
- e. MSEDCL shall co-ordinate and ensure that the timelines and directions given in this paragraph are complied with.*

*15. The Commission is aware that MSEDCL has filed appeal against above said APTEL judgment before the Hon 'ble Supreme Court in Civil Appeal No. 1843 of 2021. However, there is no stay in the matter and hence, the Commission is bound to continue with the present proceeding which has been initiated for compliance of APTEL judgment.*

*16. Post receipt of submissions mentioned in para 14 above, next hearing in that will be held on Tuesday, 25 June, 2021 at 10.30 am."*

**10. At second E- hearing held on 25 June, 2021:**

10.1 Advocate of MSEDCL stated that in compliance with the interim Order dated 17 June 2021 passed by the Commission, MSEDCL has released part payments of undisputed amount to the tune of Rs 83 Cr to the concerned generators and is releasing amount of Rs 129.57 Cr today itself. Thereby 50 % of the undisputed amount of Rs 426.38 Cr will be released today. For balance 50% payment, MSEDCL requested one week period. He further stated that as per the directives of the Commission, MSEDCL has shared the computations of LPS with the Generators vide mail dated 19 June 2021 and except GMR, all other generators have replied to mail with discrepancies which are being reconciled. After reconciliation of the disputed amounts, MSEDCL would report the same to the Commission within a week's time. MSEDCL further stated that it is complying with the Orders of the APTEL as well as of the Commission in true letter and spirit but without prejudice to its rights in Civil Appeal No 1843 of 2021 filed by MSEDCL before the Hon'ble Supreme Court against APTEL Order in Appeal No 77 of 2018. He informed that its stay application which was to be listed today has unfortunately not been listed and might be listed sometime next week.

10.2 Representative of APML stated that MSEDCL has not complied with directives of the APTEL as well as the Commission. Further MSEDCL has applied MCLR rates instead of SBI PLR rates in the computations which are not acceptable to APML. Further no comments are received from MSEDCL on the computations submitted by APML.

- 10.3 Advocate of JSW stated that reconciliation in their case was limited to Rs. 6 crore which has also been cleared recently. Hence, MSEDCL should make the payment of the same immediately.
- 10.4 Advocate of RPL stated that time period given by APTEL is expiring and MSEDCL is trying to expand the period. Further the computations are based on MCLR rates and not on SBI PLR rates. MSEDCL is wrongly pleading before the Supreme Court that there would be increased burden to the consumers as this amount is on account of default in making payments in timely manner by MSEDCL which as per MERC Tariff Regulations cannot be allowed as pass through to the consumers.
- 10.5 Advocate of GMR Warora stated that it has submitted the computations to MSEDCL vide mail dated 16 June 2021. MSEDCL has not disputed any of the bill raised by GMR in the past. Therefore, the question of admitted and non-admitted amount doesn't arise at this stage and MSEDCL should immediately pay the amount as claimed by GMR.
- 10.6 All the generators except GMR gave consent to the proposal of MSEDCL to pay 50 % of the admitted amount today and remaining 50 % within a week's time. GMR contended that instead of payment of 50% of amount as admitted by MSEDCL, it should be paid immediately 50% of the amount claimed by generators pending reconciliation.
- 10.7 On the concerns of the Commission and the Respondents, about the impending expiry of time period as stipulated by APTEL, MSEDCL undertook to approach Hon'ble APTEL for seeking extension of the time limit for compliance of the APTEL Order.
- 10.8 Considering the submissions made by Petitioners and Respondent, the Commission directed as follows:
- a. MSEDCL to pay additional amount to respective generators today itself so that 50% amount of claims admitted by MSEDCL is paid on or before 25 June 2021.
  - b. Balance 50% of the admitted amount to be released to the concerned generators within a week's time.
  - c. MSEDCL and the generators should reconcile the balance claims (amount) within a period of 3 days and MSEDCL to file the submission before the Commission on or before 29 June 2021. The submissions shall also include the time bound plan to release additional amounts if any as a result of reconciliation.
  - d. Based on submissions filed by MSEDCL/generators on reconciliation of LPS amount, the Commission will pass final Order in the matter quantifying LPS amount, if so required.
  - e. MSEDCL is at liberty to file the application before APTEL for extending the time limits for compliance of the APTEL Order.



**11. MSEDCL vide letter dated 29 June, 2021 submitted compliance of above directives as follows:**

11.1 MSEDCL has released an aggregate amount of Rs. 129.57 Crores to the generators and as on date only 50% of the total amount of Rs. 426.38 Crores i.e. Rs. 213.18 Crores remains to be paid. Details of payment are as follows:

Particulars	APML	JSW	RPL	GMR	Total
Amount of LPS paid Rs Cr	44.02	0.38	43.45	41.72	129.57

11.2 MSEDCL has reconciled the statements of LPS payable by MSEDCL after discussion / verifying the details submitted by the Generators. MSEDCL has submitted the audited and certified reconciled calculations by Chartered Accountants with respect to each generator. The key highlight of the reconciliation is as follows:

**A. Adani Power Maharashtra Ltd (APML) :-**

- a. APML has not shared any calculations for reconciliation but has only given comments on calculation shared by MSEDCL on 19 June 2021. APML comments indicated an additional amount of Rs. 162 Crores over and above the MSEDCL calculated claim of Rs. 210.30 Crores. Therefore, the claim of APML stands revised to Rs. 372 Crores in place of earlier claim of Rs.550 Crores.
- b. Further, during reconciliation from this amount of Rs. 162 Crores, an amount of about Rs. 22 Crores was reduced due to change in due dates in the respective bills for the claims pertaining to Financial Year 2014-15. As there is no specific provision in PPA regarding due date of infirm power supply, LPS is calculated excluding the same. Therefore, amount of LPS is also reduced to the tune of Rs. 5 Crs.
- c. Effectively, an aggregate amount of Rs.27 Crores (approx.) has been reduced from the Claims against LPS bill raised by APML and thus, the final amount due to APML is Rs. 345 Crores. Out of the said outstanding amount of Rs. 345 Crores, a total amount of Rs. 105 Crores has been paid to APML and Rs.240.20 Crores remains outstanding as on date.
- d. APML has submitted additional claim (as revised comments on MSEDCL calculations) of Rs.13 Crores vide email dated 28 June 2021. During scrutiny reconciliation it was finalized to Rs. 12.64 Crs. Further as per as per Ministry of Power (MoP) notification dated 20 November 2020, the rate of interest for COVID – 19 lockdown period is considered 1% per month. It has resulted in reduction in LPS amount by Rs. 10.49 Crs.

- e. To sum up, now there is net increase in APML's liability of Rs. 137.22 Crs. over Rs. 210.30 Crs and after making payment of Rs. 105.17 Crs. balance payable is Rs. 242.35 Crs.

B. JSW Energy Ltd.

- a. JSW submitted its revised calculations indicating an amount of Rs. 100.73 Crores as payable by MSEDCL. Based on the calculations shared by JSW, MSEDCL reworked the LPS liability, considering due dates as per PPA provision clause no 11.2.1 (ii), and the claim of JSW stood reduced by Rs. 3.43 Crores. Further as per MoP notification dated 20 November 2020 there is reduction in LPS amount by Rs. 0.96 Crs.
- b. Effectively, the revised claim stands at Rs. 96.64 Crores. Furthermore, an amount of Rs. 47.79 Crores has already been paid to JSW on 25 June 2021. Accordingly, an amount of Rs. 48.55 Crores, remains outstanding to be paid to JSW as on date.

C. RattanIndia Power Ltd. (RPL)

- a. RPL has submitted calculations of Rs. 171.08 Crores as being payable by MSEDCL against LPS. RPL has considered the LPS liability to an amount of Rs.50.57 Crores, settled as per undertaking submitted by RIPL on 05 April 2018, whereby RPL has agreed that they would not claim interest (LPS) on the same. As per the affidavit given by RPL, out of total LPS of Rs. 171.08 Crores amount to the tune of Rs. 52.63 Crores is towards the said interest and hence MSEDCL has not considered the said amount of Rs. 52.63 Crores for calculation.
- b. Further, RPL has not given clarification / comment about balance difference of Rs. 5.53 Crores, hence MSEDCL has not considered the same. MSEDCL has reworked LPS excluding infirm power and corrected the due dates of some bills; it has resulted in reduction of LPS liability of MSEDCL against RPL to about Rs. 5.92 Crores. Further as per Ministry of Power (MoP) notification dated 20 November 2020 there is reduction in LPS amount by Rs. 2.17 Crs.
- c. Effectively, about Rs. 66 Crores has been reduced from the claim of RPL against LPS payable by MSEDCL and revised claim comes to the tune of Rs. 104.82 Crores. MSEDCL has already paid an amount of Rs. 56.45 Crores on 25 June 2021 and the remaining payable amount is Rs. 48.37 Crores.

D. GMR Warora Energy Ltd. (GMR)

- a. GMR has submitted calculations of Rs. 29.39 Crores. There arose a correction of formula in LPS up to March 2017, the rectification of which has resulted in reduction of Rs. 5.50 Crores in the LPS liability of MSEDCL to GMR

- b. There were some errors observed in comments provided by GMR on 27 June 2021, upon rectification of which, the LPS liability was further reduced by Rs. 18.85 Crores which is not payable by MSEDCL as follows
- LPS on disputed coal shortfall claims – Rs. 12.80 Crores
  - LPS on paid amount not considered by GMR – Rs. 4.41 Crores
  - LPS on STOA credit adjustment – Rs. 1.64 Crores
- c. As per MoP notification dated 20 November 2020 there is reduction in LPS amount by Rs. 0.47 Crs
- d. Further difference of Rs.0.10 Crores is not reconciled and the same will be resolved during LPS calculation of FY 2021-22
- e. Effectively about Rs. 24.35 Crores in claim of GMR has been reduced and revised claim of GMR stands at Rs. 4.66 Crores. Accordingly, balance payable after payment of Rs. 3.77 Crores on 25 June 2021 is Rs. 0.79 Crores.

11.3 The revised impact of LPS as per the reconciliation statement is as below:

*In Rs Crore*

Generators	Earlier Claims of Generators	Revised During Reconciliation	Already paid	Balance payable
APML	550.15	347.52	105.17	242.35
RIPL	171.08	104.82	56.45	48.37
JSW	101.62	96.64	47.79	48.55
GMR	29.39	4.66	3.77	0.79
TOTAL	852.24	553.64	213.18	340.06

11.4 MSEDCL has submitted that the impact of revised claim of APML and the impact of MoP Notification is not considered in the certified Auditors certificates provided as attachments to the letter.

11.5 Accordingly, liability of LPS payable against 50% of the balance amount is reduced from Rs 213.18 Crores to Rs 202.13 Crores

11.6 This balance Rs 202.13 Crores shall be paid to the generators before 2 July, 2021 as shown below subject to the result of hearing in the Hon'ble Supreme Court of MSEDCL's stay application.

Name of Generator	Amount to be paid	Balance w.r.t. additional liability during reconciliation
APML	105.17	137.18
RPL	48.37	Nil
JSW	47.79	0.76
GMR	0.79	Nil
Total	202.12	137.94

11.7 Additional amount of Rs 137.94 Crores shall be paid by MSEDCL within further two weeks from 2 July, 2021.

**12. RPL in its additional submission dated 3 July,2021 pursuant to MSEDCL reconciliation has stated as follows:**

12.1 RPL had submitted its LPS claim for Rs. 171.08 Cr (as of 28 April, 2021) against which the MSEDCL has admitted LPS of Rs. 112.93 Crores (as of 31 March 2021).RPL vide email dated 23 June, 2021 submitted a detailed explanation with workings highlighting the inaccuracies in the computation provided by MSEDCL and requested MSEDCL to correct the same. Multiple rounds of discussions have happened between RPL and MSEDCL. However, MSEDCL has not taken any steps to rectify the computation.

12.2 MSEDCL has considered incorrect principal amount for computation of the LPS claim. MSEDCL has reduced the principal amount by Rs 50.64 Cr for calculating its LPS claim based on an erroneous assumption that the Undertaking dated 5 April, 2018 executed between RPL and MSEDCL will apply in the present case. The Settlement Agreement cannot apply to a subsequent cause of action which has arisen in favour of RPL based on the orders of the Commission as well as the APTEL. The Judgment of the APTEL will have overriding effect and MSEDCL is liable to pay LPS for all delayed payment in accordance therewith.

12.3 MSEDCL has contended that RPL has not given clarification / comment about balance difference of Rs. 5.53 Cr, hence MSEDCL has not considered the same. RPL has clarified during discussions with MSEDCL that the difference was on account of MSEDCL considering the incorrect due date. Further, RPL vide its letter dated 29 April, 2021 has considered LPS amount of Rs 171.03 Cr which was payable as on 28 April, 2021 whereas LPS as on 31 March, 2021 is Rs 165.92 Cr. there is a difference in the invoice Due Dates considered by MSEDCL for computing LPS claims. MSEDCL has considered the incorrect Due Dates of the invoices. During discussion with MSEDCL this issue has been highlighted by RPL, however, MSEDCL has not taken any steps to rectify the same.

12.4 For certain months, MSEDCL has split the energy invoice into energy invoice and others. Based on the discussion with MSEDCL, it emerged that MSEDCL in the energy invoice section has considered the energy invoice amount based on MUs approved by MSLDC, whereas in the “others” section, MSEDCL has considered the differential amount (between the initial MUs and revised MUs) based on the revised MUs submitted by MSLDC. While the aggregate amount of Energy and Other amounts match the amount as per Signed Reconciliation Statement, different due dates have been considered for Energy and Other components by MSEDCL, which has resulted in the variation in the LPS amount. This is impermissible and contrary to the terms of the PPA.

12.5 As regards the MoP notification No 23/22/2019 -R & R (Part - 4) dated 20 November, 2020 (which refers to the Notification dated 28 March 2020) it is submitted that MSEDCL has not placed the Notification dated 28 March 2020 on record. The copy of such Notification is not available on the MoP website. These notifications appear to be

recommendatory. Further, vide Notification dated 6 April, 2020, MoP has clarified that the notifications will apply only to those amounts which became overdue during the period between 24 March, 2020 to 30 June, 2020. The claims in the present matter relate to period prior to 24 March 2020. Therefore, these notifications will not apply. MSEDCL is requested to consider the LPS claim of Rs 171.03 Cr which was payable as on 28 April, 2021 out of which MSEDCL has paid Rs 58.57 as on 25 June, 2021 and balance payable amount is Rs 112.51 Cr.

**13. APML in its additional submission dated 6 July, 2021 pursuant to MSEDCL reconciliation has stated as follows:**

13.1 MSEDCL vide email dated 19 June, 2021 shared its computation of the LPS payable to APML. APML duly submitted its observations on MSEDCL's LPS computation along with details of the additional LPS payable by MSEDCL vide its email dated 22 June, 2021. Further MSEDCL has shared excel file of LPS computation vide email dated 28 June, 2021 with MSEDCL. Multiple rounds of discussions have happened between APML and MSEDCL thereof. Therefore, the contention of MSEDCL that APML has not shared its calculations is factually incorrect.

13.2 MSEDCL has reduced the amount of LPS to the tune of Rs 5 Cr on the ground that there is no specific provision in PPA regarding due date of infirm power supply and therefore LPS is calculated excluding the same. In this regard as per the PPAs, power sold prior to the CoD (infirm power) is to be billed at the energy charge rate. Being prior to CoD APML cannot raise this claim through a Monthly Bill and accordingly raised it through a Supplementary Bill.

13.3 As per provisions under PPA, APML can raise the claim for infirm power only through a Supplementary Bill and LPS is payable for delay in payment of Supplementary Bill at the same terms as applicable to Monthly Bill. Therefore, MSEDCL's contention that in absence of a specific provision in the PPA, it can exclude the infirm power while calculating LPS is wrong and denied as being devoid of merits. As such, MSEDCL cannot deduct an amount of Rs. 5.43 Crs corresponding to infirm power.

13.4 The MoP Notifications dated 28 March, 2020 as well as 20 November, 2020 do not alter the provisions of the LPS rate stipulated under the PPA. As per the MoP Notification dated 20 November, 2020 the LPS rate of 1% per month is applicable for payments made utilizing funds infused under the Atmanirbhar Bharat Scheme. MSEDCL has not informed APML till date that it has made any payments from funds thus sourced. Therefore, the claim of MSEDCL to consider the 1% per month interest rate is not correct in view of the aforementioned reasons. Further, MSEDCL has also not taken this plea before the APTEL in Appeal No. 77 of 2018.

13.5 The LPS payable in terms of the Interim Order dated 17 June, 2021 and Daily Order dated 25 June, 2021 by MSEDCL as on date is Rs 258.27 Crores

13.6 This LPS amount is in relation to undisputed claims and it does not include LPS payable towards change in law compensation for domestic coal shortfall for which APML is entitled for in accordance with PPA provisions.

**14. JSW in its additional submission dated 6 July, 2021 pursuant to MSEDCL reconciliation has stated as follows:**

14.1 MoP Notification dated 20 November, 2020 is not binding on JSW Energy Limited and there is no Order/ Regulation of the Commission mandating that the LPS would stand reduced to 1% pursuant to MoP Notification. The notification is advisory in nature and cannot be said to have amended the terms of the approved PPAs. On this score the dispute of reduction of LPS amounting to approximately 96 Lakhs.

15. GMR Warora has not submitted any additional say pursuant to MSEDCL reconciliation.

**Commission's Analysis and Ruling:**

16. The present proceeding has been initiated to verify compliance of APTEL judgement dated 27 April, 2021 in Appeal No 77 of 2018. As per the directives of APTEL. As summarised in Para 2.4 above, said APTEL judgment has directed as follows:

- a. MSEDCL to pay outstanding LPS to generators (APML, JSW, RPL and GMR) within four weeks.
- b. After period of above said 4 weeks, the Commission has to initiate the proceedings to verify compliance of APTEL judgment.
- c. In case LPS amount needs to be quantified, the Commission shall do that within two months.
- d. The Commission shall submit report on compliance of above judgement to the APTEL within three months.

17. As MSEDCL has not paid the outstanding LPS amount to the respective generators within the four weeks times stipulated by the APTEL and as there is difference between the LPS amount agreed by MSEDCL (Rs. 426 Cr) and that claimed by generators (Rs. 837 Cr), the Commission vide its interim Order dated 17 June, 2021 directed MSEDCL to release the undisputed amount immediately, reconcile the balance claims with the generators and submit the agreed amount of LPS.

18. The Commission in the further proceedings dated 25 June, 2021 observed that MSEDCL has paid Rs 83 Cr of the undisputed amount to the generators and is paying Rs 129.57 Cr amount on that day only making total payment as 50% of the undisputed amount (Rs 213.18 Cr). Further, MSEDCL's proposal to pay balance 50 % of the undisputed amount within a week was accepted by most of the generators except GMR. Therefore, the



Commission vide its daily Order directed MSEDCL to reconcile the disputed amount with generators and apprise the Commission on or before 29 June, 2021 with time bound plan to release additional agreed amount.

19. Accordingly, MSEDCL has filed the reconciliation on 29 June, 2021. Subsequently, generators have also filed their submissions on MSEDCL's reconciliation statements. As there is difference of opinion between MSEDCL and Generators on LPS amount, the Commission is adjudicating on the same in the following paragraphs.

20. LPS amount due to APML:

20.1 As per MSEDCL's submission dated 29 June, 2021, reconciled amount of LPS payable to APML is as follows:

Sr. No.	Particulars	Rs. Cr.
1	Original Claims as per APML submission	550.15
2	Revised Claim by APML vide mail dated 24.06.2021	372.93
3	Less: To be withdrawn by APML (As calculation of LPS included in revised claim was on the basis of Due date considered as mid of respective FY instead of Actual due date)	(22.13)
4	Less: Impact of Infirm Power	(5.43)
5	Add: Additional claim as per comments of APML on MSEDCL calculation submitted on 28.06.2021	12.64
6	Less: as per MoP notification dated 20.11.2020, rate of interest during Covid-19 lockdown period is considered 1% per month	(10.49)
7	Less: Paid as on 19.06.2021	(61.15)
8	Less: Paid as on 25.06.2021	(44.02)
<b>9</b>	<b>Balance Payable</b>	<b>242.35</b>

20.2 APML in its submission has objected on deduction of the amount on account of Infirm Power (@ sr.no.4 in above table) and by considering reduced interest rate as per MoP notification dated 20 November, 2020 (@ sr. no. 6 in above table). The Commission is addressing these issues as below:

a. Reduction in LPS on account of Infirm Power:

20.3 APML has objected that MSEDCL has deducted LPS amount on bills of infirm power based on wrong premise that PPA does not have specific provision stipulating due date for payment of infirm power supply bill. APML submitted that as per provisions under PPA, APML can raise the claim for infirm power only through a Supplementary Bill and LPS is payable for delay in payment of Supplementary Bill at the same terms as applicable to Monthly Bill. Therefore, MSEDCL cannot deduct an amount of Rs. 5.43 Crs corresponding to infirm power.

20.4 In this regard, the Commission notes that infirm power is the power supplied by generators to Discoms before achieving CoD and is to be billed at the energy charge rate

as per provisions of PPA. The Commission notes the various provisions under PPA as follows:

*“**Monthly Bill:** shall mean and monthly invoice comprising Capacity Charges (applicable after Delivery Date) and Energy Charges (as applicable), including incentive and penalty, as per Schedule 4 hereof;*

***Supplementary Bill:** Shall mean a bill other than a Monthly Bill raised by any of the Parties in accordance with Article 8 of PPA.*

***Due Date:** Due Date shall mean the thirtieth (30th) day after a **Monthly Bill or a Supplementary Bill** is received and duly acknowledged by the Procurer or, if such day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by such Procurer.”*

Further, Article 8.8.3 of the PPA reads as follows:

*“**8.8.3** In the event of delay in payment of a **Supplementary Bill** by either Party beyond its **Due Date**, a **Late Payment Surcharge shall be payable** at the same terms applicable to the Monthly Bill in Article 8.3.5. “*

Thus, it is evident that APML can raise the claim for infirm power only through a Supplementary Bill and LPS is payable for delay in payment of Supplementary Bill at the same terms as applicable to Monthly Bill. Further the infirm power had already been consumed by MSEDCL as per the provisions of the PPA and therefore under PPA, MSEDCL cannot escape the LPS liability on those infirm power bills.

20.5 In view of above MSEDCL, cannot deduct Rs 5.43 Cr on account of LPS on Infirm Power.

b. Reduced interest rate as per MoP notification dated 20 November, 2020:

20.6 The Commission notes that MSEDCL by relying on MoP Notification dated 20 November, 2020 has computed LPS amount at reduced rate of 1% per month during COVID-19 lockdown period and has accordingly reduced the claims of generators.

20.7 APML objected to the deduction on the ground that it is applicable for payments made utilizing funds infused under the Atmanirbhar Bharat Scheme. MSEDCL has not informed APML till date that it has made any payments from funds thus sourced. Therefore, the claim of MSEDCL to consider the 1% per month interest rate is not correct.

20.8 In this regard, the Commission notes that MoP vide notification dated 28 March, 2020 has directed Central Electricity Regulatory Authority (CERC) regarding reduction of LPS. The relevant extract of the notification is as follows:

*4. In view of above using powers under section 107 of Electricity Act, 2003, the following directions are issued to Central Electricity Regulatory Commission in public interest.*

- i. *The Commission may specify the reduced rate of Late payment Surcharge (LPS) for payments which become delayed beyond a period of 45 days (from the date of presentation of the bill) during the period from 24<sup>th</sup> March, 2020 to 30<sup>th</sup> June, 2020 to generating companies and licensees treating the restrictions placed by the central government vide its order dated 24.03.2020 to contain covid-19 as an event of force majeure. The reduced LPS shall be applicable for such delayed payments till 30<sup>th</sup> June 2020. The LPS should not be more than the cost that the generating companies or transmission licensees would have to bear because of the delayed payment.*
- ii. *For generating companies or transmission licensees whose tariff was determined under section 63 by the central commission, discoms may claim relief from its obligations regarding the rate at which LPS to be paid , as per force majeure provisions given in the respective power purchase agreement.*

20.9 On the basis of the above directions CERC in *Suo Moto* Petition 6/ SM/2020 vide its Order dated 3 April, 2020, has ruled as above:

13. *Keeping in view the directions issued by the Government of India under section 107 of the Act and to address the difficulties faced by the distribution companies (beneficiaries of the generating stations and long term customers of inter-State transmission systems) on account of the unprecedented situation arising out of the restrictions placed by the Central Government and State Governments on the movement of public and opening of offices and establishments etc., the Commission in exercise of its powers under Regulation 76 of the 2019 Tariff Regulations relaxes the provisions of Regulation 59 of 2019 Tariff Regulations to provide that if any delayed payment by the distribution companies to the generating companies and inter-State Transmission licensees beyond 45 days from the date of the presentation of the bills falls between 24.03.2020 and 30.06.2020, the concerned distribution companies shall make the payment with LPS at the reduced rate of 12% per annum that translates into 1% per month.*

14. *It is clarified that if the period of 45 days beyond the due date of the presentation of the bill by the generating companies or inter-State transmission licensees, as the case may be, falls before 24.03.2020 or after 30.06.2020, the concerned distribution company shall be liable to pay the LPS as per Regulation 59 of the 2019 Tariff Regulations.*

15. *It is further clarified that the beneficiaries of the generating stations and long term customers of the inter-State transmission systems will continue to avail rebates under Regulation 58 of the 2019 Tariff Regulations if the payments are made to the generating companies and the transmission licensees within the timeline specified in the said regulations.*

16. *As per the directions issued under Section 107 of the Act, **the generating companies whose tariff has been determined under Section 63 of the Act by this Commission, relief on the Late Payment Surcharge for payment which become delayed beyond 45 days (from the date of presentation of the bill) during the period from 24.03.2020 to 30.06.2020 may be claimed in terms of the force majeure provisions of the respective power purchase agreements (PPAs).***

20.10 Further MoP vide notification dated 6 April 2020 has issued clarification of the letters dated 27 March, 2020 and 28 March, 2020. Relevant extract is as follows:

3. *Therefore, in brief –*

(a) *The obligation to pay for power within 45 days of the presentation of the bill or as provided in the PPA remains unchanged.*

(b) *Late payment surcharge shall apply at reduced rate only for the period between 24.03.2020 to 30.06.2020 (on those payments that become overdue during the period 24.03.2020 to 30.06.2020 and not on those payments which were already overdue before 24.03.2020) and after 30.06.2020 the delayed payment surcharge shall be payable at rates given in the PPA/regulations.*

(c) *Obligation to pay for capacity charges as per the PPA shall continue, as does the obligation to pay for transmission charges.*

20.11 Subsequent clarification from MoP dated 20 November, 2020 has made it clear that LPS at reduced rate not exceeding 1% per month is to be made applicable for all payments under the liquidity infusion scheme of PFC and REC under Atmanirbhar Bharat program. Relevant extract of the notification is as under:-

*3. It is hereby clarified that the Generating Companies and the Transmission Companies are advised to charge Late Payment Surcharge (LPS) at a rate not exceeding 1% per month on the principle dues (excluding LPS) for all payments which are due either from the projects developed under section 62 or section 63 of the Electricity Act, 2003, **made by Discoms under the Liquidity Infusion Scheme of PFC and REC under Aatmanirbhar Bharat.***

20.12 On perusal of all the above-mentioned communications from MoP and CERC Order, it is very clear that for project under Section 63, Distribution Licensee has to claim such relief of lower LPS rate under Force Majeure provision of the PPA. Admittedly, MSEDCL has not followed such provision under the PPA while deducting amount of LPS by relying on MoP notifications. Also, as stated under MoP notification dated 20 November 2020, generators are required to offer reduced rate of LPS on payment made by Distribution Licensee through liquidity infusion scheme of PFC and REC under Aatmanirbhar Bharat program. MSEDCL in present petition has not revealed whether it is making payment to generators under that scheme or otherwise. Therefore, MSEDCL's action of considering LPS computation at reduced rate as per MoP notifications is premature and hence cannot be allowed. MSEDCL is free to claim relief under above said MoP notifications separately by following due process of law envisaged therein.

20.13 In view of above, at present, MSEDCL cannot deduct Rs 10.49 Cr on account of MoP notification for levying LPS at lower interest rate during Covid-19 period, at this point of time.

20.14 Accordingly, balance amount payable to APML stands revised to Rs. 258.27 Cr (242.35+5.43+10.49).

21. LPS amount due to JSW:

21.1 As per MSEDCL's submission dated 29 June, 2021, reconciled amount of LPS payable to JSW is as follows:

Sr. No.	Particulars	Rs. Cr.
1	Original Claims as per JSW submission	101.62
2	Revised Claim by JSW vide mail dated 24.06.2021	100.73
3	Less: LPS on due date corrections	(3.43)
4	Less: as per MoP notification dated 20.11.2020, rate of interest during Covid-19 lockdown period is considered 1% per month	(0.96)
5	Less: Paid as on 19.06.2021	(6.07)
6	Less: Paid as on 25.06.2021	(41.72)
7	<b>Balance Payable</b>	<b>48.55</b>

21.2 JSW in its submission has objected on deducting the amount on account of considering reduced interest rate as per MoP notification dated 20 November, 2020 (@ sr. no. 4 in above table).

21.3 The Commission has already ruled on issue of MSEDCL's computation of LPS at reduced rate of 1% per month as per MoP notification dated 20 November, 2020 in para 20.12 above and held that such computation cannot be allowed in present proceeding. Accordingly, MSEDCL cannot deduct Rs. 0.96 Cr on this account.

21.4 In view of above, balance amount payable to JSW stands revised to Rs. 49.51 Cr (48.55+0.96).

## 22. LPS amount due to RPL:

22.1 As per MSEDCL's submission dated 29 June, 2021, reconciled amount of LPS payable to RPL is as follows:

Sr. No.	Particulars	Rs. Cr.
1	Original Claims as per RPL submission	171.08
2	Revised Claim by RPL vide mail dated 24.06.2021	171.08
3	Less: LPS not payable due to difference in principle amount on account of undertaking dated 5.04.2018	(52.63)
4	Less: Variation in calculations due to exclusion of infirm power and Due dates revision	(5.92)
5	Less: Reasons of Calculations difference not given by RIPL	(5.53)
6	Less: as per MoP notification dated 20.11.2020, rate of interest during Covid-19 lockdown period is considered 1% per month	(2.17)
7	Less: Paid as on 19.06.2021	(13.01)
8	Less: Paid as on 25.06.2021	(43.45)
9	<b>Balance Payable</b>	<b>48.37</b>

22.2 RPL in its submission has objected to deduction of the amount on account of undertaking dated 5 April, 2018 (@ sr. no. 3 in above table), deduction on account of due date revision (@ sr. no. 4 in above table), deduction on account of non-providing details (@ sr. no. 5 in above table) and deduction considering reduced interest rate as per MoP notification dated 20 November, 2020 (@ sr. no. 6 in above table). The Commission is addressing these issues as below:

a. Deduction on account of undertaking dated 5 April, 2018:

22.3 RPL has stated that it executed undertaking dated 5 April, 2018 with MSEDCL for settlement of capacity charges and refund of penalty for backdown units. The Settlement Agreement cannot apply to a subsequent cause of action which has arisen in favour of RPL based on the Orders of the Commission as well as the APTEL. The Judgment of APTEL will have overriding effect and MSEDCL is liable to pay LPS for all delayed payment in accordance therewith. Reliance by MSEDCL on the undertaking to deny RPL's legally valid claim is contrary to law.

22.4 The Commission notes that MSEDCL and RPL have executed undertaking dated 5 April, 2018 for settlement of capacity charges and refund of penalty for back down units. Relevant extract of the undertaking is as follows:

2. *That as per mutual discussion on 8<sup>th</sup> January 2018, wherein considering all the relevant factors, in respect of payment of capacity charges for deemed availability against monthly bills of M/s RPL under 450 MW & 750 MW, M/s RPL agrees to settle for the sum of Rs. 50.57 Crores. The details of which are as under:*
  - i. *Rs. 13.14 Crores for back down for the year 2014-2015.*
  - ii. *Rs. 8.99 Crores refund against additional recovery of penalty for the year 2014-15.*
  - iii. *Rs. 28.44 Crores refund against penalty for the year 2015-16.*
3. *M/s RPL hereby undertakes that the amount of Rs. 50.57 Crores, is the Full & Final Settlement against the claim of M/s RPL, as against the total claim of Rs. 216.05 Crores, which was raised in letters dated 18<sup>th</sup> March 2016 and 30<sup>th</sup> May 2016.*
4. *M/S RPL further hereby undertakes that they will not claim any right, interest, penalty under capacity charges for deemed availability and refund of penalty for backdown units against MSEDCL for the said claim of 216.05 Crs.*
5. *M/s RPL will not file any claim related to this settlement before any competent forum and/ or court in relation to the claims raised vide its aforesaid letters."*

The Commission notes that the undertaking given by RPL is a valid legal document. Therefore, once the settlement has been agreed by RPL, it is not open for RPL to raise the claim again.

22.5 As far as RPL's contention that subsequent Orders of the APTEL/Commission allowed recovery of LPS on such amount, the Commission notes that RPL has not highlighted any specific ruling of the APTEL/Commission on this issue. APTEL has only directed MSEDCL to pay applicable LPS on due amount. This ruling of APTEL cannot be expanded to seek LPS on amount which has been forfeited by RPL through undertaking.



Once amount is forfeited, it cannot be considered as amount due under the PPA. Hence, LPS cannot be allowed on such amount.

22.6 Commission rules that MSEDCL has correctly deducted LPS amount on account of RPL's undertaking dated 5 April, 2018.

b. Deduction on account of due date revision:

22.7 RPL contended that MSEDCL has considered the incorrect Due Dates of the invoices which was highlighted by RPL to MSEDCL during discussion, however, MSEDCL has not taken any steps to rectify the same. RPL has also contended that MSEDCL has split the energy invoice into energy invoice and others. In the energy invoice section, MSEDCL has considered the energy invoice amount based on MUs approved by MSLDC, whereas in the "others" section, MSEDCL has considered the differential amount (between the initial MUs and revised MUs) based on the revised MUs submitted by MSLDC. While the aggregate amount of Energy and Other amounts match the amount as per Signed Reconciliation Statement, different due dates have been considered for Energy and Other components by MSEDCL, which has resulted in the variation in the LPS amount. This is impermissible and contrary to the terms of the PPA.

22.8 RPL also contended that in most of the cases it appears that MSEDCL has considered the Due Date from the last supplementary invoice instead of main invoice raised by RPL. The said approach of MSEDCL is incorrect as the Due Date has to be considered from the date of the respective invoice instead of the supplementary invoice raised by RPL. A statement highlighting the Invoice wise Due Date variation between RPL and MSEDCL is provided in the Appendix-2 (however not part of the submission).

22.9 In this regard, the Commission notes that as Appendix-2 referred above is not part of submission, it is difficult for this Commission to analyse this issue. Further, RPL has also raised issue of splitting invoice into energy component and other component and using different due dates for each component. There is no submission of MSEDCL on this aspect. In absence of such submissions and complete factual details of the issue, it would not be appropriate for this Commission to adjudicate on this issue.

22.10 Hence, the Commission directs both parties i.e. RPL and MSEDCL to once again sit together and reconcile this issue and approach the Commission through a separate petition, with complete details, if there difference of opinion subsists.

22.11 Accordingly, the Commission has kept Rs. 5.92 Cr aside for reconciliation by both parties.

c. Deduction on account of not-providing details:

22.12 RPL stated that vide its letter dated 29 April, 2021 has considered LPS amount of Rs 171.03 Cr which was payable as on 28 April, 2021 whereas LPS as on 31 March, 2021 is

Rs 165.92 Cr. RPL has contended that such details were provided to MSEDCL during the discussion.

22.13 In this regard, the Commission notes that difference of Rs. 5.11 Cr is on account of RPL considering bill dated 28 April, 2021. From the submissions made in this matter, the Commission notes that MSEDCL has computed LPS amount for all generators till March 2021. As APTEL Order directing MSEDCL to pay LPS amount is dated 27 April, 2021, while reviewing compliance of such Order, it would be incorrect to include amount which become due after issuance of such APTEL Order.

22.14 Hence, the Commission notes that MSEDCL has correctly deducted Rs. 5.53 Cr. RPL can claim such LPS amount accrued on any bill amount that become due post issuance of APTEL Order through separate bill.

d. Reduced interest rate as per MoP notification dated 20 November, 2020:

22.15 The Commission has already ruled on the issue of MSEDCL's computation of LPS at reduced rate of 1% per month as per MoP notification dated 20 November, 2020 in para 20.12 above and held that such computation cannot be allowed in present proceeding. Accordingly, MSEDCL cannot deduct Rs. 2.17 Cr on this account.

22.16 In view of above, balance amount payable to RPL stands revised to Rs. 50.54 Cr (48.37+2.17). Further, Rs. 5.92 Cr on account of deviation in due dates is kept aside for reconciliation by both parties.

23. LPS amount due to GMR:

23.1 As per MSEDCL's submission dated 29 June, 2021, reconciled amount of LPS payable to GMR is as follows:

Sr. No.	Particulars	Rs. Cr.
1	Original Claims as per GMR submission	29.39
2	Revised Claim by GMR vide mail dated 25.06.2021	29.39
3	Less: LPS on Payment not considered by GMR	(4.41)
4	Less: LPS on NCDP payment being under dispute	(12.80)
5	Less: LPS on STPA credit adjustment	(1.64)
	Less: LPS correction as per MCLR up to Mar-17	(5.50)
6	Less: as per MoP notification dated 20.11.2020, rate of interest during Covid-19 lockdown period is considered 1% per month	(0.47)
7	Less: Paid as on 19.06.2021	(3.39)
8	Less: Paid as on 25.06.2021	(0.38)
<b>9</b>	<b>Balance Payable</b>	<b>0.79</b>

23.2 GMR has not made any submission on above reconciliation submitted by MSEDCL. Therefore, this Commission assumes that there is no difference of opinion GMR on above computation.

23.3 The Commission is also aware of the fact that GMR Warora is regulated by the Central Electricity Regulatory Commission and hence it would not be appropriate for this Commission to adjudicate on any dispute between GMR and MSEDCL.

23.4 However, in order to have consistency in approach and also to comply with mandate of the APTEL, the Commission has to fix LPS amount payable to GMR. As MSEDCL has deducted Rs.0.47 Cr ( @ sr. no. 6 in above table) on account of reduced interest rate as per MoP notification dated 20 November 2020, which has been held incorrect by this Commission for all other generators, same ruling will be applicable to GMR also.

23.5 In view of above, balance amount payable to GMR stands revised to Rs. 1.26 Cr (0.79+0.47). However, GMR is free to approach to CERC for any dispute about reconciliation of amount submitted by MSEDCL.

24. Having ruled on quantification of LPS amount on each of the generator as above, summary of the same is tabulated below:

Generator	Claimed by Generator (Rs. Cr)		As pe MSEDCL (Rs. Cr.)		As Per MERC (Rs. Cr.)	Payment made Rs. Cr.)		Balance Amount (Rs.Cr.)
	Original	Revised	Original	Revised		19 Jun	25 Jun	
APML	550.15	372.93	210.31	347.52	363.44	61.15	44.02	258.27
JSW	101.62	100.73	95.58	96.34	97.3	6.07	41.72	49.51
RPL	171.08	171.08	112.93	104.83	107	13.01	43.45	50.54
GMR	29.39	29.39	7.56	4.57	5.04	3.39	0.38	1.26
<b>Total</b>	<b>852.24</b>	<b>674.13</b>	<b>426.38</b>	<b>553.26</b>	<b>572.78</b>	<b>83.62</b>	<b>129.57</b>	<b>359.58</b>

25. By quantifying LPS amount as above, the Commission has complied with one of the mandates given by APTEL in judgment dated 27 April 2021. Now, the Commission needs to verify compliance of other directives of the APTEL i.e. payment of such LPS amount.

26. APTEL has directed MSEDCL to pay LPS amount within a month from issuance of its Order. Therefore, payment should have been made before 26 May 2021. However, due to issues of reconciliation of LPS amount, MSEDCL has made first payment on 19 June 2021 and subsequent payment on 25 June 2021 that too after this Commission has specifically directed for the same.

27. On the issue of balance payment, MSEDCL in its submission dated 29 June 2021 has provided following payment plan based on reconciled amount as per their submission:

Name of Generator	Amount to be paid by 2 July 2021	Balance w.r.t. additional liability during reconciliation to be paid within 2 weeks from 2 July 2021
APML	105.17	137.18
RPL	48.37	Nil
JSW	47.79	0.76
GMR	0.79	Nil
<b>Total</b>	<b>202.12</b>	<b>137.94</b>

*Note: above payment plan is as per MSEDCL's claim, MERC has approved higher amount as shown in para 24 above.*

28. As per above submission, MSEDCL was to pay Rs. 202.12 Cr to the generators. However, the Commission has not received any submission about payment made on 2 July 2021. Hence, the Commission assumes that no payment has been made by MSEDCL as stated by it in its submission dated 29 June, 2021.
29. The Commission notes that MSEDCL has requested additional time for payment of balance LPS amount to the generators. In this regard the Commission notes that payment timelines are laid down by APTEL, and the Commission is not empowered to relax the same. The Commission in daily Order dated 25 June, 2021 had given liberty to MSEDCL to approach APTEL for extending the timelines if it is facing difficulty in time bound implementation. MSEDCL has not apprised the Commission about any relaxation granted by APTEL.
30. Accordingly, the Commission directs MSEDCL to pay balance LPS amount as determined by the Commission in para 24 above to respective generators on priority so as to comply with APTEL Judgment dated 27 April, 2021.
31. Having ruled as above, the Commission takes note of the fact that MSEDCL has challenged APTEL's judgment before the Hon'ble Supreme Court in Appeal No. 1843 of 2021. During the hearing on stay application in that matter on 2 July, 2021, Advocate of Generators have stated as follows before the Supreme Court:
- “Mr. Mukul Rohatgi, learned Senior Counsel submits the respondents will not precipitate the matter before the Commission, in the meanwhile.”*
- Thereafter the matter was heard on 14, 15 and 27 July 2021. Arguments of parties in above appeal have been concluded and the Supreme Court has directed parties to file written submissions by 30 July 2021 and matter is listed on 3 August 2021 for further clarification, if any.
32. In view of undertaking given by the Respondent Generators before the Hon'ble Supreme Court, the Commission is of the opinion that it would be appropriate to defer the full implementation of its directives in para 30 above till final judgment of the Supreme Court in Civil Appeal No. 1843 of 2021.
33. Hence following Order.

### **Order**

- 1. Case No. 24 of 2017 - Proceeding initiated for seeking compliance of APTEL Judgment dated 27 April 2021 is disposed of in terms of rulings given in the para 30 above.**

2. However, considering undertaking given by the Respondent Generators before the Hon'ble Supreme Court, the implementation of directives given in para 30 is deferred till final judgment of the Supreme Court in Civil Appeal No. 1843 of 2021.

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

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

**Sd/-**  
**(Sanjay Kumar)**  
**Chairperson**

