

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BANGALORE**

Dated : 4th February, 2016

Present :

Sri M.K. Shankaralinge Gowda	Chairman
Sri H.D. Arun Kumar	Member
Sri D.B. Manival Raju	Member

RP No.9/2014

BETWEEN :

M/s.CLP wind Farms (India) Private Limited,
Flat No.D-1, 3rd Floor,
Salcon Ras Vilas,
District Center, Saket,
NEW DELHI – 110 017.

.. **REVIEW PETITIONER**

[Represented by Trilegal, Advocates]

AND:

Bangalore Electricity Supply Company Limited,
K.R. Circle,
BANGALORE – 560 001.

.. **RESPONDENT**

[Represented by ALMT Legal, Advocates & Solicitors]

ORDERS

- 1) This Review Petition is filed by the Petitioner in OP No.21/2013 praying for deletion of Paragraph-(ii) of the operative portion of the Order dated 14.8.2014 passed by this Commission in OP No.21/2013, directing the Petitioner to furnish security in the form of a Bank Guarantee or in any other form acceptable to the Respondent-Bangalore Electricity Supply Company Limited (BESCOM), in respect of the Minimum Alternate Tax

(MAT) credit that would get set-off in future years after the expiry of the term of the Power Purchase Agreement (PPA) dated 28.10.2010.

- 2) Paragraph-(i) of the operative portion of the said Order dated 14.8.2014 declares that the Petitioner is entitled for reimbursement of the MAT paid by it during the subsistence of the PPA dated 28.10.2010 entered into between the Petitioner and the Respondent, subject to the maximum limit specified for the Wind Power Projects in the generic Tariff Order dated 11.12.2009 of this Commission.

- 3) During the arguments, the learned counsel for the Review Petitioner submitted that, an error apparent on the face of the record, even if it had occurred by reason of oversight on the part of this Commission, would be a sufficient ground to review its own decision. The learned counsel for the Review Petitioner further submitted that, reliance by this Commission on the decision of the Hon'ble Appellate Tribunal for Electricity (APTEL) dated 2.5.2014 in the case of *Bangalore Electricity Supply Company Limited and others -Vs- Tata Power Company Limited and another*, in Appeal No.330/2013 (Tata Power case), to direct the Petitioner to furnish security, as noted in Paragraph-(ii) in the operative portion of the Order in question, without there being comparable facts, is an oversight on the part of this Commission. Further, the learned counsel for the Review Petitioner submitted that, a direction to furnish security in the Tata Power case was ordered, as the term of the PPA in that case had already expired, and he

pointed out that in the present case, the term of the PPA had just commenced and therefore an order for furnishing the security in this case was not at all called for and it would be an unnecessary burden on the Petitioner.

- 4) The learned counsel for the Respondent (BESCOM) opposed the request made by the Review Petitioner and also contended that, as the Respondent (BESCOM) has filed an Appeal against the Order dated 14.8.2014 passed by this Commission in OP No.21/2013, the Review Petitioner could not have filed the present Review Petition before this Commission. We are of the considered view that, filing of an Appeal by the Respondent before the Hon'ble APTEL does not bar the Review Petitioner to file the present Review Petition before this Commission.

- 5) The following points would arise for our consideration :

(1) Whether the direction given to the Petitioner in OP No.21/2013 to furnish security, as noted at Paragraph-(ii) of the operative portion of the Order dated 14.8.2014 in the said case, amounts to an error apparent on the face of the record, in the facts and on the circumstances of the case?

(2) What Order?

6) **Point No.(1) :**

- (a) It may be noted that a Company has to pay higher normal tax liability or liability as per MAT provisions. If in any year, the Company pays liability as per MAT, then it is entitled to claim credit of MAT paid over and above the normal tax liability in the subsequent year(s). The provisions relating to carry forward and adjustment of MAT credit are stated in Section 115JAA of the Income Tax Act. The MAT credit can be carried forward only for a period of ten years, after which it will lapse. The credit of MAT can be utilized by a Company in the subsequent year(s). The MAT credit can be adjusted in the year in which the liability of a Company as per the normal provisions is more than the MAT liability. The set-off in respect of brought forward MAT credit shall be allowed in the subsequent year(s) to the extent of the difference between the tax on its total income as per the normal provisions and as per the MAT provisions.
- (b) For the year in which the MAT set-off is claimed, the tax liability for that year would be consequently reduced by the set-off amount and it is such reduced liability that would normally have been passed on to the Distribution Licensee in the subsequent year(s), had the PPA been subsisting. Therefore, the benefit of the set-off of the MAT at credit at the time of expiry of the PPA, in respect of a Project, requires to be passed on to the Distribution Licensee, as and when such credit gets set-off in the

subsequent year(s). For securing repayment of such set-off of the MAT credit to the Distribution Licensee by the Generator, which might take place after the expiry of the term of the PPA, proper security would have to be taken from the Generator.

(c) It is a fact that, in the Tata Power case (OP No.49/2012), the term of the PPA had expired by the time this Commission passed its Order on 10.10.2013 in the said case. In the Tata Power case, in order to protect the interest of the Distribution Licensee, security by way of a Bank Guarantee was ordered to be furnished for the prompt repayment of the MAT credit that would get set-off in future years after the expiry of the term of the PPA.

(d) In the present case (OP No.21/2013), the Petitioner has prayed for a direction against the Respondent (BESCOM) to refund / reimburse the MAT paid by it for the Financial Year 2012-13, attributable to the Wind Power Project of the Petitioner, and also to reimburse MAT or any other income tax, surcharge and cess paid in relation to the said Project, on an on-going basis, during the whole term of the PPA in question. In the present case, the term of the PPA is for twenty years from the Date of Commercial Operation (COD), i.e., from February, 2011. Therefore, the PPA would expire by February, 2031. The MAT liability paid by the Distribution Licensee for the first ten years of the term of the PPA would lapse by February, 2022. During the subsistence of the PPA, the MAT

liability reimbursed by the Distribution Licensee from the eleventh year onwards of the term of the PPA could be the subject matter for claiming set-off for the subsequent year(s), within a period of ten years. Therefore, the Petitioner is required to furnish security, for securing repayment of such set-off of the MAT credit, paid subsequent to the eleventh year onwards of the term of the PPA. In other words, the Distribution Licensee (BESCOM) can insist on the Petitioner to furnish security for the reimbursement of the MAT paid by the Petitioner from the eleventh year onwards of the term of the PPA. The Order in question passed by this Commission in the present case is also to the same effect as mentioned above. Therefore, there is no error in the said Order of this Commission, directing the Petitioner to furnish the security, as mentioned in Paragraph-(ii) of the operative portion of the said Order. The direction given in the said Order states that the Petitioner shall furnish security in the form of a Bank Guarantee or in any other form acceptable to the Respondent (BESCOM) in respect of the MAT credit that gets set-off in future years after the expiry of the term of the PPA. This would mean that the said direction to furnish security does not apply in respect of the MAT credit that gets set-off during the term of the said PPA. For the above reasons, we are of the considered opinion that the Order of this Commission does not require any review / modification. Accordingly, we answer Point No.(1) in the negative.

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7) **POINT No.(2)** :

For the foregoing reasons, we pass the following :

ORDER

The Review Petition stands dismissed.

Sd/-
(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-
(H.D. ARUN KUMAR)
MEMBER

Sd/-
(D.B. MANIVAL RAJU)
MEMBER