

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION  
4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A.No.11 of 2015 in O.P.No.26 of 2012  
Date: 27-06-2015

Present  
Sri Justice G. Bhavani Prasad, Chairman  
Dr. P. Raghu, Member  
Sri P. Rama Mohan, Member

**Between:**

M/s. GMR Vemagiri Power Generation Limited  
Skip House, 25/1, Museum Road  
Bangalore - 560 025

...Applicant/Petitioner

**A N D**

1. Andhra Pradesh Power Coordination Committee (APPCC), Vidyut Soudha, Hyderabad  
Rep. by its Chief Engineer (Commercial)
2. M/s. Transmission Corporation of Andhra Pradesh Limited (AP Transco), Vidyut Soudha  
Khairatabad, Hyderabad - 500 082
3. Central Power Distribution Company of Andhra Pradesh Limited, 11-5-423/1/A, First Floor, Singareni Bhavan  
Lakdikapul, Hyderabad - 506 001  
Represented by its Managing Director
4. Southern Power Distribution Company of Andhra Pradesh Limited, Above Hero Honda Showroom, Renigunta Road  
Tirupati - 517 501
5. Northern Power Distribution Company of Andhra Pradesh Limited, 1-7-668, Postal Colony, Hanamkonda  
Warangal - 506 001
6. Eastern Power Distribution Company of Andhra Pradesh Limited, Sai Shakti, Opposite Saraswati Park  
Daba Gardens, Visakhapatnam - 530 020

...Respondents

The petition has come up for hearing on various dates including 27-06-2015 in the presence of Sri Kaustubh Mishra, learned counsel appearing on behalf of Sri S. Niranjan Reddy, learned counsel for the petitioner, Sri P. Shiva Rao, learned Standing Counsel for AP Discoms and Sri Y. Rama Rao, learned Standing Counsel for TS Discoms. After carefully considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following:

## ORDER

1. O.P.No.26 of 2012 on the file of the erstwhile Andhra Pradesh Electricity Regulatory Commission was filed for reimbursement of Minimum Alternate Tax (MAT) as per Article 3.8 of the Power Purchase Agreement dated 31-03-1997 to the generating company by the four distribution companies, Power Coordination Committee and Transmission Corporation of the erstwhile State of Andhra Pradesh along with late charges/interest under Article 5.11 of the Power Purchase Agreement. The claim was contested by the respondents and the Commission by an order dated 27-11-2012 referring to relevant paragraphs of the Power Purchase Agreement and the earlier orders in I.A.No.140 of 2011 in O.P.No.18 of 2009 and Appeal No.113 of 2012 by the Appellate Tribunal for Electricity, concluded that the petitioner is entitled for payment of MAT by the respondents under the relevant clauses of the Power Purchase Agreement both during the tax holiday period and after expiry of the same. The respondents, hence were directed to reimburse the MAT claim after due scrutiny together with interest as per the terms of the Power Purchase Agreement.
2. The Petitioner in O.P.No.26 of 2012 filed O.P.No.36 of 2014 before the Commission contending that the respondents be directed to pay the principal amount specified along with interest in compliance of the orders in O.P.No.26 of 2012. The matter is pending consideration of this Commission.
3. The respondents filed an appeal before the Appellate Tribunal for Electricity against the order in O.P.No.26 of 2012 dated 27-11-2012 along with I.A.No.409 of 2013 to condone the delay of 268 days. The application was dismissed and the appeal was rejected by an order dated 23-01-2014 and the respondents approached the Hon'ble Supreme Court of India in C.A. Diary No.17120 of 2014 in which the Hon'ble Supreme Court condoned the delay and admitted the appeal. The Hon'ble Supreme Court noted that actual amounts are yet to be quantified and directed the APERC to assess the amount said to be due to the respondents within a month from the date

and on such assessment being made, the appellants shall secure 50% of the amount due by way of bank guarantee on any nationalized bank and the remaining amount shall be paid directly to the 2<sup>nd</sup> respondent within one month thereafter.

4. The present application by the applicant is claiming quantification of the amount payable towards reimbursement of MAT dues including interest in compliance with the orders of the Hon'ble Supreme Court dated 13-03-2015.
5. The reimbursement claimed relates to the assessment years 2011-12 and 2012-13. On appearance of the parties before this Commission and appropriate directions given by this Commission for quantification of the amount to be reimbursed, ultimately by 20-06-2015, it was reported by the parties that no dispute remains about the principal amount of MAT payable in accordance with the interim directions of the Hon'ble Supreme Court relating to both financial years. It was also admitted that such principal amount due from the respondent Nos.4 and 6 has already been paid and the amount payable by the respondent Nos.3 and 5 is in the process of being finalized and paid. However, controversy remained about the liability to pay interest even under the interim orders of the Hon'ble Supreme Court, which is the subject of the present consideration.
6. When this question was the subject of the rival submissions on 16-05-2015, this Commission has noted that "The Hon'ble Supreme Court directed the assessment of the amount said to be due and securing and payment of amount due in equal percentages in its order and the reference to the amount due is in obvious reference to the amount directed to be reimbursed by the Commission in the order under appeal. In its order in O.P.No.26 of 2012 dated 27-11-2012, which is the order under appeal, the Commission directed that the respondents before it after due scrutiny of the MAT claim, have to reimburse the said amount paid by the petitioner together with interest as per the terms of the PPA. In the absence of any contrary indication in the order of the Hon'ble Supreme Court, the amount

due has to be understood by the parties for the purpose of compliance of the interim order as the amount thus directed by the Commission to be paid in the order under appeal. This clarification is given to avoid any ambiguity in compliance with the orders of the Hon'ble Supreme Court”.

7. Still it was contended that in identical cases, the same respondents were not made liable to pay any interest under any interim order and the learned counsel for both parties were requested to place before the Commission the details of such identical cases for determination of the issue if necessary by reconsideration of the order dated 16-05-2015 and the orders passed in O.P.No.61 of 2012 dated 08-08-2013 and I.A.No.140 of 2011 in O.P.No.18 of 2009 dated 10-12-2012 were placed before this Commission by the respondents along with a memo.
8. In O.P.No.61 of 2012, the erstwhile Andhra Pradesh Electricity Regulatory Commission dealt with a similar claim by M/s. Lanco Kondapalli Power Limited. By an order dated 08-08-2013, the Commission directed reimbursement of MAT payments after due scrutiny together with interest as per the terms of the Power Purchase Agreement. In C.A.No.6036 of 2012, the Hon'ble Supreme Court by order dated 17-09-2012 passed a similar interim order. In SLP Civil No.31244 of 2013 against the order in O.P.No.61 of 2012, the Hon'ble Supreme Court by order dated 17-10-2013 directed the matter to be listed along with C.A.No.6036 of 2012 referred to above and gave an interim direction directing the appellant Nos.2 to 6 to make the payments as directed by the Hon'ble High Court (which appears to be a reference to APERC which passed the order), in Para No.16 of the impugned order and 50% of the amount was directed to be paid in cash and the remaining 50% was directed to be secured by giving bank guarantee of a nationalized bank within three months. The payment directed by the Commission in Para No.16 of the impugned order was reimbursement of MAT amount together with interest as per the terms of the Power Purchase Agreement.

9. In I.A.No.140 of 2011 in O.P.No.18 of 2009, the erstwhile Andhra Pradesh Electricity Regulatory Commission by an order dated 10-12-2012 quantified the MAT to be reimbursed by the respondents for three financial years as per the orders of the Hon'ble Supreme Court dated 17-09-2012 above referred to and specifically dealt with the contention of the respondents about the payment of interest. In Para No.16 of the order, the Commission has noted that "The Hon'ble Supreme Court has directed to quantify the actual amounts payable to the petitioner. The quantification directed by the Hon'ble Supreme Court is in the context of the earlier order of the Commission regarding payment of MAT amount which was passed in pursuance of the order of Hon'ble ATE. Hence, the plea raised by the respondents that the Hon'ble Supreme Court has directed the Commission to quantify only the actual amount of MAT as per the entitlement ordered by the Commission but not the interest thereon as payable in terms of the PPA, is not correct". The Commission, therefore, directed the Discoms to compute the interest payable on the quantified MAT amount as per the provisions of the PPA and disburse the MAT amount together with interest in accordance with the directions of the Hon'ble Supreme Court.
10. Hence, either of the orders relied on by the respondents does not support the contention that the component of interest in the amount due as ordered by the APERC is not the subject of the interim directions of the Hon'ble Supreme Court. Such a plea ex-facie does not appear tenable and as the controversy is now confined only to interest, the pleadings of the parties relating to other issues need no reference and similarly the claim of the learned Standing Counsel for the respondents that as a matter of fact, any portion of the interest therein was not paid or secured by any bank guarantee under the interim directions of the Hon'ble Supreme Court in the other similar cases is of no significance as any such default has to be acted upon by the generating company therein and any inaction on their part cannot estop the petitioner herein from claiming the component of interest also under the specific interim directions of the Hon'ble Supreme Court.

11. For the above reasons, the order of this Commission dated 16-05-2015 needs no reconsideration and it is reiterated that the amount due has to be understood by the parties for the purpose of compliance of the interim directions of the Hon'ble Supreme Court, as the amount directed by the Commission to be paid in the order under appeal. Hence, both parties shall exchange their respective calculations of such interest component payable on the reimbursable MAT amount for both financial years in question as per the terms of the Power Purchase Agreement dated 13-03-1997 as amended from time to time within one week from today and in the event of a consensus on such amount, the respondents shall comply with the interim orders of the Hon'ble Supreme Court for payment of 50% and securing by way of bank guarantee, the remaining 50% within one week thereafter. In the event of any difference of opinion on the quantification of interest, the respondents shall comply with the interim orders of the Hon'ble Supreme Court to the extent of the interest payable as per their calculation within such time and the Commission will hear the parties further on such difference of opinion and pass necessary final orders for ensuring due compliance with the interim directions of the Hon'ble Supreme Court. Call on 04-07-2015 at 11:00 AM.

This order is corrected and signed on this 27<sup>th</sup> day of June, 2015.

Sd/-  
P. Rama Mohan  
Member

Sd/-  
Dr. P. Raghu  
Member

Sd/-  
Justice G. Bhavani Prasad  
Chairman