

**BEFORE THE HON'BLE MAHARASHTRA ELECTRICITY  
REGULATORY COMMISSION**

**AT MUMBAI**

**REVIEW CASE NO: \_\_\_\_\_ OF 2018**

**IN**

**CASE NO: 19 OF 2017**

**IN THE MATTER OF:**

REVIEW PETITION UNDER REGULATION 85 OF MAHARASHTRA  
ELECTRICITY REGULATORY COMMISSION (CONDUCT OF  
BUSINESS) REGULATIONS, 2004 READ WITH SECTION 94 (1) (F)  
OF THE ELECTRICITY ACT, 2003.

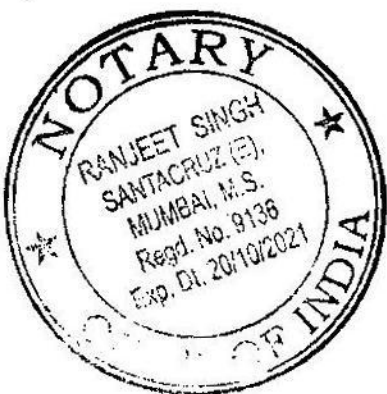
**AND**

**IN THE MATTER OF:**

REVIEW OF ORDER DATED 27.02.2018 IN CASE NO. 19 OF 2017  
PASSED BY THE HON'BLE COMMISSION.

**AND**

**IN THE MATTER OF:**



PETITION OF RATTANINDIA POWER LTD. REGARDING SALE OF  
UN-availed GENERATION CAPACITY TO THIRD PARTIES IN  
TERMS OF ITS PPAS WITH MAHARASHTRA STATE ELECTRICITY  
DISTRIBUTION CO.

**AND**

**IN THE MATTER OF:**

Maharashtra State Electricity Distribution Co. Ltd  
Through its The Chief Engineer (Power Purchase)  
5<sup>th</sup> Floor, Plot No G-9, Station Road,  
Prakashgad, Bandra (East), Mumbai- 400051

**....Review Petitioner/Applicant**

***Versus***


1. Rattan India Power Limited  
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2. Maharashtra State Load Dispatch Centre, Kalwa,  
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**....Respondents**

**MOST RESPECTFULLY SHOWETH:**


**1. DESCRIPITON OF PARTIES:**

(i) Maharashtra State Electricity Distribution Company



Limited (*hereinafter referred to as "MSEDCL" or "The Petitioner"*) is a Company constituted under the provisions of Government of Maharashtra General Resolution No. PLA - 1003 / C. R. 8588 dated 25<sup>th</sup> January 2005 and is duly registered with the Registrar of Companies, Mumbai on 31<sup>st</sup> May 2005. The Petitioner Company is functioning in accordance with the provisions envisaged in the Electricity Act, 2003 and is engaged, within the framework of Electricity Act, 2003, in the business of distribution of electricity to its consumers situated over the entire State of Maharashtra, except Mumbai City & its suburbs (excluding Mulund & Bhandup).

(ii) Rattan India Power Limited, the original Petitioner (*hereinafter referred to as "RIPL" or "Respondent No. 1"*) is a company engaged in the business of generation of electricity which owns and operates a 1350 MW (5 X 270 MW) coal fired power plant at Nandgaonpeth, Amravati District, Maharashtra. All these 5 generating companies have been commissioned and have been



generating and supplying the contracted capacity to MSEDCL since 03.06.2013.


(iii) Maharashtra State Load Dispatch Centre (*hereinafter referred to as "MSLDC" or "Respondent No. 2"*) is the apex body for integrated operation of electricity grid in the State of Maharashtra and constituted under Section 31 of the Electricity Act, 2003.

## **2. PROVISIONS FOR REVIEW:**

- Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004:


### **85. Review of decisions, directions, and orders:**

- (a) *Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, **upon the discovery of new and important matter or evidence which**, after*



*the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of **some mistake or error apparent from the face of the record**, or for any **other sufficient reasons**, may apply for a review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.*

- (b) *An application for such review shall be filed in the same manner as a Petition under these Regulations.*
- (c) *The Commission, shall for the purposes of any proceedings for review of its decisions, directions and orders be vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.*



(d) *When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.*

(e) *When the Commission is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the decision or order, the review of which is applied for.*

- *Section 94 (1) (f) of Electricity Act, 2003:*

**Section 94. (Powers of Appropriate Commission):**

(1) *The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil*

court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

- (a) .....
- (f) reviewing its decisions, directions and orders;  
.....

**3. ISSUES RAISED IN REVIEW (WITHOUT PREJUDICE TO ONE ANOTHER):**

- A. Cannot adjudicate dispute under PPA for non-tariff related matter for which a separate mechanism envisaged under the PPA itself.
- B. Cannot in any event clarify clauses of PPA which are not tariff related under adjudication of purported dispute for open access.
- C. Purported exercise of jurisdiction and adjudication of dispute when third party sale under PPA and open

*access entirely a different cause of action for which separate mechanism envisaged.*

*D. Error apparent in holding third party sale meaning open access.*

*E. Error apparent in holding third party sale allowable even below the contracted PPA rate. Records clearly reveal purported sale to third party under Open Access below contracted rate.*


*F. Third party sale allowed under the PPA only with intention to benefit both the parties and not to any third party which in this case may be the trader.*

*G. Error in holding that the price at which the Trader sells the power to its buyers is also unrestricted, but has no nexus with the PPA provisions.*

*H. Clause 4.5.3 has direct nexus with the profits that has to be shared mutually between the parties, in case of third party sales. Hence sale of power by*



*traders to buyers cannot be said to have no nexus with clause 4.5.3.*

- 
- I. Error in relying on old data on backing down instructions which has now completely changed as per change in scenario.*
- J. Error in not appreciating that 2 hours provision for recalling of power, directly related to universal service obligation and limiting third party sale only on hourly basis and not on RTC basis that too only limited to bilateral transactions.*
- K. 2 hour recalling powers clearly in line with the philosophy of making available the contracted power within 2 hours. Any long term third/short term RTC third party sale bound to defeat the recalling powers.*
- L. Error apparent as the order under review fails to take note that the realm of electricity happens in real time*



*situation and not on paper, hence black and white clause in a PPA has to be read in sync with the real time challenges.*

*M. Change in scenario as RIPL not even able to schedule 50% of contracted power.*

*N. Change in scenario as now MSEDCL not in a position to issue advance standing instructions for Zero Scheduling that too for an identified date as was the position earlier.*

*O. MSEDCL's universal Service Obligation and Standby Support to other Discom's and Deemed Discom's to the tune of 500 MW not accounted for.*

*P. Coal linkage vis a vis lower coal rate being allowed after PPA with MSEDCL. Same being allowed to be utilized for private purposes rather than public good.*

*Q. Allowing Open Access through the contracted PPA power only creating a vicious circle of demand and*


*supply gap as well as burdening normal consumers of MSEDCL with costly power.*

*R. Erroneously equating unscheduled power meaning un-dispatched power.*

**4. GROUNDS (WITHOUT PREJUDICE TO ONE ANOTHER):**

- (i) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously interpreted clauses of PPA related to non-tariff issues for which a separate mechanism of Arbitration is provided for under the PPA.
- (ii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to appreciate that clauses in the PPA are sacrosanct and cannot be modified meaning thereby that remedies provided under the clauses can be availed only under the

adjudicatory mechanism envisaged under the PPA and not otherwise.




(iii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erroneously not appreciated that the Hon'ble Commission has not been entrusted with the responsibility under the PPA to interpret or adjudicate disputes related to non-tariff issues arising out of the PPA.

(iv) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to appreciate that no third party sale can be allowed under clause 4.5.3 of the PPA when the purported third party sale is below the contracted price.

(v) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to appreciate that third party sale is only allowed when such sale results in mutual

financial benefit of both the parties and not otherwise.



(vi) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to appreciate that third party sale is completely different from open access.

(vii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to appreciate that the purported record of GEPL/trader considered as third party sale clearly establishes that the said price was lower than MSEDCL contracted rate as per PPA. Hence any consequential order would be rendered ineffective of the premises of the order is itself incorrect.


(viii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to appreciate that third party sale

allowed under the PPA can only be bilateral and not through a trader.

(ix) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erred by holding that price at which the trader sells power to its buyers is unrestricted and has no nexus with clause 4.5.3 of the PPA. Clause 4.5.3 is for the mutual benefit of the parties and not for the benefit of a third party.

(x) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has failed to understand that allowing a trader to mean third party sale would lead to absurdity of determination of actual sale price as a trader makes windfall margins given the fact that no trading margins are fixed in Maharashtra. Such windfall margins would be at the behest of MSEDCL's interest.

- (xi) That the present review petition is filed on discovery of new and important data which was not a part of the record when the order was passed. It is a matter of fact that in spite of MSEDCL giving 100% schedule to RIPL recently, RIPL has failed to supply even 50% of such contacted capacity.
- (xii) That the present review petition is filed on discovery of new and important data which was not a part of the record when the order was passed. This Hon'ble Commission relied on data and circumstances which were for the period 15.02.2016 and 23.02.2016. Now the circumstances have changed and MSEDCL is not in position to issue any future standing instructions to backing down. The power demand scenario in last one and half year has tremendously changed due to the various reasons like (a) Seasonal Temperature Variations.



irrigation projects. (b) irregular rains in monsoon period i.e. unpredictable dry spell and heavy raining. (c) The good monsoon and availability of water in certain areas of Marathwada. Further the availability of the thermal units has become unpredictable due to the shortage of coal scenario nationwide and transportation of coal facility.

- (xiii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erred by not appreciating that the time frame of 2 hours available to MSEDCL to recall the power mandates that RIPL cannot get into any short term/long term RTC supply of power to third parties and can only be for a very meagre intermittent period. Moreover prayer made by RIPL for relaxation of 2 hours period makes it evident that allowing any third party sale would defeat the intent of the PPA as RIPL would not be in a position to supply power to


MSEDCL in a case of recall of such power by MSEDCL.

- (xiv) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erred by not appreciating that flow of electricity happens in real time and the terms of the PPA has to be read as per the real ground scenario. Hence, clause 4.5.3 has to be read in sync with the universal service obligation of MSEDCL. Any default by RIPL in making power available within 2 hours of recall would severely jeopardize the universal service obligation of MSEDCL.
- (xv) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erred by not appreciating that apart from MSEDCL's own demand there is demand of other DISCOM's and Deemed Discom's to the tune of 500 MW which needs to be met by MSEDCL by providing standby support. Such

demands are largely unforeseeable. Hence allowing third party sale can cause severe detriment of interest of all Discom's.

- (xvi) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erred by not appreciating that the FSA of RIPL is based completely on the PPA with MSEDCL. Such subsidized supply of fuel is for the benefit of MSEDCL and not for some third party or trader.
- (xvii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erred by overlooking the large issue of allowing open access through the contacted capacity from the PPA. This would further create a vicious circle of demand and supply gap and would also negatively impact the consumer of MSEDCL financially. A PPA is for the benefit of parties and not to their derogation. Moreover a long term PPA takes






into account all intermittent factors and such minor intermittent factors cannot usually be used to disrupt a chain of transaction which otherwise is completely for the benefit of consumers of State.

(xviii) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has erred by not appreciating that the word "ordinarily" appearing in clause 4.5.2 (i) of the PPA which means in ordinary circumstances and not otherwise. The backing down instructions issued in past were not ordinary circumstances and were circumstances beyond the control of MSEDCL.

(xix) That the Hon'ble Commission's order is vitiated by error apparent as the Hon'ble Commission has the Hon'ble Commission has erred by holding unscheduled power in same parlance to un-dispatched power. It is submitted that



unscheduled power can never mean un-dispatched power un-dispatched power can only be known around 4 PM on a daily basis as per the Scheduling and Dispatch Code.

5. The Petitioner states that this Hon'ble Commission has the jurisdiction to adjudicate the present dispute.
6. The Petitioner states that there is no delay in filing the review petition and the same is filed well within limitation.
7. The Petitioner craves leave of this Hon'ble Commission to add/amend/substitute the present petition with the prior permission of this Hon'ble Commission.

### **PRAYER**

In view of the above, it is therefore most respectfully prayed that this Hon'ble Commission may graciously be pleased to:

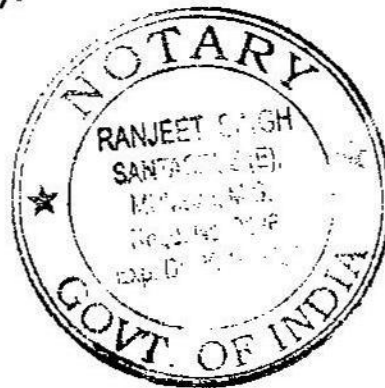
- a) Review the order dated 27.02.2018 passed in Case No. 19 of 2017 by allowing the present review petition.

- b) Declare that the contracted capacity under the PPA is the exclusive right of MSEDCL which under ordinary circumstances cannot be taken away under the guise of a third party sale; or in the alternative;
- c) Hold that this Hon'ble Commission had no jurisdiction to adjudicate upon a non-tariff related issue arising out of the PPA.
- d) Pass such further orders as this Hon'ble Commission deems fit and proper in the interest of justice and good conscience.

It is prayed accordingly.

Date:

Place: Mumbai



*S. Pharat*  
Deponent  
Chief Engineer (Power Purchase)  
MSEDCL C. L.

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**AND**

**IN THE MATTER OF:**

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5<sup>th</sup> Floor, Plot No G-9, Station Road,  
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**....Review Petitioner/Applicant**


***Versus***

1. Rattan India Power Limited  
5th Floor, Tower-B, Worldmark-1,  
Aerocity, New Delhi - 110 037  
E-mail: [nilesh.thakur@rattanindia.com](mailto:nilesh.thakur@rattanindia.com)
2. Maharashtra State Load Dispatch Centre, Kalwa,  
Thane - Belapur Road, Airoli,  
Navi Mumbai - 400 708  
E-mail: [cesldc@mahasldc.in](mailto:cesldc@mahasldc.in)

**....Respondents**

**AFFIDAVIT VERIFYING THE REVIEW PETITION**

I, Kavita Gharat, age 40 years, having office at MSEDCL, Prakashgad, Plot No.G-9, Anant Kanekar Marg, Bandra (East), Mumbai 400 051 do solemnly affirm and say as follows:



I say that I am the Chief Engineer (Power Purchase), of the Review Petitioner above named. I have read the copy of the present Review Petition and also the records and proceedings to the present proceedings as available in my office and therefore, able to depose on the same as duly authorized by the Review Petitioner above named.

**2** The statements made in paragraphs 1 to 2 of the petition are true to my knowledge and belief and are based on information and I believe them to be true. That the statements made in Para 3 to 7 are legal submissions based on the advice of my advocate.

**3** I say that there are no proceedings pending in any court of law/ tribunal or arbitrator or any other authority, wherein the Applicant are a party and where issues arising and/or reliefs sought are identical or similar to the issues arising in the matter pending before the Commission.

Solemnly affirm at Mumbai on this 10<sup>th</sup> day of April, 2018 that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

( )

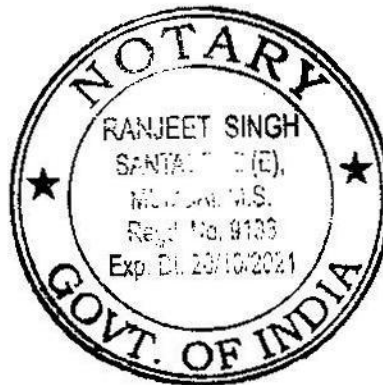
( )

Identified before me

Mumbai

Dated: 10 APR 2018

*Rgharal*  
Deponent  
Chief Engineer (Power Purchase)  
M. S. E. D. C. L.



BEFORE ME  
*Rsmbs*  
RANJEET SINGH  
M.Sc LL B.  
NOTARY  
MAHARASHTRA  
GOVT OF INDIA  
10 APR 2018

