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RESERVE BANK OF INDIA

CO-OPERATIVE BANKS - INTEREST RATE ON DEPOSITS DIRECTIONS, 2016

Reserve Bank of India vide its Master Direction DCBR.Dir.No.1/13.01.000/2015-16 in exercise of power conferred by Sections 21 and 35 A read with Section 56 of the Banking Regulation Act, 1949 makes the Directions called Reserve Bank of India (Co-operative Banks-Interest Rate on Deposits) Directions, 2016 ("**Directions**"). These Directions apply to every co-operative bank licensed or permitted to carry on banking business in India by the Reserve Bank of India. Following are the essential guidelines laid down in these directions:

- These Directions specify the terms and conditions in accordance with which the Co-operative Banks shall pay interest on deposits of money (other than current account deposits) accepted by them or renewed by them in their Domestic, Ordinary Non-Resident (NRO), Non-Resident (External) Accounts (NRE) and Foreign Currency (Non-resident) Accounts (Banks) Scheme {FCNR (B)}.
- These interest rates shall be governed by a comprehensive policy and should be duly approved by the Board of Directors.
- These rates need to be uniform across every branch and for every customer.
- The Interest rates have been further categorized into rupee deposits through domestic transactions and rupee deposits by non-residents.

- The Directions also provide for certain prohibitions and exemptions for the payment of interest by the Co-operative Banks.

RESERVE BANK OF INDIA (OWNERSHIP IN PRIVATE SECTOR BANKS) DIRECTIONS, 2016.

Reserve Bank of India vide its exercise of powers conferred by second proviso to Section 12(B)(2) of the Banking Regulation Act, 1949 is issuing Master Direction No. DBR.PBSD.No. 97/16/13.100/2015-16 ("**Directions**") relating to Ownership in Private Sector Banks.

Following are the essential directions laid down in these Directions:

i. These Directions govern the promoter/ promoter group shareholding in the bank, during the lock-in period and thereafter. It also provides for cases where the promoter/ promoter group is eligible for higher shareholding on account of being a financial institution.

ii. They also provide for directions for all shareholders in the long run which is categorized in accordance with if the shareholder is a (i) natural persons (individuals) and (ii) legal persons (entities/institutions). There are separate shareholding limits set for non-financial and financial institutions (financial institutions are further categorized into diversified and non-diversified financial institutions.

iii. They also lay down the procedure for Banks to raise funds through the issuance of American Depository Receipts (ADRs) and Global Depository Receipts (GDRs).

The issuance of these Directions also repeals the following circulars issued by the Reserve Bank:

i. Circular DBOD.No.PSBD.BC.99/16.13.100/2004-05 dated February 28, 2005 on Ownership and Governance in Private Sector Banks stand superseded to the extent covered by these Directions.

ii. Circular DBOD.No.PSBD.7269/16.13.100/2006-07 dated February 5, 2007 on Issue of American Depository Receipts (ADRs) / Global Depository Receipts (GDRs) - Depository Agreement.

FOREIGN EXCHANGE MANAGEMENT (MANNER OF RECIEPT AND PAYMENT) REGULATIONS, 2016.

Reserve Bank of India vide its Notification No. FEMA 14(R)/2016-RB dated May 2, 2016 in exercise of its power conferred under Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) makes the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 ("**Regulations**"). These Regulations deal with receipt and payment to a person resident outside India. Following are the essential points that the Regulations deal with:

i. It directs the authorized dealers to collect the receipts of **foreign exchange** by remittance or reimbursement from their branch or correspondent outside India against payment for export from India in certain format. Such formats are categorized in a manner accordingly depending on whether it is collected from

   A. Members of the Asian Clearing Union [further categorized into (i) Bangladesh, Myanmar, Pakistan, Sri Lanka & Republic of Maldives; (ii) Nepal and Bhutan; (iii) Islamic Republic of Iran];

   B. and (iv) all countries other than the aforementioned

ii. It further directs that any receipt for export from India shall be made in a currency appropriate to the place of final destination.

A. It also specifies the manner of payment in foreign exchange depending whether the payment is made to Members of the Asian Clearing Union [further categorized into (i) Bangladesh, Myanmar, Pakistan, Sri Lanka & Republic of Maldives; (ii) Nepal and Bhutan; (iii) Islamic Republic of Iran];

B. and (iv) all countries other than the aforementioned.

SECURITIES EXCHANGE BOARD OF INDIA

SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) (SECOND AMENDMENT) REGULATIONS, 2016.

Securities Exchange Board of India vide its notification No. SEBI/ LAD-NRO/GN/2016-17/002 and in exercise of powers conferred under Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) makes the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2016 to amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011("**SAST**"). Following are the essential amendments that are brought about in through these regulations:

- In sub-regulation (1) of Regulation 2 of SAST, clause (ze) shall be re-numbered as clause (zf); and after that clause (zd) and before clause (zf) the following shall be inserted:

"(ze) "wilful defaulter" means any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes any person whose director, promoter or partner is categorized as such;"

- After regulation 6 and before regulation 7, the following shall be inserted, namely,-

"6A. Notwithstanding anything contained in these regulations, no person who is a wilful defaulter shall make a public announcement of an open offer for acquiring shares or enter

into any transaction that would attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations:

Provided that this regulation shall not prohibit the wilful defaulter from making a competing offer in accordance with regulation 20 of these regulations upon any other person making an open offer for acquiring shares of the target company."

SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (THIRD AMENDMENT) REGULATIONS, 2016.

Securities Exchange Board of India ("**SEBI**") vide its notification No. SEBI/ LAD-NRO/GN/2016-17/003 dated May 25, 2016 in exercise of its powers conferred under Section 30 of the Securities Exchange brings about the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2016 ("**Regulations**") to amend Securities Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. These Regulations apply to issuers filing offers documents with the Registrar of Companies. Following are the amendments issued:

- In Regulation 2, in sub-regulation (1),- after clause (zm), the following shall be inserted namely:

  "(zn) "wilful defaulter" means an issuer who is categorized as a wilful defaulter by any bank or financial institution or

consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes an issuer whose director or promoter is categorized as such."

- Clause (c) in sub-regulation (2) of Regulation 4 shall be completely omitted.
- In Regulation 4, after sub-regulation (4), following shall be inserted :

"(5) No issuer shall make:

(a) a public issue of equity securities, if the issuer or any of its promoters or directors is a wilful defaulter; or

(b) a public issue of convertible debt instruments if,

(i) the issuer or any of its promoters or directors is a wilful defaulter, or

(ii) it is in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months.

(6) An issuer making a rights issue of specified securities, shall make disclosures as specified in Part G of Schedule VIII, in the offer document and abridged letter of offer, if the issuer or any of its promoters or directors is a wilful defaulter.

(7) In case of a rights issue of specified securities referred to in sub-regulation (6) above, the promoters or promoter group of the issuer, shall not renounce their rights except to the extent of renunciation within the promoter group."

- In Regulation 73, in sub-regulation (1), after clause (g) the following shall be inserted:

  "(h) disclosures, similar to disclosures specified in Part G of Schedule VIII, if the issuer or any of its promoters or directors is a wilful defaulter"

- In regulation 84, in sub-regulation (1), after the words and numbers "*Schedule XVIII*", the words, symbols and numbers "*and disclosures similar to disclosures specified in Part G of Schedule VIII shall be made, if applicable*" shall be inserted.
- In Schedule VIII, in Part A, in para (2), in item (XI), in sub-item (E) the words "*by Reserve Bank of India or other authorities*" shall be omitted.
- In Part E, in para (5), in item (XV), in sub-item (D) the words "*by Reserve Bank of India or such other authorities*" shall be omitted.

1 After Part F, the following Part G shall be inserted:

2 *"Part G*

3 *[See regulation 4(6)]*

(1) If the issuer or any of its promoters or directors is a wilful defaulter, it shall make the following disclosures:

a) Name of the bank declaring the entity as a wilful defaulter;

b) The year in which the entity is declared as a wilful defaulter;

c) Outstanding amount when the entity is declared as a wilful defaulter;

d) *Name of the party declared as a wilful defaulter;*

e) *Steps taken, if any, for the removal from the list of wilful defaulters;*

f) *Other disclosures, as deemed fit by the issuer in order to enable investors to take informed decisions;*

g) *Any other disclosure as specified by the Board.*

(2) *The fact that the issuer or any of its promoters or directors is a wilful defaulter shall be disclosed prominently on the cover page with suitable cross referencing to the pages.*

(3) *Disclosures specified herein shall be made in a separate chapter or section distinctly identifiable in the Index / Table of Contents"*

- In Schedule XXI, in Part A, in Para (XIV), in item (C), the words "*by Reserve Bank of India or such other authorities*" shall be substituted with the words "*in India or*"

SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

Securities Exchange Board of India vide its notification no. SEBI/CFD/DCR/SAST/1/2011/09/23 dated September 23, 2011 has prescribed the format for report to be furnished to stock exchanges under regulation 10(5) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SAST**") for acquisitions that are being made under regulation 10(1)(a) of SAST. As per this notification dated May 2, 2016, separate formats for reports are to be furnished to SEBI under regulations 10(7) of the regulations in respect of acquisitions made in reliance upon exemption provided under sub-clauses (i), (ii), (iii), (iv) and (v) of regulation 10(1)(a).

10(7) of SAST read as:

> "*In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub regulation (1), clause (h) of sub -regulation (1), sub-regulation (2), sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date of acquisition, submit a report in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions, along with a non-refundable fee of rupees 14 [one lakh fifty thousand] by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board*."

The amended format has been brought about to comply with the requirement under regulation 10(1)a(ii) of the SAST that says that the reporting of such compliance has to be done within three (3) years.

Following are the description of formats that are released and will be available on the on the SEBI website in link http://www.sebi.gov.in/cms/sebi_data/attachdocs/1462179239778.pdf :

i. Format for Disclosures under Regulation 10(5) - Intimation to Stock Exchanges in respect of acquisition under Regulation 10(1)(a) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

ii. Format under Regulation 10(7) - Report to SEBI in respect of any acquisition made in reliance upon exemption provided for in regulation 10(1)(a)(i) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

iii. Format under Regulation 10(7) - Report to SEBI in respect of any acquisition made in reliance upon exemption provided for in regulation 10(1)(a)(ii) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

iv. Format under Regulation 10(7) - Report to SEBI in respect of any acquisition made in reliance upon exemption provided for in regulation 10(1)(a)(iii) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

v. Format under Regulation 10(7) - Report to SEBI in respect of any acquisition made in reliance upon exemption provided for in regulation 10(1)(a)(iv) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

vi. Format under Regulation 10(7) - Report to SEBI in respect of any acquisition made in reliance upon exemption provided for in regulation 10(1)(a)(v) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

APPELLATE TRIBUNAL FOR ELECTRICITY.

APPEAL NO. 316 OF 2013

Appeal No.316 of 2013 ("**Appeal**") was filed by M/s Sai Wardha Power Co. Ltd ("**Appellant**") before the Appellate Tribunal for Electricity ("**APTEL**") against Maharashtra Electricity Regulatory Commission, Maharashtra State Electricity Distribution Co. Ltd. and Maharashtra State Electricity Transmission Co. Ltd. under Section 111 of the Electricity Act, 2003 ("**EA 2003**") against an order in Case No.117 of 2012 ("**Impugned Order**") pronounced by Respondent No.1 viz Maharashtra Electricity Regulatory Commission (herein after may be referred to as "**MERC**"/"**State Commission**"). The original petition before the MERC was filed by the Appellant under Section 40, 42 & 86(1)(f) and 86 (1)(k) of EA 2003. The dispute in the matter is relating to cross subsidy surcharge ("**CSS**") imposed on the captive consumers of the Appellant availing open access by Respondent No.2. The issue in question is whether the delay in grant of Appellant's captive status for FY 2012-13 which eventually led to imposition of CSS on the Appellant's consumer is attributable to Respondent No.2 viz. Maharashtra State Electricity Distribution Co. Ltd. (herein after may be referred to as "**MSEDCL**") or not.

Facts and Contention:

The Appellant is a generating company and is engaged in the generation of electricity through a Special Purpose Vehicle ("**SPV**"). The Appellant entered into separate Power Delivery Agreements and Share Subscription Agreements with each of the captive users. The Appellant also entered into a transmission agreement with Maharashtra State Electricity Transmission Co. Ltd. ("**MSETCL**") and a distribution agreement with the MSEDCL. The Appellant thereafter applied for short term and long term Open Access applications to which MSETCL raised certain queries.

MSETCL had then pointed certain procedural issues to the Appellant such as the captive users were located at different places and they would need to file individual applications for the grant of open access. MSETCL called upon the Appellant to produce the consent letters from each consumer and MSEDCL. MSEDCL thereon sent a letter to the Appellant conveying that the consent letter could not be granted as the appellant had not complied with certain mandatory criteria. After sending several such queries to the Appellant and numerous requests for documentation, the Appellant filed a petition before MERC contending that because of such delays caused by MSEDCL and MSETCL, appellant had to suffer loss with respect to cross subsidy surcharge.

Appellant contended that the eligibility criteria required for 51% proportionality rule and the 26% minimum share does not apply to the Appellant since it is a SPV. The appellant contended that it was due to the delay that the Appellant could not supply 51% of the net energy. Such delay cannot be the sole reason to subject the Appellant or its captive users to levy of CSS. Owing to the delays, the Appellant also had to sell the power to the third parties. Such procedural delay contributed the non-granting of captive status to the Appellant thereon leading to imposition of CSS on the Appellant.

Appellant contended that Regulation 4 of the MERC (Distribution Open Access) Regulations 2005 specifies the disposal of an open access application within 30 days from the date of its filing.

Appellant urged that the State Commission has the jurisdiction to pass an order for relaxation in the requirement of a generating company to produce at least 51% for captive users under Section 2(8) of EA 2003 and Rule 3 of the Electricity Rules 2005.

MSEDCL contended that the delay in grant of open access was due to the fact that the Appellant has had a change in the shareholding pattern.

APTEL's RULING

- The State Commission rules in the Impugned Order that group captive structure underwent changes multiple times. Thus, when there is an issue in compliance by the Appellant for fulfilling the qualifications for being a CGP, the DISCOM had no choice but to reject the said application filed by the Appellant for granting of open access. Through judgements such as Appeal 171/2008, 172/2008, IA 233/2008, IA 234/2008, IA 10/2008 and Appeal 117/2009 held that Rule 3 of Electricity Rules 2005 applies to an SPV (minimum consumption of 51% through generated electricity and shareholding minimum 26% in the ownership).
- CGP is an association of persons and is thus liable to consume minimum 51% of its generation in proportion to the shareholding of the generating plant.
- Any scrutiny issues and queries raised by the authorities of the distribution licensee in regard to the data, documents furnished by the appellant required clarifications and thus the delay is justified as the time consumed in grant of open access to the consumers of the Appellant appears to be merely a procedural delay and not intentional nor a malafide one.
- Introduction of a new consumer by the Appellant also contributed to this procedural delay as this consumer was not included in the original equity shareholding. Such delay owing to the scrutiny of legal issue by distribution licensee cannot be deemed as deliberate and malafide.
- Factors such as demanding open access capacity for a captive user more than the amount specified in the contract by the Appellant had to be denied by the distribution licensee since the same involved technical feasibility issues.
- There ***is no concept of deemed open access either under the Electricity Act 2003 or Electricity Rules 2005.***
- If anyone of the conditions prescribed in Rule 3 of Electricity Rules 2005 is not fulfilled, the captive power plant/CGP will lose its CGP status and become a generating plant or independent power producer and accordingly

the State Commission cannot relax the provisions of Rule 3 of Electricity Rules 2005 under its power to relax.

Commission cannot exercise its power to relax the provisions of Rule 3 of Electricity Rules 2005 and this issue is decided against the Appellant. Consequently, the appeal is liable to be dismissed.

MAHARASHTRA ELECTRICITY. REGULATORY COMMISSION

CASE NO. 55 OF 2015—SHAH PROMOTERS AND DEVELOPERS VERSUS MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD

Case No. 55 of 2015 was filed by M/s Shah Promoters and Developers before the Hon'ble Maharashtra Electricity Regulatory Commission ("**MERC**") against Maharashtra State Electricity Distribution Company Ltd ("**MSEDCL**"), the Respondent in the said matter. The issue in question is to give necessary directions to MSEDCL to purchase power for the period of April 1, 2012 to April 30, 2012 at Average Pooled Power Purchase Cost ("**APPC**") rate.

The facts and contentions are as follows:

1. The Petitioner is a registered partnership firm established in the year 1986, whose main business consists of construction of residential and commercial units and generation of power through windmills.
2. The Petitioner commissioned its Wind Power Project of 12 MW (800 X 15) on March 31, 2011 and August 11, 2011 at Chavaneshwar, District: Satara. The entire electricity generated from the Project is sold to third party and MSEDCL.
3. The Petitioner submitted an Open Access ("**OA**") application for sale of its wind power to M/s Jindal Poly Films Ltd, Nashik ('**Jindal'**) on September 19, 2011 for the period from March 31, 2011 to 30 March, 2012. MSEDCL granted OA permission on 25 October, 2011.

4. For the period from 1 April, 2012 to 31 March, 2013 (i.e. FY 2012-13), on 9 November, 2012 the Petitioner submitted an OA application for sale of its wind power to M/s EON Kharadi Infrastructure Pvt. Ltd ('**EON Kharadi**'), Pune. On 6 December, 2012, the Petitioner requested MSEDCL for a change in the OA period to 1 October, 2012 to 31 March, 2013, which was granted by MSEDCL on 14 February, 2013.
5. The Petitioner applied for sale of its wind power to MSEDCL at the preferential tariff for the period 1 May, 2012 to 30 September, 2012 on 6 December, 2012, for which MSEDCL issued permission on 1 August, 2013. The Petitioner had not sought sale of power to MSEDCL at the preferential tariff for the month of April, 2012 as it has already claimed Renewable Energy Certificate ("**REC**") for that period.
6. Since the power flow in April, 2012 was not covered anywhere and the Petitioner had claimed REC for it, vide letter dated 10 December, 2012 the Petitioner requested MSEDCL to purchase that power at the APPC rate.
7. Vide letter dated 25 August, 2013, the Petitioner requested MSEDCL to issue OA for April, 2012 to EON Kharadi. In its reply dated 25 September, 2013, MSEDCL informed that permission for sale to MSEDCL cannot be granted since the Petitioner has claimed REC benefit for the month of April, 2012 and application for sale to third party cannot be considered due to enormous delay.
8. Vide letter dated 15 October, 2013, the Petitioner again stated that OA permission for April, 2012 had been inadvertently left out and that, hence, MSEDCL may consider its application for sale of power at APPC rate or sale of power to the third party, Jindal.
9. Vide letter dated 25 August, 2014, the Petitioner brought the following facts to the notice of MSEDCL:
    a. The Petitioner had received OA permission for third-party sale of power on 25 October, 2011 for the period 31 March, 2011 to 30 March, 2012. However, due to some ongoing policy issues, power adjustment had been

b. Meanwhile, MSEDCL stopped issuing new permissions for further periods till the policy matters were resolved. During this time, the Petitioner claimed REC for the period of April, 2012 and stopped claiming REC from May, 2012 onwards. The Petitioner received permission on 1 August, 2013 for sale of power to MSEDCL from 1 May to September, 2012.

c. The matter of approximately 12 lakh Units for the period of April, 2012 is not addressed by MSEDCL in any of its OA permissions, which has resulted in financial loss to the Petitioner. The Petitioner requested MSEDCL to issue third party sale permission or to purchase power at the APPC rate or at the preferential tariff for that month.

10. Vide letter dated 24 September, 2014, MSEDCL declined to purchase the power at the preferential tariff due to the claim of REC for April, 2012.

11. The OA permission was stalled by MSEDCL for various reasons. Being a RE Generator, the Petitioner had, therefore, requested MSEDCL vide letter 4 July, 2012 to purchase its power at the APPC rate for the period from April, 2012 to March, 2013 (i.e. FY 2012-13). Since the Petitioner did not receive any response from MSEDCL, it applied for OA for the period of FY 2012-13.

12. The Petitioner also stated that MSEDCL's contention that the Petitioner had not disclosed the fact that it had already claimed REC for the April, 2012 and was seeking adjustment for energy for that month contrary to the RPO Regulations, 2010 is false. MSEDCL was made fully aware of the REC claimed for April, 2012 through the Petitioner's letter dated July 4, 2012.

Commissions Ruling:

A. On 9 November, 2012, the Petitioner initially applied for OA permission for sale of its wind power to a third party, EON Kharadi, for the entire FY 2012-13. However, through two separate applications dated 6 December, 2012, the Petitioner instead

i. sought a revised OA period of October, 2012 to March, 2013 instead of the entire period of FY 2012-13 (which was granted by MSEDCL in February, 2013); and

ii. proposed that MSEDCL purchase the power injected from May to September, 2012 at the preferential tariff (which MSEDCL agreed to in August, 2013, having ostensibly received that application only in March, 2013).

B. Thus, the revised applications of 6 December, 2012 left out the month of April, 2012. The Petitioner has stated that there were certain ongoing OA policy issues regarding which the Hon'ble Commission restored the status quo ante through an interim Order at the end of April, 2012. Since it had initially sought to avail of the REC mechanism for that month instead of pursuing its application of November, 2012 for OA sale to EON Kharadi for the entire FY 2012-13, it also did not seek purchase at the preferential tariff for April, 2012 in those applications.

C. However, the Hon'ble Commission notes that, the power flow in April, 2012 not having been covered anywhere, including in third-party sale, on 10 December, 2012 asked MSEDCL to buy the power injected during that month at the APPC rate, to which MSEDCL did not immediately respond.

D. That being the position, on 25 August, 2013 the Petitioner requested MSEDCL for OA permission for April, 2012 for sale to EON Kharadi. On 25 September, 2013, MSEDCL informed the Petitioner that sale to MSEDCL could not be accepted since the Petitioner had claimed REC benefit for that month; and that OA permission for sale to EON Kharadi could also not be given due to inordinate delay. Subsequently, on 15 October, 2013, reiterating that the month of April, 2012 was inadvertently left out, the Petitioner again sought purchase of its power at the APPC rate or, alternatively, for OA permission for sale to another third party, Jindal.

E. At the hearing and in its Rejoinder, the Petitioner has referred to a letter dated 4 July, 2012 to MSEDCL seeking power purchase for the entire period of FY2012-13 (including April, 2012) at the APPC rate under the REC mechanism. MSEDCL has reservations on the authenticity of that letter purportedly bearing the stamp of the Commercial Department

and as having been received on 5 July, 2012, and could not locate it in its office. The Hon'ble Commission noted that that was a distinct difference in the manner in which that letter has been acknowledged by MSEDCL as against the other documents. Moreover, it was first cited only at the hearing and then in the Petitioner's Rejoinder, and not in the Petition. Considering these uncertainties, it would not be prudent to rely on that letter.

F. The sequence of letters and applications shows that the Petitioner has been changing its stand and the permissions sought from time to time. Nevertheless, it is not disputed that the Petitioner also wrote to MSEDCL on 10 December, 2012 asking it to purchase the power injected in April, 2012 at the APPC rate. While MSEDCL entertained and approved the two applications made only four days earlier (dated 6 December, 2012) for OA from October, 2012 to March, 2013 and for purchase at the preferential tariff for May to September, 2012, MSEDCL remained silent on the request to buy the power of the remaining month of April, 2012 at the APPC rate. It was only in September, 2013, i.e. 8 months later, that MSEDCL rejected that request stating that REC had been claimed for that month, thus foreclosing any other option the Petitioner might have considered had a timely reply been given; nor did it agree to OA permission sought in August, 2013 for sale to EON Kharadi for April, 2012 citing inordinate delay and the absence of an EPA. The Hon'ble Commission also noted that the CERC Regulations require sale of power to the Distribution Licensee at the APPC rate or third-party OA sale for the issue of RECs, but both were denied by MSEDCL and hence the Petitioner could not avail of RECs either. The Commission does not find merit in the grounds cited by MSEDCL as to why, when it was prepared to grant, retrospectively, OA permission for October, 2012 to March, 2013 at the end of that period, and to agree to purchase the power injected from May to September, 2012 at the preferential tariff after the financial year was over (and without requiring an EPA, which was another reason cited), it could not

agree to purchase the power for April, 2012 at the APPC rate in the circumstances of this Case set out above, and which it denied several months later.

G. Considering the foregoing, the Hon'ble Commission allowed the Petitioner's prayer and directed MSEDCL to purchase the power injected in April, 2012 at the APPC rate.

H. Consequently the Petition of M/s Shah Promoters and Developers in Case No. 55 of 2015 stands disposed of accordingly.

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Warm Regards,

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