



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION  
HYDERABAD.**

5<sup>th</sup> Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 54 of 2018

Dated 21.12.2018

**Present**

Sri. Ismail Ali Khan, Chairman

Between

Southern Power Distribution Company of Telangana Limited,  
Corp Off: 6-1-50, Mint compound  
Hyderabad - 500 063, Telangana.

... Petitioner.

AND

M/s. Kreate Energy (I) Private Limited  
(formerly known as M/s. Mittal Processors Private Limited)  
Unit No. 1002, 10<sup>th</sup> Floor, Antriksh Bhawan,  
22 KG Marg, New Delhi – 110 001.

...Respondent.

This petition came up for hearing on 06.09.2018, 29.09.2018, 27.10.2018 and 17.11.2018 in the presence of Sri. Y. Rama Rao, Standing Counsel along with Ms. M. Pravallika, Advocate. Sri. Abhinav Krishna Uppuluri, Advocate for the respondent appeared on 06.09.2018. Sri. Adarsh Tripathi, Advocate along with Ms. Shradha Gupta Advocates, appeared for the respondent on 29.09.2018. Sri. Adarsh Tripathi along with Ms. Shradha Gupta, Advocates, with Sri. Dhawal Desai, representative of the respondent appeared on 27.10.2018. Sri. Adarsh Tripathi, Ms. Shradha Gupta, Advocates and Sri Yogesh Kumar representative of the respondent appeared on 17.11.2018. The petition having stood over for consideration to this day, the Commission passed the following:

## ORDER

This is a petition filed u/s 86 (1)(f) of the Electricity Act, 2003 seeking recovery of outstanding amounts with interest and also refund of STOA charges as per purchase orders dated 29.04.2014 and 12.02.2014.

2. The petitioner company came into being on 02.06.2014 as per the provisions of the A.P. Reorganisation Act, 2014 and it has been undertaking the distribution and retail supply of electricity as per the terms of licence granted by the Commission. Prior to Telangana State formation, the petitioner has been a part of four APDISCOMs under the name APCPDCL. The respondent is a registered power trading company.

3. Erstwhile APPCC / APDISCOMs (including the petitioner) took a decision to procure power under short term arrangement through APPCC as an advance measure to bridge demand supply gap for the period from 30.05.2014 to 28.05.2015. A tender was floated through E-procurement platform inviting bids from various generating sources vide tender no. 206/2013 based on the guidelines dated 15.05.2012 issued by the MoP, Gol.

4. The respondent, a trader participated in the tender and offered bids for supply of 5MW power from the generator M/s. PSR Green Power Projects (P) Ltd based at Mahabubnagar Dist., and 50MW power from the generator M/s. Vandana Vidyut Limited, an inter-state grid based generating source located in Chhattisgarh State. After negotiations, final bids were offered by the respondent / trader at the unit price of Rs.5.45 / kWh for supply of 5MW power from M/s. PSR Green Power Projects (P) Ltd and Rs.3.52/kWh for supply of 50 Mw from M/s. Vandana Vidyut Limited were accepted.

5. The CGM (Comml & RAC) of the erstwhile APCPDCL, on behalf of four Discoms placed two purchase orders on the respondent on the letter dated 29.04.2014 of CE (Comml) and letter dated 12.02.2014 of CGM (Comml & RAC).

6. The clauses concerning compensation, alternate supply and open access charges in the purchase orders are as follows:

- (i) Compensation clause:
- deviate (a) Both the parties would ensure that actual scheduling does not by more than 15% of the contracted power for both the parties individually as per the approved open access on monthly basis.
- (b) In case deviation from seller side is more than 15% of contracted energy for which open access is allocated on monthly basis, seller shall pay compensation to procurer at 20% of tariff per kwh for the quantum of shortfall in excess of permitted deviation of 15% in the energy supplied and pay for the open access charges to the extent not availed by the procurer.
- (c) The compensation will be levied on yearly basis of 85% of cumulative corridor approved quantity. But the compensation will be calculated on running monthly average basis and will be reconciled on annual average basis at the end of contract period.
- (ii) Alternate supply clause:
- If the power is being supplied through alternate source, any additional charges and losses, if any, due to cancellation of existing corridor and booking of new corridor etc, shall be to the account of bidders. If trader / generator wants to supply from alternate source, they have to bear if any additional financial commitment applicable.

7. Clauses pertaining to purchase order dated 12.02.2014 (50MW supply)

Open access charges:

- (i) PoC injection charges and losses (including STU / CTU transmission charges, SLDC / RLDC, operating charges and SLDC / RLDC application fee, annual fee, PGCIL application fee, SRLDC application fee and SRLDC operating charges etc.) up to delivery point have to be borne by trader / seller. AP withdrawal charges and losses, APSLDC application fee, operating charges, annual fee and transmission charges are to the account of APCPDCL. Even open access charges beyond delivery point also have to be paid by trader / seller. However, reimbursement of open access charges beyond delivery point will be made on submission of open access bill by seller.

- (ii) The open access charges if any received back from the SRLDC due to curtailment, congestion, revision, force majeure etc., are to be returned to APCPDCL within one week otherwise APDISCOMS reserve the right to deduct from energy bills.
- (iii) If the trader/generator supplies energy less than the open access approved quantity, then the open access charges for difference of energy to be returned to APCPDCL within one week from the date of receipt from SRLDC, failing which APDISCOMs reserve the right to deduct from energy bills.

8. Recovery of compensation amount

(a) The purchase order dated 29.04.2014 was placed on the respondent / trader for supply of power from the source M/s. PSR Green Power (P) Ltd to the erstwhile four APDISCOMs as follows:

Generating source	Period	Quantum (MW)	Duration (Hrs)	Rate at Delivery point (Rs./Kwh)	Type of supply
PSR Green Power (P) Ltd	30.05.2014 to 26.05.2015	5	RTC	5.45	Firm

(b) After bifurcation of the AP State, 53.89% of the total energy supplied (i.e., to 4 combined APDISCOMs) by the respondent from the source M/s. PSR Green Power (P) Ltd during the month of June 2014 (02.06.2014 to 30.06.2014) was accounted for TSDISCOMS.

(c) Subsequently the management of TSPCC & APPCC took a decision to allocate the purchase orders placed on intra-state sources of AP & TS based on geographical location of the generating source. Since M/s. PSR Green Power (P) Ltd is located geographically in TS, it supplied the entire 5MW power to TSDISCOMS from 01.07.2014 till 08.08.2014 under the same purchase order dated 29.04.2014.

(d) Vide its letter dated 25 July, the trader represented that the source, PSR Green Power (P) Ltd had shut down the generating plant due to lack of funds to procure fuel resulting from non-receipt of timely payment of energy bills by TSPCC / TSDISCOMS and requested to consider the non-supply of power under force majeure.

(e) The petitioner held several discussions with the respondent informing that the delay in payment of bills is not covered under force majeure but

Sl. No.	Billing period	Minimum PO quantum (85%) to be supplied (Kwh)	Actual energy supplied (Kwh)	Short fall units (Kwh)
1	30.05.2014 to 01.06.2014	306000	0	306000
2	02.06.2014 to 20.06.2014	1938000	1901286	36714
3	21.06.2014 to 20.07.2014	3060000	1818136	1241864
4	21.07.2014 to 20.08.2014	3162000	1039765	2122235
5	21.08.2014 to 20.09.2014	3162000	0	3162000
6	21.09.2014 to 20.10.2014	3060000	0	3060000
7	21.10.2014 to 20.11.2014	3162000	0	3162000
8	21.11.2014 to 20.12.2014	3060000	0	3060000
9	21.12.2014 to 20.01.2015	3162000	0	3162000
10	21.01.2015 to 20.02.2015	3162000	0	3162000
11	21.02.2015 to 20.03.2015	2856000	0	2856000
12	21.03.2015 to 20.04.2015	3162000	0	3162000
13	21.04.2015 to 28.05.2015	3876000	0	3876000
<b>TOTAL</b>				<b>3,23,68,813</b>

merely

attracts surcharge for late payment.

(f) As there was power crisis in the State and there was a gap between the demand and supply increasing day by day, the trader sought to resume power supply immediately to TSDISCOMs either from source, PSR Green Power (P) Ltd or other source under the alternate supply clause of the purchase order.

(g) Trader continued to represent to TSPCC / TSDISCOMS for cancellation of purchase order dated 29.04.2014 without any financial liability on either party, in view of termination of agreement between the respondent and M/s. PSR Green Power (P) Ltd on 15.12.2014.

(h) The respondent was solely responsible for supply of power under short term purchase order, irrespective of its agreements with generators. Since

the respondent failed to supply energy, it attracted compensation clause for deviation by more than 15% cut-off limit.

(i) The monthly energy supplied by the respondent from the source M/s. PSR Green Power (P) Ltd against purchase order dated 29.04.2014 are as follows.

(j) As per the purchase order, compensation was levied at Rs.1.09/kWh on shortfall units every month and reconciled on annual average basis at the end of contract period. The compensation amount of Rs.3,46,48,586/- was thus levied on the respondent for the short fall units of 3,23,68,813 kwh against the purchase order dated 29.04.2014 at the end of contract period.

(k) A sum of Rs.40,40,426/- was recovered from the on-hand monthly bills towards compensation. Several letters were addressed to respondent demanding arrangement of payment of balance amount of Rs.3,06,08,160/- which evoked no response from the respondent.

9. Claim No.2: Refund of STOA charges for curtailed corridor by SRLDC / surrendered corridor by the respondent.

(a) The following purchase order was placed on the trader for supply of power from the source M/s. Vandana Vidyut Ltd to four APDISCOMs.

Generating source	Period	Quantum (MW)	Duration (Hrs)	Rate at Delivery point (Rs./Kwh)	Type of supply
Vandana Vidyut Ltd	30.05.2014 to 28.05.2015	50	RTC	3.52	Firm

(b) As per the terms of purchase order dated 12.02.2014, the trader was required to apply for transmission corridor for contracted capacity quantum every month and required to schedule the SRLDC approved power quantum.

(c) Post bifurcation of the state, the respondent was required to schedule 26.94MW (53.89% of 50MW) to TS DISCOMs. The respondent initially applied for corridor from alternate source, M/s. Adhunik Power Ltd till September 2014 and subsequently from the original source, M/s. Vandana Vidyut Ltd from October 2014 onwards.

(d) The respondent after obtaining SRLDC approval for corridor, surrendered the approved corridor by seeking revision of the SRLDC approvals during certain months.

(e) TSPCC/TSDISCOMs had reimbursed the open access charges beyond delivery point against the initial SRLDC corridor approvals in advance. Later, SRLDC has curtailed the approved corridor in certain months while the respondent itself surrendered the corridor in certain months.

(f) The relevant open access clause in the purchase order is as follows:

(i) Open access charges if any received back from SRLDC due to curtailment are to be returned to TSDISCOMS within one week otherwise DISCOMs reserve the right to deduct from energy bills.

(ii) In case the seller supplies energy less than the open access approved quantity, then the OA charges for difference of energy to be returned to DISCOMs within one week from the date of receipt from SRLDC, failing which DISCOMs reserve the right to deduct from energy bills.

(g) The trader had not refunded the open access charges already paid by the DISCOMs for the SRLDC curtailed corridor / seller surrendered corridor quantum. There were no pending bills submitted by the trader for making deductions by DISCOMs.

(h) Details of surrendered power and corresponding open access charges to be refunded by the respondent to the petitioner is tabulated below:

S.No.	Month	Approval No.	Approved quantum (Mwh)	REA (Mwh)	SRLDC curtailment (Mwh)	Generator Shortfall (Mwh)	Amount to be refunded by respondent (Rs.)
1	Jun-14	11727TA	97.44	85.98	3.24	8.22	2782
		11915TA	918.72	811.82	29.43	77.47	25961
		12051TA	5571.04	4946.26	180.02	444.76	155440
2	Jul-14	12226A	571.08	534.89	35.16	1.03	8789
		12164A	4756.08	4472.95	275.47	7.66	70439
		12399F	10865.52	10479.15	369.55	16.82	96125
3	Aug-14	12583F	4702.08	3538.61	71.01	1092.46	293880
4	Sep-14	12406A	5258.4	0	0	5258.4	1368237
5	Oct-14	12725A	784.92	0	0	784.92	2602.63
6	Dec-14	13194/A	1075.08	0	0	1075.08	333554
7	Feb-15	13698/A	201.6	0	0	0	107164
<b>TOTAL</b>							<b>27,22,635</b>

The trader/ respondent is required to refund Rs.27,22,635/- towards reduced open access charges for the SRLDC curtailed corridor / seller surrendered

corridor against the purchase order dated 12.02.2014. In spite of several reminders from the petitioner demanding payment towards compensation and refund of OA charges from time to time without success. On the other hand, the trader replied to the final demand notice that it is not at all responsible for any lack of performance under the contract.

10. When there was no response from the trader the present petition has been filed seeking payment of principal sum of Rs.3,33,30,795/- and interest @1.25% per month up to 28.05.2018 amounting to Rs.1,52,77,378/- with future interest @ 1.25% per month for the period beyond 28.05.2018 till actual payment towards compensation based on power purchase order dated 29.04.2014 on account of deviation in supply of power by more than 15% of the contracted energy, over the contract and refund of STOA charges as per the power purchase order dated 12.02.2014 on account of surrender of corridor by trader against SRLDC approved quantum to the petitioner company.

11. The respondent i.e., M/s. Mittal Processors Pvt. Ltd., filed counter with the following material allegations:

- (i) The respondent company is now known as M/s. Kreate Energy (I) Pvt. Ltd.
- (ii) The petitioner ought to have made the generator M/s. PSR Green Power Projects Pvt. Ltd., (PSRGPPPL) being generator to the respondent which is a necessary party. The generator vide email dated 24.12.2014 took all the liabilities arising out of the termination of letter of intent and therefore it is imperative that the generator is made a party to the present petition. It is also clear from the LOI of APPCC dated 22.01.2014 and 29.04.2014 that the supply of power was from PSRGPPPL to APPCC through respondent / trader.
- (iii) The performance of the agreement was affected on 08.08.2014 when the generator did not supply power due to consistent delay of payment by the TSDISCOMS. Therefore, the claim is affected by limitation of three years. Even otherwise, the limitation from the date of termination i.e., 24.12.2014 the period of 3 years has expired and thus the present petition is hit by limitation and liable to be dismissed.

- (iv) Claim No.1 - Recovery of compensation amount: The respondent being a trader participated in the tender dated 19.11.2013 floated by erstwhile APDISCOMS for procuring power and inviting bids from generating sources for the power flow period from 30.05.2014 to 28.05.2015. The respondent as a trader participated in the two tenders (i) for supply of 5 MW power from PSRGPPL (intrastate generator) from industrial waste based power project in Telangana (ii) supply of 50MW from Vandana Vidyut Limited an inter-state grid based generating source in Chhattisgarh.
- (v) Accordingly two letters of intent were issued to the respondent and they are dated 29.04.2014 for 5MW from PSRGPPL, Telangana for the period from 30.05.2014 to 28.05.2015 and another letter dated 12.02.2014 for 50MW from Vandana Vidyut Ltd for the period from 30.05.2014 to 28.05.2015.
- (vi) After the bifurcation of the state of Andhra Pradesh which took place on 02.06.2014, allocation for Telangana state was 53.89% and for Andhra Pradesh state was 46.11%. The petitioner vide letter dated 10.07.2014 conveyed the decision stating that 100% allocation of the generator's power to the State of Telangana (based on geographical location of the plant within the state) and scheduling the power of 5MW to the state of Telangana as per LOI issued by APPCC.
- (vii) The respondent / trader supplied power to APPCC/APDISCOMS from the generator against LOI No. 269/14 dated 22.01.2014 from 23.01.2014 till 29.05.2014 including the following terms & conditions
- a. Default in supply or off-take less than 85% of contracted energy in a month
  - b. Payment of energy charges by petitioner within 10 days from the date of invoice submission surcharge @ 12% per annum
  - c. Trader as per LOI has the option to terminate the contract for breach / violation of payment clause
- (viii) The respondent raised invoices as per the LOI but timely payment was not made causing cash flow problems in the supply chain of money to the generator for supply of power under this contract. On the one hand, the payment was delayed by the petitioner from the due date and

never paid surcharge for the delayed payment. On the other hand, the petitioner deducted rebate from the invoice amount in spite of delayed payment.

- (ix) In spite of various constraints including payments against invoices, the respondent facilitated and managed to pursue the generator to continue the supply of power to the petitioner from 23.01.2014 till 08.08.2014. The respondent through email dated 16.07.2014 communicated to the petitioner that due to cash crunch and persistent default in payment by the petitioner, the generator was not able to procure fuel and there may be more than 15% deviation in the generation schedule. The respondent vide letter dated 23.07.2014 informed the petitioner that due to non-receipt of timely payment and lack of cash flow against power supply, the generator was unable to procure fuel and shut down the generating plant. The respondent gave termination notice on 24.12.2014 stating that the agreement between the respondent and the generator has been terminated on 15.12.2014.
- (x) The generator by way of email dated 24.12.2014 assured the respondent/trader that it will accept any financial obligation (compensation) which would be raised by TSPCC due to termination of LOI and the same shall be borne by them. Then the respondent requested the petitioner on 24.12.2014 to cancel the LOI without any financial liability on either parties.
- (xi) The respondent being a trader has agreements with APPCC ( after bifurcation with TSPCC) as well as the generator which is back to back arrangement / agreement. Similarly, LOIs have back to back provisions involving reciprocal promises.
- (xii) The petitioner has not suffered any loss due to shortfall in supply as it is not facing any legal action from any consumer for shortfall in supply. The penalty clause which is termed as compensation would arise only when the party seeking to implement it has to be in full compliance of terms of the agreement. The petitioner had delayed payments against invoices to the extent of 80 days and had not paid surcharge on the delayed payments. Therefore, the petitioner is not entitled to any relief.

- (xiii) In a similar case, of Raghu Rama Renewable Energy Ltd vs TANGEDCO the ATE by order dated 11.07.2014 in appeal no. 181 of 2013 directed TANGEDCO to refund the compensation amount deducted from the bills of appellant where the appellant could not meet its obligation for supplying full contracted power in the subsequent months. The petitioner enjoys a monopoly and the respondent being a trader had no other option except to fulfil its obligation of resale of the power procured from the generator in spite of persistent delay in payment as long as sustainable till the generator closed the plant for lack of fuel. The delay in payments caused prejudice to the respondent as well as generator.
- (xiv) The respondent had the source of supply always available during the contract period and therefore the question of arrangement of alternative source of power by the respondent did not arise.
- (xv) The respondent being a trader is not obliged to pay compensation and it is the generator, being the seller had accepted financial obligation to pay compensation vide email dated 24.12.2014 to be borne by them due to termination / cancellation of LOI. Therefore, the generator is a necessary party to the present petition and the alleged claim of petitioner has to be recovered from generator if he is entitled to.
- (xvi) Claim No.2 - Refund of STOA Charges: - The petitioner raised a claim regarding refund of STOA charges Rs.27,22,635/- by the respondent to TSPCC against the refund received by the respondent from SRLDC due to curtailment / surrendered power against SRLDC approved quantum from M/s Vandana Vidyut Limited (generator) to APPCC.
- (xvii) The power was scheduled from generator to then APPCC through the respondent vide APPCC / APDISCOMS LOI dated 12.02.2014 during the period from 30.05.2014 to 28.05.2015 @ 3.52/kWh at delivery point.
- (xviii) As per the LOI dated 12.02.2014 the respondent was to apply for transmission corridor for the contracted capacity quantum for the full month as firm RTC. In the present case the power was not scheduled due to truncated power, non-availability of transmission corridor and corresponding non feasibility of supply.

- (xix) The respondent received from SRLDC which remained in view of dispute due to non-payment for the energy as well as deductions made by APPCC against another previous contract.

12. (a) The respondent pleads that the amount it received from SRLDC remained with it due to dispute due to non-payment for the energy as well as deductions made by APPCC against another previous contract LOI No. 26 / 13 dated 10.05.2013 for supply of 500 MW firm power CPP, IPP & Utilities in WR and ER through MPPL during the period from 01.06.2013 to 29.05.2014 @ Rs.4.09 / kWh at delivery point (SR periphery). Further vide letter no. 56/13 dated 12.06.2013, APPCC / APDISCOMS issued an amendment and revised the arrangement. The respondent scheduled power from alternate sources on behalf of M/s. Vandana Vidyut Ltd and fulfilled its obligation as per LOI terms and conditions. The respondent in this LOI raised energy bills at 4.09/kWh and whereas APPCC released payment @ Rs.4.06/kWh leaving difference of Re0.03 per unit of energy bills which is not paid till date. The respondent requested the APPCC to release the differential amount of Rs.35,00,362/- at rs.0.03/kWh which is not paid till date.

(b) The erstwhile APPCC deducted compensation of Rs. 1,30,55,280/- for the non-scheduled power from Vandana Vidyut Ltd (VVL) to APPCC during the period from 02.08.2013 to 09.08.2013. The respondent sought approval for flow of RTC power from VVL for one month in August 2013 against which the truncated approval for only 9 days was received from SRLDC. The generator has also indicated on 30.07.2013 its inability to supply truncated power and sought withdrawal from the open access. The trader intimated APPCC on 30.07.2013 about inability to supply the truncated 9 days supply of power with a request not to levy any compensation as per clause 3.3(i) of LOI dated 10.05.2013.

(c) Due to bifurcation of the state of Andhra Pradesh, the existing contracts with APPCC have been apportioned with 46.11% to the AP and 53.89% to TS and accordingly all pending payments and liabilities shall be shared prior to bifurcation in the stated proportion. Thus, the petitioner owes in the proportion of 53.89% to the respondent and the amounts due are Rs.18,86,345 and Rs.70,35,490/- totalling Rs. 89,21,835/- which is pending since 2013 and yet to be received by the respondent.

(d)

Component due to	Total due (Rs.)	TSPCC share @ 53.89% (Rs.)	TSPCC claim as per the petition (Rs.)	Net receivable by Trader from TSPCC (Rs.)
Compensation	1,30,55,280	70,35,490		
Difference in rate (Re 0.03 / kWh)	35,00,362	18,86,345	27,22,635	61,99,470

The petitioner is due Rs.61,99,470/- to the respondent / trader.

13. The respondent filed additional counter with the following material allegations:
- (i) The tender notice provides for appropriate disclosure regarding the generator from where electricity is to be procured and it also provides for an arbitration clause for dispute resolution. In order to participate in the tender notice, the respondent had duly executed PPA with the generators / suppliers which was disclosed to the petitioner and it was incorporated in the LOI issued by the petitioner. Since the trader has back to back agreements buyers and suppliers, a true copy of the PPA is executed by the respondent with its suppliers / generators.
  - (ii) The entire arrangement between the parties was time bound and the time was the essence of the contract. The payment schedule was time bound because incentive was given for early payment as well as penalty for delayed payment. The petitioner miserably failed to comply with the reciprocal obligation of making timely payments as per the schedule. The payment was delayed by the petitioner against each and every invoice raised by the respondent. The petitioner sent an email dated 10.10.2014 to respondent admitting the delay in payment and requesting for waiver of surcharge on late payment. This is breach of the contract.
  - (iii) As per S. 86 (1) (f) a dispute can be adjudicated by having the generator as a party. In the present circumstances, the dispute is between

two licensees and that too when there already exists a valid arbitration clause between the parties and therefore the present petition is not maintainable.

(iv) There is no proof for considering the claim on liquidated damages. The petitioner failed to prove any ground for consideration of liquidated damages. The petitioner admittedly delayed payments which amounts to fundamental breach of the contract and therefore it is not entitled to any liquidated damages. The respondent is entitled to get surcharge along with applicable interest @ 1.25% per month amounting to Rs.5.70 lakhs till 30.09.2018 from the petitioner. The petitioner has to return an amount of Rs.40.40 lakhs deducted stating the amount as compensation along with applicable interest @ 1.25% per month amounting to Rs.64.44 lakhs till 30.09.2018.

(iv) Regarding the second claim, it is the respondent which is entitled to damages and it has already sent a legal notice dated 21.03.2017 to the petitioner and the petitioner has not been vigilant in advancing the claim.

14. The petitioner filed rejoinder to the counter and additional counter with the following material averments:

(i) Regarding the point raised on non-joinder of generator, the agreement was entered between the petitioner and the trader / respondent who was the successful bidder and it was mandatory for the respondent to mention the source and it offered power from the intra-state generator (M/s. PSR Green Power Projects (P) Ltd) as a source. The name of source is mentioned in the purchase order to facilitate the recording of energy for the purpose of monthly billing as well as the recording of energy delivered at the inter-connecting substation with power plant of generator. There is no privity of contract between the petitioner and the generator.

(ii) As per the purchase order placed on the trader / respondent, it is the obligation of the trader to supply power from either the designated source or through an alternate source as per the purchase order which clearly shows that the petitioner has no binding obligations against the generator.

(iii) As per Article 54 of Limitation Act, the performance of the contract was affected on 08.08.2014 when the generator did not supply power due to consistent delay in payment by TSDISCOMS. Limitation of 3 years is applicable from the date of termination notice issued by the respondent on

24.12.2014. The claim of the respondent that the petition is barred by limitation is not correct.

(iv) The purchase order was placed for supply of RTC power for a continuous period of one year from 30.05.2014 to 28.05.2015 and the contract provided for compensation payable by the party deviating from 85% scheduled energy in a month. Since the trader has not supplied any power from the month of August 2014, it is 100% deviation and compensation can be billed month to month and the total quantum is payable by the defaulting party only at the end of contract period as per the clause (h) of compensation clause.

(v) The compensation amount payable by the seller / trader / respondent during a month for breach of contract has continued with additional sums in the subsequent months till the expiry of purchase order. As per S.22 of the Limitation Act, in case of continuing breach of contract a fresh period of limitation would start and as per S.55 of the Limitation Act, if there is continuous breach, the limitation shall be reckoned from the cessation of the contract. In the present case, the 3 years limitation would commence from the end of the date of purchase order. The limitation would start after expiry of purchase order by 28.05.2018 before which a suit must be instituted before an appropriate forum. Since the present petition has been filed on 05.05.2018, the claim is well within time.

(vi) Regarding the claim of the respondent that actual loss suffered must be established due to breach of contract for claiming compensation, it is stated that as per the purchase order there is a provision for compensation and it has been calculated as such. As per the orders of APTEL in Appeal No.154 / 2013, *there is no need to explain actual damage caused since a pre-estimated damage was arrived at by both the parties in the PPA*. Therefore, the contention of the respondent on this aspect is untenable.

(vii) The respondent claimed that the petitioner delayed payments and cited APTEL judgment in Appeal No. 181 / 2013 between M/s. Raghurama Renewable Energy Limited vs TANGEDCO wherein APTEL held as follows:

*"...TANGEDCO is not entitled to claim compensation for short supply of power when it had failed to perform its own reciprocal promise and*

*creating circumstances leading to non fulfilment of obligation's of maintaining contracted supply on the part of the appellant.....”*

Though, delay has occurred in payments, it is not considerable delay when viewed with the judgment in TANGEDCO case. Since the facts in the cited case are totally different and distinct, the decision is not applicable to the present case.

(viii) **Rebate for prompt payment:** As per the purchase order dated 29.04.2014 a rebate of 2% on invoice including trading margin amount is to be allowed if the payments are made within stipulated period.

**Surcharge for late payment:** A delayed payment surcharge of 1.25% shall be leviable on all dues remaining unpaid for more than 30 days from the date of receipt of the bill. In case of bank holiday falling on the last day, the next working day would be treated as the due date of payment. Therefore, the respondent is eligible for surcharge if any on delayed payments and nothing else.

(ix) The respondent itself gave acceptance letter for waiver of surcharge for delayed payments while receiving the payments and therefore no surcharge was paid to it. No rebate was availed by the petitioner against any of the invoices raised by the respondent against purchase order dated 29.04.2014. Therefore, the claim of the respondent that surcharge was not paid and availing of rebate by the petitioner even for delayed payments is incorrect and denied.

(x) LOI vide D.No.269/14 dated 22.01.2014 entered with erstwhile four APDISCOMS and claiming that both LOI i.e., 2014/14 dated 29.04.2014 have same terms and conditions is not correct and it is purely unconnected to the present petition.

(xi) During the month of November 2014, the generator / M/s. PSR Green Power Projects (P) Ltd has offered 7.5 MW power from their plant to TSDISCOMS on long term basis with tariff determined by erstwhile APERC (nearly Rs.6.00/kWh) until issue of revised tariff orders by TSERC and differential payments in tariff may be adjusted after release of TSERC tariff order. It is clear that the generator has wilfully discontinued the supply of power on short term basis so as to supply on long term basis for which the

tariff determined by APERC is higher than for the existing short term purchase order which is the reason for delayed payments.

(xii) Regarding the preliminary objection of the respondent that the refund of open access charges from SRLDC (claim 2) of the petitioner have been adjusted against the non-payment made by APPCC in the previous LOI No. 26/13 dated 10.05.2013. The claim 2 (Rs. 27,22,635/-) pertains to refund of open access charges towards SRLDC curtailed corridor / seller surrendered corridor quantum as per purchase order conditions which are already reimbursed by the petitioner in advance. In spite of a notice vide letter dated 19.08.2017 for refund of the open access charges, the respondent failed to pay.

(xiii) The Commission u/s 86 (1) (f) of the EA, 2003 has the power of adjudication either between the licensees or between the generators or between generators and the licensees. In the present matter the dispute is regarding procurement process of the distribution licensee or purchase of electricity including the price and to regulate the same and thus the Commission has jurisdiction with wider power to decide the dispute. The contention to the contrary is untenable.

(xiv) The respondent by way of reply to the final demand notice dated 17.04.2018 addressed to the petitioner stating that the respondent was a trader and it is not responsible for any lack of performance under the contracts and it is the matter between the petitioner and the generator under the contract.

(xv) The respondent admitted in its counter about the receipt of open access charges from SRLDC. Instead of returning the amount to the petitioner as per the condition of purchase order, the respondent claimed that the amount was adjusted with another purchase order placed for a different period while mentioning about certain pending amounts against another previous purchase order placed for supply of power to the combined APDISCOMS for the period from 01.06.2013 to 29.05.2014 explained that the refund of open access charges as claimed in the present petition remained under dispute due to non-payment of said pending payments against the purchase order dated 10.05.2013. This contention has not been raised by the respondent earlier in response to any of the demand notice served on it.

(xvi) The purchase order dated 10.05.2013 is totally unconnected with the present petition and pending claims against the purchase order dated 10.05.2013 cannot be raised in the present petition. Any dispute arising out of purchase order dated 10.05.2013 has to be settled separately as per the dispute resolution mentioned in the purchase contract. The respondent is wilfully merging all purchase orders placed for different periods and misleading the Commission. Therefore, the respondent may be directed to pay the outstanding amounts Rs.4,86,08,173/- (principal amount – Rs.3,33,30,795/-(compensation + STOA) and interest amount @1.25% per month up to 28.05.2018 – Rs.1,52,77,379/-) towards compensation and refund of STOA charges as per short term power purchase orders dated 29.04.2014 & 12.02.2014 with future interest @ 1.25% per month beyond 28.05.2018 till payment.

15. Heard both sides. Additionally the respondent filed written submissions.

16. Based on the material on record and contentions the following issues arise for determination.

- (i) Whether the Commission has jurisdiction to decide the dispute between the DISCOM and a trader u/s 86(1)(f) of the EA, 2003?
- (ii) Whether the claim of the petitioner is hit by limitation?
- (iii) Whether the generator being the seller is a necessary party to the present petition?
- (iv) Whether the respondent can plead adjustment of the amount due connected with LOI (No.26/13) dated 10.05.2013 purchase order for supply of power to the combined APDISCOMS for the period from 01.06.2013 to 29.05.2014?
- (v) Whether the respondent is liable to refund Rs.27,22,635/- towards reduced OA charges for the SRLDC curtailed corridor / seller surrendered corridor against PO dated 12.02.2014?
- (vi) Whether the petitioner is entitled to recover Rs.4,86,08,173/- (principal amount – Rs.3,33,30,795/-(compensation + STOA) and interest amount @1.25% per month up to 28.05.2018 – Rs.1,52,77,379/-) towards compensation and refund of STOA charges as per short term

power purchase orders dated 29.04.2014 & 12.02.2014 with future interest @ 1.25% per month beyond 28.05.2018 till payment from the respondent?

**Issue – (i):**

17. The respondent contended that u/s 86(1) (f), the Commission has no jurisdiction to decide dispute between the petitioner / DISCOM and the trader / respondent taking the provision literally. S.86(1) (f) reads as follows:

*“adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration”*

Since there is no term ‘trader’ found in the provision, the respondent pleaded that the Commission has no jurisdiction to decide the dispute relating to a trader.

18. The respondent M/S. Mittal Processors (p) Ltd. being a trader participated in the tender for supply of 5 MW and 50 MW respectively and separate purchase orders for the above quantities were issued. A perusal of the purchase order dated 29.04.2014 shows that it was issued to the respondent for supply of 5 MW power from the generator M/s. PSR Green Power Projects (P) Ltd with certain conditions. Another purchase order dated 12.02.2014 was also issued to the respondent for supply of 50 MW power from the generator M/s. Vandana Vidyut with certain conditions. The trader has to supply power from those generators based on the terms of purchase orders placed by the petitioner. Thus, the respondent as a trader transacted supply of power to the petitioner DISCOM. The dispute between the DISCOM and the trader acting on behalf of the generators comes within the four corners of the Section 86 (1) (f) of the EA, 2003. Regarding the status of a trader, S. 86 (1) (d) contemplates issue of licences to the electricity traders with respect to their operations within the State. When the role of the electricity traders is contemplated, naturally any dispute relating to electricity trade or supply would be subject to the jurisdiction of this Commission. This Commission therefore, has the jurisdiction to decide the present dispute between the parties.

**Issue – (ii):**

19. The respondent contended that the performance of the agreement was affected on 08.08.2014 when the generator did not supply power due to consistent delay in payment by the TSDISCOMS. The limitation of three years is also applicable

in this case. Even otherwise calculating the limitation from the date of termination i.e., 24.12.2014 the period of three years has expired and thus the claim is barred by limitation. The petitioner contended that the purchase order was placed for RTC power for a continuous period of one year from 30.05.2014 to 28.05.2015. Compensation is payable by the party deviating from the 85% scheduled energy in a month. The trader has not supplied any power from the month of August 2014 and this non supply can be deemed to be 100% deviation and it can be billed month to month. As per clause (h) of compensation clause of purchase order dated 29.04.2014, "the compensation will be levied on yearly basis of cumulative corridor approved quantity. But the compensation be calculated on running monthly average basis and reconciled on annual average basis, at the end of contract."

20. As per clause (h) of compensation clause of purchase order dated 29.04.2014, it is clear the compensation has to be levied on yearly basis and its calculation on running monthly average basis reconciled on annual average basis at the end of the contract. If such is the case and the claim of the petitioner is that it is a continuing breach, as per the limitation act, the period of limitation shall be reckoned only on the cessation of the contract. As rightly claimed by the petitioner, the limitation period shall be calculated only after the expiry of purchase order i.e., 28.05.2015 and the limitation would end by 28.05.2018. In the present case, originally the petition has been filed on 05.05.2018 which is well within the period of limitation. The contention contrary raised by the respondent is untenable. The issue is answered accordingly.

**Issue (iii):**

21. The respondent claimed the generator being the seller of the energy ought to be made as a party to the present petition on the ground that as a trader is not liable to pay compensation and the generator has already given acceptance in email dated 24.12.2014 stating that it would bear financial burden due to termination / cancellation of LOI and therefore the generator is a necessary party to the present petition. The generator is neither a party in the LOI / purchase order nor it had any contract with the petitioner and therefore, the generator is not a necessary party to the present petition. Thus, the contention of the respondent on this aspect is found untenable.

**Issue (iv):**

22. The respondent while replying to the claims of the petitioner pleaded that in connection with LOI (No. 26 / 13) dated 10.05.2013 purchase order placed by combined APDISCOMS for supply of 500 MW power from 01.06.2013 to 29.05.2014 @ Rs.4.09 / kWh. The APPCC released the payments against the same @ Rs.4.06 / kWh. There is a difference of Rs.0.03/- per unit of energy bills was to be paid by the petitioner to the respondent which is not paid till date. Further, requested APPCC the order placing authority from time to time to release the differential amount of Rs. 35,00,362/- (calculated @ 0.03/- / kWh) and this amount was neither been received by the respondent nor has been denied by the petitioner till date. This claim of the respondent regarding purchase order dated 10.05.2013 is denied by the petitioner by terming the plea as purely unconnected to the present petition and the pending claims against the purchase order dated 10.05.2013 cannot be linked up with the present petition and any dispute on this purchase order has to be settled separately based on the terms of purchase order. This contention of the petitioner is tenable because the respondent has not taken any separate steps relating to any dispute regarding purchase order dated 10.05.2013. Besides this aspect, the question of limitation regarding claim of the respondent relating to purchase order dated 10.05.2013 would arise adversely. The claim of the respondent on this issue is not maintainable. This issue is answered accordingly against the respondent and in favour of the petitioner.

**Issue (v):**

23. The petitioner pleaded for refund of Rs.27,22,635/- towards reduced OA charges for the SRLDC curtailed corridor / seller surrendered corridor against the purchase order dated 12.02.2014 from the respondent. On this claim, it is to be noted that TSPCC / TSDISCOMS had reimbursed the OA charges beyond delivery point against the initial SRLDC corridor approvals in advance. Later, SRLDC had curtailed the approved corridor in certain months while the respondent itself surrendered the corridor in certain amounts. The respondent admitted receipt of refund from SRLDC but claimed that the amount remained under dispute due to non-payment of energy rate as well as deductions made by APPCC against previous contract ( LOI No. 26/13 dated 10.05.2013 for supply of 500 MW). The plea of the respondent regarding dues connected with LOI No. 26 / 13 dated 10.05.2013 is

negated in the previous issue and therefore this plea is not available to the respondent. Therefore, the petitioner is entitled to recover Rs.27,22,635/- from the respondent towards reduced OA charges for the SRLDC curtailed corridor / seller surrendered corridor against PO dated 12.02.2014 as provided in the clause relating to open access charges of purchase order dated 12.02.2014 which specifically states that *“the open access charges if any received back from SRLDC due to curtailment, congestion, revision, force majeure, etc., are to be returned to APCPDCL within one week otherwise APDISCOMS reserve the right to deduct from energy bills.”*

**Issue (vi):**

24. Recovery of compensation amount from the respondent under PO dated 29.04.2014. The PO was placed on the respondent / trader for supply of power from M/s. PSR Green Power Projects (P) Ltd to the erstwhile four APDISCOMS. The entire 5MW power was to be supplied from 30.05.2014 to 26.05.2015. Post bifurcation of the AP State, 53.89% of the total energy supplied to 4 APDISCOMS by the respondent during the month of June 2014 (02.06.2014 to 30.06.2014) was accounted for TSDISCOMS. The management of TSPCC & APPCC took a decision to allocate purchase orders placed on intra-state sources of AP & Telangana states based on geographical location of the generating source. As the generator is located in Telangana State, the respondent supplied entire 5 MW power to TSDISCOMS from 01.07.2014 till 08.08.2014 under the same PO dated 29.04.2014.

25. According to the petitioner, in the month of August 2014 the respondent represented that the generator M/s. PSR Green Power Projects (P) Ltd had shut down the plant due to lack of funds to procure fuel as a result of non-receipt of timely payment of energy bills by TSPCC / TSDISCOMS seeking to treat this non supply of power under force majeure clause. The petitioner contended that delay in payment of bills is not covered under the force majeure clause but only attracts surcharge for late payment. At that time there was power crisis in the state of Telangana and the gap between demand and supply was increasing day by day. The respondent was requested to resume power supply immediately from its generator or from any other source under the clause 'alternate supply' in the purchase order. Despite this request, the respondent continued to represent to TSPCC / TSDISCOMS for

cancellation of PO dated 29.04.2014 without any financial liability on either party in view of termination of agreement between the respondent and its generator on 15.12.2014. The respondent contended that the petitioner had not suffered any loss due to shortfall in supply since it has not faced any legal action from any consumer or entity for shortfall in supply.

26. The shortfall in monthly energy supplied by the respondent through its generator against PO dated 29.04.2014 is given in the table below:

**Table 1**

Sl. No.	Billing period	Minimum PO quantum (85%) to be supplied (Kwh)	Actual energy supplied (Kwh)	Short fall units (Kwh)
1	30.05.2014 to 01.06.2014	306000	0	306000
2	02.06.2014 to 20.06.2014	1938000	1901286	36714
3	21.06.2014 to 20.07.2014	3060000	1818136	1241864
4	21.07.2014 to 20.08.2014	3162000	1039765	2122235
5	21.08.2014 to 20.09.2014	3162000	0	3162000
6	21.09.2014 to 20.10.2014	3060000	0	3060000
7	21.10.2014 to 20.11.2014	3162000	0	3162000
8	21.11.2014 to 20.12.2014	3060000	0	3060000
9	21.12.2014 to 20.01.2015	3162000	0	3162000
10	21.01.2015 to 20.02.2015	3162000	0	3162000
11	21.02.2015 to 20.03.2015	2856000	0	2856000
12	21.03.2015 to 20.04.2015	3162000	0	3162000
13	21.04.2015 to 28.05.2015	3876000	0	3876000
<b>TOTAL</b>				<b>3,23,68,813</b>

According to the petitioner, under compensation clause it is mandatory on the part of the successful bidder to apply for corridor each and every month of the contract period through STOA/MTOA. In case the bidder fails to apply for corridor, the compensation will be levied on the shortfall of 85% cumulative corridor approved

quantity. But the compensation will be calculated on running monthly average basis and will be reconciled on annual average basis at the end of contract period. Further, both parties would ensure that actual scheduling does not deviate more than 15% of the contracted power for both parties individually as per the approved open access on monthly basis.

27. The respondent contended that the payments were irregular for the energy supplied and they were stopped at one stage to the respondent affecting the generator. It is further contended that when payments were not made regularly by the petitioner, it affected the ability of the generator to buy fuel and at one stage for non-payment the entire project stopped working. Admittedly the payments by TSSPDCL were delayed as under:

**Table 2: Payment Delay Statement**

Bill No.	Bill date	Amount Receivable	Date of Receipt	Due Date	Receipt amount (INR) from buyer	Delay days	Remarks
3880	09.06.14	2,516,592.00	18.06.14	28.07.14	2,516,592.00	40.00	Amount deducted on account of compensation of Rs.373558.
3919	16.06.14	2,115,036.00	25.06.14	04.08.14	2,115,036.00	40.00	
4028	01.07.14	5,730,402.50	10.07.14	08.08.14	5,356,844.50	29.00	
4018	01.07.14	2,719,332.00	10.07.14	11.09.14	2,664,945.00	63.00	Amount deducted on account of compensation of Rs.1353632 and amount deducted on account of energy 221.86 MWH not considered by TSPCC Rs.1209137.
4019	01.07.14	3,166,668.00	10.07.14	11.09.14	3,103,335.00	63.00	
4054	09.07.14	5,232,000.00	18.07.14	11.09.14	2,786,929.00	55.00	Amount deducted on account of compensation of Rs.2313236 and amount deducted on account of energy 97.15 MWH not considered by TSPCC Rs.529467.
4213	01.08.14	1,703,125.00	10.08.14	29.10.14	1,703,125.00	80.00	
4242	09.08.14	4,979,937.50	18.08.14	29.10.14	1,650,386.00	72.00	
4374	26.08.14	(486,848.50)	04.09.14	29.10.14		55.00	

28. It can be seen from Table 2 that there was delay in payment ranging from 29-80 days for energy supplied in the first four months till August 2014. The respondent submitted that raised invoices as per the LOI, however, no timely payment was made causing cash flow problem in the supply chain of money to the Generator for supply of contracted volume of energy. It is further stated that the petitioner never

paid surcharge for delay in payment and on the other hand, deducted rebate from the invoice amount in spite of delayed payment. The respondent stated that since 23-07-2014 has been sending letters to the petitioner that reduction in fuel supply due to the delayed/non-payment of bills leading to shutting down of generation plant. The respondent vide its letters dated 28-11-2014 and 24-12-2014 informed the petitioner that it intends to terminate the LOI for supply of power in view of the inability of the generator to continue its supply due to financial crisis because of delayed payment. It requested to make outstanding payment or consider the period of delayed payments as Force Majeure event.

29. Above Table 2 also indicates the amounts deducted by TSSPDCL from payable amount towards compensation. Table 1 indicates default in supply of power to the petitioner from the respondent during the 9 months period from 21.08.2014 to 28.05.2015. Claim of petitioner is towards shortfall in supply in this period as per the compensation clause for a deviation of 85% from the contracted volume of energy. As mentioned above, persistent default in payment of dues by the petitioner, non-payment of surcharge but at the same time deducting the compensation charges for short supply resulted in failure on the part of the appellant to fulfil its promise to maintain the contracted supply from the generator.

30. The Commission feels that the petitioner by not discharging its obligation under the LOI/purchase order made the performance of the contract impossible. The respondent sustained power supplies for around four months by utilising its own resources to fulfil its contract obligation but could not sustain further because of persistent failure of the petitioner in making timely payments. The claim of the respondent on this aspect appears to be tenable since payments were not made in time and the generator was not able to buy fuel without timely payment of bills. Under these circumstances the plea of the petitioner that the respondent waived surcharge cannot be accepted as voluntary. The respondent is entitled to surcharge @ 1.25% per month on all dues remaining unpaid for more than 30 days which is to be calculated based on the table above. The respondent is found entitled to recover surcharge for late payment on proper calculation.

31. The question now is whether the petitioner is entitled to compensation for non-supply of agreed power by the trader based on compensation clause in PO

dated 29.04.2014 which contemplates any deviation above 15% of the contracted power. On this aspect, the seller should pay compensation to the DISCOM at 20% of tariff per kWh for the quantum of shortfall in excess of permitted deviation of 15% and pay for the open access charges to the extent not availed by the petitioner. This compensation should be levied on yearly basis at 85% of the cumulative corridor approved quantity.

32. The claim and counter claim in this case are difficult to reconcile clearly. The petitioner is aggrieved that agreed quantum of energy has not been supplied by the respondent and the respondent is aggrieved that timely payments have not been made affecting the ability of the generator to buy fuel and ultimately it was forced to shut down the plant. The respondent relied on the decision on ATE dated 11.07.2014 delivered in the matter of Raghu Rama Renewable Energy Ltd., vs TANGEDCO & 3 others wherein TANGEDCO did not comply its obligation to make payment even after receiving the contracted power supplies for 4 months from June 2011 to September 2011 and thereafter delaying payment by 4 to 9 months despite appellants repeated requests, which had direct bearing on the performance of the appellant who could not meet its obligation for supply of full contracted quantum of power in the subsequent months from November 2011 onwards. It is further observed that TANGEDCO had failed to perform into own reciprocal promise cannot claim for performance of the appellant and claim damages for non-performance of the appellant caused due to non-receipt of payment. The cited decision discloses similarities in the transactions. The petitioner has not denied delayed payments and that too without any surcharge and the respondent pleads helplessness when bills are not paid in timely fashion to enable the generator to buy fuel. It has to be noted that the entire capacity of the generator ie., 5MW was subject matter of PO dated 29.04.2014.

33. The respondent has also referred to Section 39 and 55 of Contract Act which provides as follows:

*“39. Effect of refusal of party to perform promise wholly.—When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract,*

*unless he has signified, by words or conduct, his acquiescence in its continuance.*

55. *Effect of failure to perform at a fixed time, in contract in which time is essential.—When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.”*

From the above provisions, it is clear that in case of reciprocal promises, if, one of the party is at breach and commits persistent breach then the other side is well within its right to terminate the contract with due notice. Referring to these provisions, the Hon'ble Supreme Court in Saradamani Kandappan vs S.Rajalakshmi and Ors [(2011) 12 SCC 18] case held that “ The payments on due dates is essence of this contract and any failure on the part of the party of the second part, the part of the first part shall cancel this agreement”. . The terms of purchase order clearly mention about timely payment and penalty for deviation. They also provide rebate for early payment. The terms *inter alia* in the purchase order clearly make out the obligations of both the parties.

34. The material on record clearly shows that the initial delayed payments by the petitioner caused disruption in supply of energy by the respondent. Persistent failure of petitioner to meet its obligation of timely payment as per the PO caused financial hardship for the respondent to facilitate procurement of fuel for the generation plant and in turn make power supplies as per the contract impossible. This grave situation has arisen because of the callous acts of the petitioner in not paying dues in time to the respondent. A small generating unit which dedicated its entire capacity of 5MW to the purchase order dated 29.04.2014 is made unsustainable by not paying the dues in time. Irrespective of the terms regarding payment of compensation, surcharge and incentive in the purchase order, the ultimate result was shutting down of the unit and resultant breach in the terms of the purchase order. Under these circumstances and also relying on the order of ATE in appeal no.181 of 2013 dated

11.07.2014, it is found reasonable to deny compensation to the petitioner and also surcharge to the respondent in this case.

35. In the result, the petition is disposed of as follows:

- (i) The Commission has the jurisdiction to decide the present dispute between the parties.
  - (ii) The petition is filed within the period of limitation.
  - (iii) The generator is not a necessary party to the present petition.
  - (iv) The claim of the respondent regarding dues relating to purchase order dated 10.05.2013 is totally unconnected to the present petition besides the claim being barred by limitation.
  - (v) The petitioner is entitled to recover Rs.27,22,635/- from the respondent towards reduced OA charges for the SRLDC curtailed corridor / seller surrendered corridor against PO dated 12.02.2014 with interest at 12% per annum from the date of this order.
  - (vi) The petitioner is found not entitled to recover compensation as claimed from the respondent for non-supply of agreed quantum of energy due to delayed payment of energy bills which resulted ultimately in shutting down of the 5MW plant of the generator.
  - (vii) As a process of reciprocity, the respondent is found not entitled to the refund of amounts deducted by the petitioner towards surcharge on delayed payments or other such payments.
- Both parties to bear their own costs.

***This order is corrected and signed on this the 21<sup>st</sup> day of December 2018.***

**Sd/-  
(ISMAIL ALI KHAN)  
CHAIRMAN**

**//CERTIFIED COPY//**