

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case No. HERC/PRO-43 of 2019

**Date of Hearing : 04.02.2020
Date of Order : 24.02.2020**

IN THE MATTER OF:

Petition under Section 142 and 146 of the Electricity Act, 2003 read with Haryana Electricity Regulatory Commission (Terms and Conditions for grant of connectivity and open access for intra-state transmission and distribution system) Regulations, 2012 (as amended from time to time) and other enabling provisions under the EA-2003 and Rules/Regulations framed thereunder.

Petitioner M/s. Jindal Stainless (Hisar) Limited (JSL)

Respondents 1. Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL)
2. Haryana Vidyut Prasaran Nigam Limited (HVPNL)

Present On behalf of the Petitioner

1. Shri R.K. Jain, Advisor, M/s. JSL

Present On behalf of the Respondents

1. Shri Samir Malik, Advocate for DHBVNL
2. Shri Pankaj Singhal, Xen/Open Access, HVPNL
3. Shri Arun Kumar, Sr. AO/Operation for DHBVNL

Quorum

**Shri Pravindra Singh Chauhan, Member
Shri Naresh Sardana, Member**

ORDER

Brief Background of the Case

1. The present petition has been filed by M/s. Jindal Stainless (Hisar) Limited seeking directions against DHBVNL for refund of UI Charges for the period November 2013 to October 2016 along with interest @ 12%.
2. The petitioner has submitted as under: -
 - a) That the Petitioner is large supply industrial consumer of the Respondent Nigam with a sanctioned contract demand of 120 MVA and is getting power supply on 220 kV through an independent feeder.
 - b) That the Petitioner have been using Inter-State and intra-State open access facilities to wheel its captive power from Odisha and power purchased over Indian Energy Exchange (IEX), guided by the Open Access Regulations framed by Central Electricity Regulatory

- Commission (CERC) for Inter-State Open Access and Haryana Electricity Regulatory Commission (HERC) for intra-State Open Access transactions.
- c) That CERC notified the Central Electricity Regulatory Commission (Open Access in Inter-state Transmission) Regulations, 2004 on 30.01.2004. These Regulations were replaced with the Central Electricity Regulatory Commission (Open Access in Inter-state Transmission) Regulations, 2008 dated 25.01.2008 and amended on 20.05.2009. Regulation 20 of these Regulations deal with the Unscheduled Inter-change (UI) Charges. The Regulation reads as under:-
- “Unscheduled Inter-change (UI) Charges***
- 20. (1) All transactions for State utilities and for intra-State entities scheduled by the nodal agency under these regulations, shall be accounted for and included in the respective day-ahead net interchange schedules of the concerned regional entity issued by the Regional Load Despatch Centre.*
- (2) Based on net metering on the periphery of each regional entity, composite UI accounts shall be issued for each regional entity on a weekly cycle and transaction-wise UI accounting, and UI accounting for intra-State entities shall not be carried out at the regional level.*
- (3) The State utility designated for the purpose of collection / disbursement of UI charges from / to intra-State entities shall be responsible for timely payment of the State’s composite dues to the regional UI pool account.*
- (4) Any mismatch between the scheduled and the actual drawal at drawal points and scheduled and the actual injection at injection points for the intra-State entities shall be determined by the concerned State Load Despatch Centre and covered in the intra-State UI accounting scheme.*
- (5) Unless specified otherwise by the concerned State Commission, UI rate for intra-State entity shall be 105% (for over-drawals or under generation) and 95% (for under-drawals or over generation) of UI rate at the periphery of regional entity.”*
- d) That the State Commission (HERC) notified the Haryana Electricity Regulatory Commission (Terms and Conditions for Intra-State Transmission and Distribution System) Regulations, 2005, which were replaced by HERC/25/2012 Regulations on 11.01.2012 and later on amended vide HERC/25/2012/1st Amendment/2013 dated 03.12.2013. Regulation 17 of HERC Open Access Regulations HERC/11/2005 read as under:-
- “17. Unscheduled Interchange Charges:***
- The payment for mismatch between the schedule/ actual injection in the grid and the actual drawal shall be governed by the pricing mechanism as specified by the Commission for the State from time to time.”*

- e) That the Petitioner, under the enabling provisions of the EA-2003 read with the HERC Open Access Regulations HERC/11/2005, started buying 10 MW power through Indian Energy Exchange (“IEX”) from September, 2009 under short term open access after obtaining necessary concurrence/no objection from the SLDC. In April 2010 the Petitioner sought credits in its bills for under-drawal of energy according to the Inter-State Open Access Regulations of the Central Commission for the period November, 2009 to March, 2010. The Petitioner again reminded Respondent No.1. However, the Respondent No.1 advised the Petitioner to take up the matter with the SLDC.
- f) That aggrieved by the non-cooperative attitude of the Respondent No.1, the Petitioner filed a petition before the Commission seeking directions to allow UI payments as per the Central Commission’s Short Term Open Access Regulations till such time the State Commission notified its own intra-state UI accounting mechanism.
- g) That the Commission considered the issues raised through this Petition and passed its order on 03.12.2010. Some of the relevant extracts from this order are reproduced hereunder:-

“The Commission has examined the issue at length and also considered the view point of all the stakeholders. Given the peculiar situation obtaining with regard to under-drawl of power by open access consumers, Commission feels that it would be reasonable to compensate such consumers for the mismatch between the sanctioned open access load and actual drawl at UI rates as per CERC regulations or the approved average cost of power purchase of the distribution licensees whichever is lower. The settlement shall be based on the composite accounts for imbalance transaction issued by the SLDC on weekly basis on net metering.

The petitioner i.e. M/S JSL Limited shall be compensated by the distribution licensee accordingly for all the power under drawn by them and consumed by other consumers of the distribution licensee since September, 2009. The Commission shall make necessary provisions relating to imbalance charge in its relevant regulations and after notification of those regulations the rates specified therein shall be applicable.”

- h) That Respondent No. 1 filed an appeal against this order of the Commission before Hon’ble APTEL through Appeal No. 44 of 2011. Hon’ble Tribunal passed its order on 06.09.2011. Some of the relevant extracts from this order are reproduced hereunder:-

*“15. In view of the above, **we hold that the second respondent has to be compensated for by the appellant for the energy underdrawn by the second respondent.** Though we feel that the compensation should be according to the Regulation 20(5) of the Central Commission Open Access Regulations as the State Commission has not notified the intra-state UI rate, the second respondent has accepted the compensation decided by the State Commission i.e. as per CERC Regulations or the approved average cost of power purchase of the distribution licensees whichever is lower. In view of the contention of the second respondent, we do not want to interfere with the decision of the State Commission.*

16. *The representative of the second respondent has stated that UI charges have not been paid by the appellant inspite of the order of the State Commission dated 3.12.2010 and verbally requested during the argument that the same should be paid with interest. We are not in a position to grant any interest to the second respondent for the past period as he has neither prayed for payment of interest before the State Commission nor filed any petition for the same before us. However, we feel that the appellant has unnecessarily withheld the UI charges for which the second respondent was entitled to despite the order of the State Commission and considering the fact that it was the beneficiary of the UI charges for the energy underdrawn by the respondent from the regional UI account. In view of this, we impose a cost of Rs. 50,000/- on the appellant to be paid to the second respondent.*

17. *Accordingly, we direct the first appellant to pay the UI charges to the second respondent in terms of the order dated 3.12.2010 of the State Commission within a period of 30 days from the date of this order. The delay beyond 30 days will attract a simple interest of 12% on the amount due to the second respondent."*

- i) That the Respondent Nigam paid the UI charges in compliance to the above order and continued doing so till October 2013 though in a time gap of 2-3 months from the due date. The Petitioner submitted its claim for the period November 2013 to March 2014 vide letter dated 17.06.2014 followed by further claims up to October 2014 submitted on 04.12.2014. The matter continued to be in correspondence with the Respondent Nigam all through.
- j) That the Petitioner also submitted an Undertaking to the Respondent Nigam vide letter dated 12.12.2014, which said, "We undertake that if audit party of Nigam point out any discrepancy in calculations, we are ready to overhaul the account accordingly." After constant follow up the Respondent Nigam finally supplied a copy of UI Compensation Calculations for the period Nov. 2013 to March 2014 vide letter dated 18.12.2014.
- k) That the Respondent Nigam released a part payment of Rs.77,35,789/- against the claim of Rs.1,04,51,397/- i.e. short by Rs.27,15,608/-. The Petitioner took up the matter with the Respondent Nigam vide letter dated 07.02.2015 for refund the balance amount as well. Simultaneously, the Petitioner continued filing its claims for the UI charges from time to time.
- l) That the Petitioner has been pursuing for the refund of UI Charges for the period November 2013 to October 2016 and various references have been made in addition to the personal meetings with the concerned officers of the Respondent Nigam. Statement showing the refund of UI Charges claimed since the period November 2013 till October 2016 has been enclosed which show that against the UI charges claim of Rs.7,92,26,722/- for the period November 2013 to October 2016 (36 months) only a small payment of Rs.77,35,789/- has been made.
- m) That the Petitioner has a 2x125 MW coal based captive power plant at its works in Odisha. Part of this power has been wheeled from Odisha to Hisar through Medium Term and

Short Term Open Access since November 2011 with approval from NERLDC and NOC/concurrence from Haryana SLDC/Respondent Nigam. It was in January 2013 that the Respondent Nigam asked the Petitioner to submit supporting data about the captive power plant in Odisha. The Petitioner replied to this reference vide letter dated 05.02.2013. The Respondent Nigam issued instructions for obtaining an Affidavit from all the Captive Generator owners on Rs. 100 Non-Judicial Stamp Paper and necessary financial data vide Sales Circular No. 65/2013 dated 19.11.2013. In compliance to these instructions, all the necessary data was furnished by the Petitioner Company vide letter dated 21.12.2013 alongwith the necessary Affidavit on Rs.100 Non-judicial Stamp Paper. The Respondent Nigam again asked for the compliance of Sales Circular D-65/2013 vide letter dated 28.01.2015 and duly replied by the Petitioner through letter dated 06.02.2015.

- n) That Section 142 and Section 146 of EA-2003 empower the Commission to take punitive action against the persons violating the directions, orders or Regulations framed by the Commission. These sections read as under:-

Section 142. (Punishment for non-compliance of directions by Appropriate Commission):

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.

Section 146. (Punishment for non-compliance of orders or directions):

Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:

- o) That the following prayer has been made:-
- a) The petition may kindly be accepted in the present form;
 - b) The Respondent No. 1 may kindly be directed to immediately pay the refund of UI Charges for the period November 2013 to October 2016;
 - c) The Respondent No. 1 may also be directed to pay interest @12% on the amount of UI Charges claimed by the Petitioner Company from the date these payments became due to the date of actual payment;

- d) May kindly inflict punishment to the concerned persons who have been sitting over the pending claims and causing financial loss and resultant hardship to the Petitioner Company;
- e) May kindly grant any other relief admissible to the Petitioner Company.

Proceedings in the Case

3. The matter was heard on 04th February, 2020 as scheduled. In the earlier hearing held on 04th December, 2019, the Commission had observed that it would be appropriate to first decide the petition filed by DHBVNL seeking clarification on Regulation clauses of Haryana Electricity Regulatory Commission (Terms and Conditions for grant of connectivity and open access for intra-state transmission and distribution system) Regulations, 2012 (as amended from time to time), which are applicable in the present case. Accordingly, the Commission vide its Order dated 09.12.2019, disposed of petition no. HERC/PRO-56 of 2019 filed by DHBVNL, clarifying as under:-

"4....."

In view of the above, exercising the power to remove difficulties, vested under Regulation clause 58 of HERC OA Regulations, the Commission considers it appropriate to clarify as under:-

"The settlement of energy as in respect of embedded open access customers shall be done by first adjusting the entitled drawl through open access and while doing so the following order of priority shall be followed:-

- 1. Solar generation after deduction of losses.*
- 2. Captive Power*
- 3. Banked Energy from Solar*
- 4. Open Access Power through Exchange*
- 5. Discom power"*

Further, the Commission does not agree with the contention of the Petitioner that power purchase price for supply of power availed through captive generating plant shall be considered as Nil. Undoubtedly, the generation of power, be it for own use or for sale, has cost associated with it and the onus of providing the evidence of the same lies with the generator."

4. After hearing the parties at length, Sh. Samir Malik, Ld. Advocate, appearing on behalf of the Respondents, sought time to submit detailed written submissions in the matter. Accordingly, acceding to the request of DHBVNL, the Commission, vide its Interim Order dated 04.02.2020, allowed them to file their summarized concluding submissions.
5. In response to the Interim Order of the Commission, DHBVN filed its concluding submissions as under:-

Petitioner's Claim barred by Limitation.

- (A) That the present petition was filed before this Commission on 29.07.2019

- (B) That the Petitioner is claiming recovery of alleged UI Charges for the period between November, 2013 to October, 2016. In this regard, following submissions have been made:-
- (a) Article 113 of the Schedule of the Limitation Act, 1963 provides a limitation of 3 years from the date when right to sue accrues. In this case, right to sue accrued on the date(s) of the Petitioner's underdrawl of electricity and non-settlement/non-payment of alleged UI Charges in the month succeeding the open access transaction of underdrawl. It is noteworthy that the Petitioner's exact case as argued during the course of hearing was that the Respondent No.1 ought to have paid the alleged UI Charges in the month ensuing subject open access transaction of underdrawl. Thus, applying this test also Petitioner is not entitled to claim any alleged UI Charges for the period before 28.07.2016 and the same ought to be rejected by this Commission. As such, the Petitioner's claim at least to this extent is barred by the law of limitation for not having taken out appropriate proceedings for recovery of these alleged charges within the prescribed time period.
- (b) In this context, the Hon'ble Supreme Court in A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd., (2016) 3 SCC 468 in the context of Electricity Act, 2003, held as under:

"30. In such a situation it falls for consideration whether the principle of law enunciated in State of Kerala v. V.R. Kalliyankutty [State of Kerala v. V.R. Kalliyankutty, (1999) 3 SCC 657] and in New Delhi Municipal Committee v. Kalu Ram [New Delhi Municipal Committee v. Kalu Ram, (1976) 3 SCC 407] is attracted so as to bar entertainment of claims which are legally not recoverable in a suit or other legal proceeding on account of bar created by the Limitation Act. On behalf of the respondents those judgments were explained by pointing out that in the first case the peculiar words in the statute—"amount due" and in the second case "arrears of rent payable" fell for interpretation in the context of powers of the tribunal concerned and on account of the aforesaid particular words of the statute this Court held that the duty cast upon the authority to determine what is recoverable or payable implies a duty to determine such claims in accordance with law. In our considered view a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Sections 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power under Section 86(1)(f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time-barred claims, there is no conflict between the provisions of the Electricity Act and the Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation, on account of the provisions in Section 175 of the Electricity Act or even otherwise, the power of adjudication and

determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. **In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.**

31.....Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court. But in an appropriate case, a specified period may be excluded on account of the principle underlying the salutary provisions like Section 5 or Section 14 of the Limitation Act. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory.
(Emphasis supplied)

- (C) The Petitioner cannot invoke the provisions of Sections 142 and 146 of the Electricity Act, 2003 to raise a stale and time barred money claim. In this regard, following submissions have been made:-
- (i) Proceedings under Section 142 and 146 of the Electricity Act, 2003 has been filed alleging that the Respondent No.1 violated O.A Regulations between November 2013 to October, 2016 by not making payment of UI Charges to the Petitioner. Thus, Right to sue/cause of action for filing such petition for alleged violation of the OA Regulations by non-payment of alleged UI Charges for the period between 01.11.2013 to 28.07.2016 expired on 29.07.2019.
 - (ii) As such, the present petition in so far as it relates to the period between 01.11.2013 to 28.07.2016 deserves to be dismissed for this reason also.
 - (iii) The proceedings under Section 142/146 of the Electricity Act, 2003 are in the nature of contempt proceedings. Unlike Section 20 of the Contempt of Court Act, 1971 which provides limitation of 1 year for filing a contempt petition, though the Electricity Act, 2003 does not prescribe limitation for filing petition under section 142/146 the provisions/principles of the Limitation Act would apply to the

proceedings under Section 142/146 particularly when money claims are sought to be raised. In this regard, following judgments are noteworthy:-

M.S Shoes East Ltd. v M.R.T.P and Ors, MANU/DE/0947/2003, wherein Division Bench of the Hon'ble High Court of Delhi in context of similar issues under M.R.T.P Act held that:-

*“26. We have heard the learned counsel for the parties at length and perused the various judgments delivered by the Apex Court and other Courts carefully. There is no doubt that the Legislature in its wisdom has not prescribed any limitation for preferring compensation petition under Section 12B of the MRTTP Act. There are large number of similar Acts where the legislature in its wisdom has not specified a period of limitation. **On proper analysis of various judgments of the Apex Court and the other courts, the ratio which clearly emerges is that all those cases where the legislature has not specified any statutory time limit, the claim has to be filed within reasonable time. In afore-mentioned judgments of the Apex Court particularly in the case of Corporation Bank (Supra) the Supreme Court observed that Act in which no statutory limitation has been prescribed that does not mean that claim petition can be entertained anytime. The ratio of the judgment is that the claim ought to be made within reasonable period. What is the reasonable time to lay a claim depends upon the facts of each case. In the legislative wisdom, three years period has been prescribed to lay a claim for money. The court observed that the period of three years is the reasonable period to raise a claim in a matter of this nature. The claim of the petitioner is in the nature of a money claim and on the analogy of the Corporation Bank (Supra) the claim ought to have been filed within the statutory limit for filing such claims by way of civil suits, i.e., three years. In the Corporation Bank's (Supra) case their Lordships of the Supreme Court examined the facts of the case in detail and thereafter observed that the claim involved in that case was essentially for money. In this view of the matter, the court observed that the period of three years is the reasonable time to raise a claim in a matter of this nature. This is also in consonance with the provisions of the Limitation Act.***

27. Learned counsel for the petitioners do not dispute the proposition that in cases, where there is no statutory limit, a claim ought to be filed within a reasonable period. The grievance of the petitioner is that in the instant cases without examining the facts and circumstances of the petitioner's cases the Commission applied the limitation of three years and dismissed the petitioner's cases. He submitted that these cases deserve to be remanded to the Commission for examining them on the facts and circumstances of each case.

28. *The cause of action in these cases arose somewhere in the year 1995. These cases have been pending since then. Remanding these cases at this stage to the Commission would mean further delay in disposal of these cases. To satisfy the petitioner even from this angle also, instead of remanding these cases to the Commission to avoid further delay we have carefully examined the facts and circumstances of these cases in extenso. In these cases the petitioners have calculated their claims for exact amounts because of deficiency of services by the undertakers/brokers who offered their underwriting and/or procurement services for public issue of the petitioner in 1995. **All claims cases of the petitioners are money claims.***

29. *Their Lordships of the Supreme Court aptly observed in the Corporation Bank (supra) that even when the Legislature has not specified any statutory time limit, the claim has to be filed within reasonable time. The Court further held what is reasonable time to lay claim depends upon the facts of each case. In the Legislative wisdom three years period has been prescribed to lay a claim for money. **The Court observed that the period of three years is reasonable time to raise a claim in a matter of this nature. The claim which has been sought by the petitioner is in the nature of a money claim and on the analogy of Corporation Bank's Case (supra), the claim ought to have been filed within statutory period of three years. The Commission has correctly appreciated the ratio of the Corporation Bank.** It was also submitted by the counsel for the respondent that the Commission has been consistently following the ratio of Corporation Bank in similar cases for several years.*

30. *In our considered opinion, no interference is called for with the impugned judgment of the Commission. These petitions being devoid of any merits and are accordingly dismissed. In the peculiar facts and circumstances of the case, we direct the parties to bear their own costs.” (Emphasis supplied)*

North Delhi Power Ltd. vs. Indian Hydraulic Industries (P) Ltd. MANU/DE/3116/2012, wherein the Hon'ble High Court of Delhi held as under:-

*“12. It is also relevant to note that **the cause of action for filing a claim of recovery against the petitioner/NDPL had accrued in favour of respondent No. 1/Consumer way back in the year 1993.** Even if, the period of three years is reckoned from the year 1999, i.e., the year when the connection was apparently converted from LIP to SIP, it would have taken the respondent No. 1/Consumer upto the year 2002 and not beyond that. **Respondent No. 1, however, approached the***

M RTP Commission after a period of six years therefrom, i.e., in the year 2008 and it approached the CGRF after a period of seven years therefrom, i.e., in the year 2009. While the complaint of the respondent No. 1/Consumer filed before the MRTP Commission was rejected with liberty granted to it to approach the appropriate forum under the Electricity Act, it is a matter of record that respondent No. 1 approached the CGRF only in the year 2009, after about six months after the order of the MRTP Commission was passed. Even in the complaint filed before the CGRF, respondent No. 1 had again claimed that the period of limitation stood extended in its favour by predicating its case on the letter dated 21.07.2005 addressed by the petitioner to it.

*13. The fact remains that **for the purpose of calculating limitation, only the complaint filed by the respondent No. 1/Consumer is required to be examined and a perusal of the application filed by it before the CGRF reveals that the respondent No. 1 had itself acknowledged in paras 27 and 30 thereof that the petitioner/NDPL had converted the connection from LIP to SIP in March, 1999 and it had installed a new meter on the basis of completion of commercial formalities, that had taken place long ago. In such circumstances, the complaint of respondent No. 1/Consumer was not maintainable before the CGRF, the same being hopelessly barred by limitation.*** (Emphasis supplied)

- (D) The Petitioner during the course of arguments sought to raise an argument that it has been writing letters/reminders/representations to the Respondent No.1 for payment of the alleged UI Charges. But, Petitioner received no response and that the Respondent No.1 denied the Petitioner's claim for the first time in its reply filed before this Commission. Basis this, the Petitioner submitted that its claims are not time barred. It has been submitted that this contention of the Petitioner is contrary to settled tenets of law, which lay down that (a) writing letters/reminders does not extend the period of limitation and that (b) the limitation would start from the date cause of action/right to sue arose and not from rejection of a representation. In this regard, reliance is placed on the judgment passed by the Hon'ble Supreme Court in **State of Tripura and Ors. vs. Arabinda Chakraborty and Ors.: MANU/SC/0342/2014**, holding as under:-

*"11. In our opinion, the suit was hopelessly barred by law of limitation. **Simply by making a representation, when there is no statutory provision or there is no statutory appeal provided, the period of limitation would not get extended. The law does not permit extension of period of limitation by mere filing of a representation. A person may go on making representations for years and in such an event the period of limitation would not commence from the date on which the last representation is decided. ...***

..

14. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the Respondent and if the Respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The Respondent kept on making representations one after another and all the representations had been rejected. Submission of the Respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done.” (Emphasis supplied)

Re: No Money Claim can be raised in proceedings under Section 142/146 of the Electricity Act, 2003.

(E) The Petitioner have essentially raised a money claim and seek to recover the monies basis the erroneous contentions raised in the Petition. In this regard, it is submitted that these proceedings are in the nature of contempt proceedings and cannot be used to raise and recover money claims. It is further submitted that adjudication of the present money claim raised by the Petitioner would require adjudication of several disputes questions of facts, which cannot be done in contempt jurisdiction under Section 142 and 146 of the Electricity Act, 2003.

(F) Without prejudice to the above, it is also submitted that the money claim that the Petitioner seeks to raise pertain to Respondent No.1's embedded consumer and the dispute sought to be raised by the Petitioner is essentially a billing dispute for which the appropriate forum is CGRF. However, the Petitioner has approached this Commission, instead of exercising its remedy before CGRF.

Re: The Judgements of Hon'ble Appellate Tribunal for Electricity and this Commission relied upon by the Petitioner does not pertain to the Period November, 2013 to October, 2016.

(G) The Petitioner has relied upon judgments – (a) Judgment dated 03.12.2010 passed by this Commission in the matter of *M/s JSL Limited v. DHBVN & Ors.*; and (b) Judgment dated 06.09.2011 passed in Appeal No.44 of 2011. Both of these judgements do not pertain to the period in question i.e. November, 2013 to October, 2016. Thus, the contention that the Petitioner is seeking to raise that the answering Respondent is in violation of the

aforesaid judgments attracting provisions of Section 142 read with Section 146 of the Electricity Act, 2003 is ex-facie erroneous and deserves to be rejected.

Re: Open Access Regulations 2005 based on which the aforesaid Judgments were passed have now been Repealed.

(H) It is noteworthy that regulations in consideration of which the aforesaid judgments were passed by Hon'ble Commission and Hon'ble Appellate Tribunal for Electricity have been repealed. This Commission notified the OA Regulations on 11.01.2012 and these were further amended in 03.12.2013. Thus, Petitioner's reliance on the aforesaid judgment to claim UI charges (and not Imbalance Charges as per new OA Regulations) is *ex facie* erroneous.

Re: Applicability of OA Regulations vis-à-vis CERC OA Regulations.

(I) In context of the aforesaid, it is noteworthy that the Petitioner is an embedded consumer of the answering Respondent and used intra state transmission system in conjunction with inter-State transmission system. Regulation 2 of the aforesaid O.A Regulation provides that in the aforesaid scenario provisions of O.A Regulations (and not CERC Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters Regulations, 2009 ("**CERC OA Regulations**") as amended from time to time. The relevant extract of Regulation 2 of the OA Regulations is quoted as under:

"2. Scope and extent of application: These regulations shall apply where an application has been made for grant of connectivity for the purpose of open access to the intra-State transmission and/or distribution system and/or where an application has been made for long-term open access, medium-term open access or short-term open access for use of the intra-State transmission and/or distribution system or where an application has been made for obtaining no objection or standing clearance, as the case may be, of the STU for open access to inter-State transmission system when the intra-State transmission and distribution system is to be used in conjunction with inter-State transmission system".

(J) The Petitioner in the present case is using inter-state and intra-state open access facilities to wheel its captive power from Odisha and power purchased over Indian Energy Exchange (IEX) through a collective transaction, which is exclusively covered under the OA Regulations. Thus, the Petitioner's reliance on CERC OA Regulations or the repealed regulations issued by this Commission is completely mis-founded.

RE: No willful violation to attract S. 142 or S. 146 of the Electricity Act, 2003

(K) That the answering Respondent is a licensee of this Commission and is bound by both the regulations framed by this Commission and the orders that may be passed by this Commission and the Hon'ble Appellate Tribunal for Electricity. In this regard, it is submitted that neither this Commission nor Hon'ble Appellate Tribunal for Electricity has

passed any directions to be complied relating to settlement of electricity sourced from multiple sources. Further, there was also no clarity in the regulations on this issue particularly in the background that open access through multiple sources would change the rate at which imbalance charges would be payable. This Commission by its order dated 09.12.2019 for the first time clarified the principle to be followed for settling energy sourced from multiple sources:-

“In view of the above, exercising the power to remove difficulties, vested under Regulation clause 58 of HERC OA Regulations, the Commission considers it appropriate to clarify as under:-

The settlement of energy as in respect of embedded open access customers shall be done by first adjusting the entitled drawl through open access and while doing so the following order of priority shall be followed:-

- 1. Solar generation after deduction of losses.*
- 2. Captive Power*
- 3. Banked Energy from Solar*
- 4. Open Access Power through Exchange*
- 5. Discom power*

Further, the Commission does not agree with the contention of the Petitioner that power purchase price for supply of power availed through captive generating plant shall be considered as Nil. Undoubtedly, the generation of power, be it for own use or for sale, has cost associated with it and the onus of providing the evidence of the same lies with the generator.”

- (L) In the absence of the aforesaid clarification from this Commission in this precarious situation, the Petitioner could not seek to invoke jurisdiction of this Commission under Section 142/146 of the Electricity Act, 2003, which is akin contempt jurisdiction of courts.
- (M) In view of the above, it is submitted that the present petition may be dismissed by this Commission.
6. Further, in response to the Interim Order of the Commission, M/s. Jindal Stainless (Hisar) Ltd., filed its concluding submissions as under:-
- (A) That the petition has been filed by Jindal Stainless (Hisar) Limited, Hisar seeking refund of the UI charges for the period November 2013 to October 2016 along with interest from the date these payments became due to the date of actual refund and has requested to inflict suitable punishment on the concerned persons who had illegally withheld the genuine payments to the Petitioner Company.
- (B) That the Petition was last heard on 04.02.20. During the hearing on behalf of Respondent No. 1, following main arguments were preferred;
- (i) The claim of the Petitioner is time barred;

- (ii) The UI payment was not made due to the confusion over the order of adjustment of the power received by the Petitioner i.e. Own Captive Power, Open Access power through IEX and the power supplied by the Distribution Utility;
- (iii) The interest claimed by the Petitioner could be considered from the date of order passed by the Commission in Petition No. HERC./PRO-56 of 2019 through which the clarification about the order of adjustment was given by the Commission;
- (iv) The relief sought for by the Petitioner under S.142 & 146 of the Electricity Act, 2003 has to be after following the procedure laid down under the EA.
- (C) That the Imbalance Charges are to be paid by the Respondent in compliance to Regulation 24 read with Reg. 43 and 44 of the HERC/25/2012 Open Access Regulations (read with 1st Amendment to these Regulations 03.12.2013). While the Commission amended the Reg. 24(2) only through 1st Amendment, the remaining Regulation 24 was not changed. These Regulations read as under:-
- “24(4) Deviations between the schedule and the actual injection / drawl in respect of open access consumers / generating company with load / generation capacity above 10 MW shall be settled based on the composite accounts for imbalance transactions issued by SLDC on a weekly cycle based on net metering.*
- 24(5) **Payment of imbalance charges shall have a high priority and the concerned constituents, including the transmission licensee, distribution licensees or the open access consumers as the case may be, shall pay the indicated amounts within 10 (ten) days of the issue of the statement, into a State Imbalance Pool Account operated by the SLDC. Thereafter, the person who has to receive the money on account of imbalance charges shall be paid out from the State Imbalance Pool Account, within three (3) working days.***
- 24(6) **If payments against the above imbalance charges are delayed by more than two days, i.e., beyond twelve (12) days from the date of issue of statement, the defaulting party shall have to pay simple interest @ 0.04% for each day of delay. The interest so collected shall be paid to the person who had to receive the amount, payment of which got delayed. In case of persistent payment defaults, the SLDC shall initiate action against the defaulter as may be provided in the detailed procedure.***
- 43 **Settlement of Energy at drawl point in respect of embedded consumers.- The mechanism for settlement of energy at drawl point in respect of embedded open access customers shall be as under:***
- (i) Out of recorded slot-wise drawl the entitled drawl through open access as per accepted schedule or actual recorded drawl, whichever is less, will first be adjusted and balance will be treated as his drawl from the distribution licensee.*

(a) *The recorded drawl will be accounted for / charged as per regulation 24 (2) (A) (a) (ii) of these regulations or regulation 42 as may be applicable.*

44. **Charges applicable to embedded consumers.** – (1) *Embedded open access consumers shall pay all other charges such as transmission charges, cross subsidy surcharge, additional surcharges, composite operating charge etc. in accordance with the methodology specified for other short term open access consumers in these regulations.*

(2) *Embedded open access consumers shall pay wheeling charges as determined by the Commission for the relevant financial year.*

(3) *Besides above charges in respect of open access, the embedded consumers shall continue to pay other charges namely demand / fixed charge, minimum monthly consumption charges etc., applicable to them as per the rates determined by the Commission in the tariff order for the relevant financial year.*

Provided that energy charges shall be payable at balance energy / consumption calculated as per energy settlement mechanism provided in these regulations.

(4) *In case inter-State transmission system is used by such consumer in addition intra-State transmission system or distribution system, transmission charges, RLDC charges etc., as fixed and approved by the Central Commission shall be payable for use of inter-State transmission system in addition to payment of charges as per sub regulations (1) to (3) above.”*

(D) That the Respondent No.1 was to pay the ‘Imbalance Charges’ in compliance to these Regulations. The Fact remains that the Respondent No.1 never refused to pay these charges. The Respondent No. 1 continued to give adjustments on account of Imbalance Charges in the bills of the Petitioner Company all through the period upto Nov. 2013 and even thereafter from November 2016 onwards.

(E) That as per the argument preferred by the Respondent No.1, the adjustment for the above intervening period was not given due to confusion about the order of adjustment of open access power. The Respondent No. 1 filed Petition No. HERC/PRO-56 of 2019 just to seek clarification on this account. The prayer made by the Respondent No.1 through this Petition read as under:-

“(a) Allow the instant Petition of the Petitioner herein seeking clarification regarding accounting methodology to be adopted or the order in which energy drawl is to be adjusted in case a consumer is sourcing conventional power through open access from multiple sources and further clarify whether payment against underdrawl under regulation 24(2)(A) (II) (i) of the OA Regulations are applicable on open access power sourced through Captive Power Plant;

(b) Pass such other and further order(s) that this Commission may feel in the interests of justice and the facts and circumstances of the case.”

This Petition No. HERC/PRO-56 of 2019 of Respondent No.1 was heard alongwith Petition No. HERC/PRO-43 of 2019 filed by the Petitioner Company. The Commission decided to first give its order on Petition No. HERC/PRO-56 of 2019.

- (F) That the Commission settled the issue of order of adjustment of Open Access power of the Petitioner Company for payment of imbalance charges, which were withheld by the Respondent No.1 on the pretext of this confusion.
- (G) That there is no question of the adjustment being time barred under the applicable Regulations. In support of this view, the Petitioner Company would draw kind attention of the Commission to the following facts:-
- a) It was never an issue whether Imbalance Charges are payable or not. All through, Respondent No.1 has been calculating the amount to be adjusted in its own discretion of adjustment of the open access power.
 - b) In reply to Petition No. HERC/PRO-43 of 2019 of the Petitioner Company, Respondent No. 1 had stated the precise reason for delay in giving adjustment to the Petitioner Company, which read as under;
“14. It is submitted that till now, all other consumers of the answering Respondent have sourced power through only one open access source and the balance requirement is met from the distribution licensee. The case of the Petitioner is a peculiar case, in as much as, a situation has arisen for the first time where a consumer is sourcing power through multiple open access sources. It is for this precise reason that there is lack of clarity among the officials of the answering Respondent as to the accounting methodology to be applied for adjustment of drawl of power from multiple open access sources as they are facing such situation for the very first time.”
 - c) Moreover, Respondent No.1 had given 3 scenarios for settlement of drawl of energy by the Petitioner Company from multiple sources i.e.
 - (i) Scenario I: Adjustment of captive power first and then power sourced through IEX; (Rs.5.11 crore)
 - (ii) Scenario II: Adjustment of IEX first and Captive Power later; (Rs.2.91 crore)
 - (iii) Scenario III: Captive Power and power from IEX treated alike; (Rs.5.78 crore)Thus the only issue to be seen was as to which of the above 3 scenarios was to be followed for the settlement of Imbalance Charges for the Petitioner Company.
 - d) The Respondent No. 1 had even issued detailed instructions to SDO/Op. Sub Division, Civil Lines, DHBVN, Hisar vide Memo. No. 650 dated 03.02.2020 for adjustment of under drawl of the Petitioner Company pursuant to the recent order of the Commission dated 09.12.2019 in Petition No. HERC/PRO-56 of 2019 filed by Respondent No. 1. A copy of this communication, which was also endorsed to the

Petitioner Company. In this letter it was clearly mentioned that the calculations had been duly pre-audited by the office of Chief Auditor of DHBVN and issued with the approval of Chairman Cum Managing Director, DHBVN/UHBVN. It is clear from this letter that the amount of adjustment to be given to the Petitioner Company had been settled by Respondent No.1 for adjustment through the monthly energy bill to be issued in Feb. 2020.

- e) The Petitioner Company being an embedded consumer of Respondent No. 1 has a running power supply contract which is perpetual and does not get affected by sourcing of power from another source. The Open Access Regulations notified by the Commission read with S.42 of the ER-2003, provide an un-ambiguous method of 'Settlement of Energy at drawl point in respect of embedded consumers' (Reg. 43) and 'Payment of Imbalance Charges (Reg. 24 & 44). While the Reg. 24(2) provides the method of calculating the Imbalance Charges, Reg. 24(5) & Reg. 24(6) lay down high priority for payment of these charges to the open access consumers and in case of delay in payment of these imbalance charges beyond two days then to pay simple interest @ 0.04% for each day of delay in payment.
- f) Once the Open Access Regulations precisely provide the timeline for the payment of imbalance charges, and payment of interest in case payment of imbalance charges is delayed, there is no question of this payment being time-barred on any account.
- g) Under the power supply contract of the Petitioner Company with Respondent No.1 monthly bills are issued by the Licensee for the net energy supplied to the embedded consumer and the imbalance charges were to be simply adjusted in the running bills. There is no such clause of electricity bills being time-barred. Rather, Reg. 6.8 of the Power Supply Code Regulations, 2014 provide for payment of arrears in installments as well irrespective of the delayed period. The Regulations read as under:-

"Reg. 6.8 Payment in Installments

(3) In case the current bill includes past arrears, such arrears can be received in installments as per the following, provided the current bill is paid.

- a) If the arrears are less than average amount chargeable for two billing cycles – two installments.*
- b) If the arrears are more than average amount chargeable for two billing cycles but less than four billing cycles – three installments.*
- c) If the arrears are more than average amount chargeable for four billing cycles but less than six billing cycles – four installments.*
- d) If the arrears are more than average amount chargeable for six billing cycles and above – five installments."*
- h) That the Distribution Licensee and embedded consumers are not equally placed because of the simple reason that if a consumer doesn't pay the electricity bills in time, he has to pay delayed payment surcharge which is as high as 36% per annum and the Licensee has the power to disconnect the power supply. On the other hand,

a consumer has no option than to continue making request to the field officers of the Licensee to pay/adjust the amounts to be refunded/ adjusted connected with supply/purchase of electricity from any other source through open access.

The Petitioner Company has attached numerous letters from December 2014 to 28.05.2019 written by the Petitioner Company to Respondent No.1 regarding this claim and once the matter is under correspondence throughout this intervening period, the claim can not be termed as barred by law. The Petitioner Company has not raised this issue now for the first time. The citation from the Judgment of Hon'ble Supreme Court is misplaced and irrelevant to the present Petition.

Reliance made to the judgment of Hon'ble Supreme Court in A. P. Power Coordination Committee v. Lanco Kondapalli Power Ltd., (2016) 3 SCC 468 is totally irrelevant to the present Petition. The order has to be read with reference to the instant matter referred to in the Petition. The payment of imbalance charges to the embedded open access consumers is covered under the regulatory powers and functions of the Commission. Hence, the above judgment has no similarity with the case of the Petitioner Company.

- (H) That the action of the Respondent No.1 in delaying payment of Imbalance Charges is a serious non-compliance of provisions as contained in the Open Access Regulations and appropriate action is to be taken by the Commission as per S.142 & 146 of Electricity Act, 2003. The argument preferred by the Respondent No.1 that there was no willful violation of Open Access Regulations but it was on account of the confusion over the method of adjustment of open access power is not supported by facts as the Respondent No.1 had been giving adjustments since the year 2009 and right up to the period of Nov. 2013 and even thereafter from Nov. 2016 onwards. The excuse of multiplicity of open access power was not applicable after Nov. 2015 when the Petitioner Company stopped wheeling of captive power from Odisha and it was getting open access power from only one source i.e. IEX. Accordingly, willful non-compliance of the Regulations was very much there and such action of the Respondent No.1 calls for punitive action under S.142 & 146 of EA-2003.
- (I) That the matter referred by Respondent No.1 to the Commission through Petition No. HERC/PRO-56 of 2019 was an intentional move of Respondent No.1 to delay the payment of Imbalance Charges to the Petitioner Company.
- (J) That the Petitioner Company has submitted its detailed arguments on each of the issues raised by Respondent No. 1 either through written reply submitted by the Respondents/ oral submissions made during successive hearings or written submissions filed thereafter. The Petitioner Company seeks justice from the omission and request to give exemplary punishment to the concerned persons who were instrumental in withholding due payment of Imbalance Charges claimed by the Petitioner Company. Moreover, the

Petitioner Company most humbly prays for the grant of relief already sought for through the main Petition/Rejoinder/the present written submissions, which may kindly be granted.

The findings recorded by the Commission.

7. The Commission heard the parties at length and perused the records of the case. After perusal of the submissions made by both the parties, following issues were framed for consideration and decision of the Commission:-
- a) Whether the claim of the petitioner is a money claim?
 - b) Whether the Limitation Act would be applicable when no separate limitation has been prescribed while exercising adjudicatory powers by the Commission?
 - c) When does the right to sue accrues?

The petitioner has filed the present petition before the Commission on 1/8/2019 seeking direction to pay the refund of UI charges for the period November 2013 to October, 2016 and also interest @ 12% on the amount of UI charges claimed by the petitioner. It is submitted by the petitioner that he has raised a bill of Rs. 1,04,51,397/- in December, 2014 pertaining to the period from November, 2013 to March, 2014, however, a sum of Rs. 77,35,789/- was released and since then the petitioner has been taking up the matter with the respondent-Nigam for refund of the balance amount by referring to letter dated 7/2/2015. The petitioner has been pursuing the matter for refund of UI charges for the period from November, 2013 to October, 2016. A statement showing the refund of UI charge for the period from November, 2013 to October, 2016 has been calculated to the tune of Rs. 7,92,26,722/-. It is, thus, very clear from the pleadings and prayer of the petitioner that the prayer is for directing the respondent-Nigam to pay a sum of Rs. 7,92,26,722/- against the UI charges for the period from November, 2013 to October, 2016.

After hearing the parties, the Commission answers the issue framed in affirmative i.e. the claim of the petitioner is a money claim. Since it has been established that the claim of the petitioner is a money claim, the petitioner has claimed for recovery of certain amount for the period from November, 2013 to October, 2016, by way of filing the present petition before the Commission on 1/8/2019. Therefore, in order to ascertain whether the UI charges for said period would be payable or not, it would be in the fitness of things to first determine as to whether the such claims ought to have been filed within the statutory period of limitation by way of filing civil suits.

Counsel for the Respondent has brought to the notice of the Commission, a judgment of the Hon'ble Apex Court titled as 'A.P. Power Coordination Committee Vs. Lanco Kondapalli Power Ltd., (2016) 3 SCC 468' wherein the Hon'ble Apex Court has held as under:-

The judgement of Hon'ble Supreme Court in A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd., (2016) 3 SCC 468, is noteworthy in this context, wherein it has been held that "30.....*In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defence of limitation, we are persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. We have taken this view not only because it appears to be more just but also because unlike labour laws and the Industrial Disputes Act, the Electricity Act has no peculiar philosophy or inherent underlying reasons requiring adherence to a contrary view.* 31.....***Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court. But in an appropriate case, a specified period may be excluded on account of the principle underlying the salutary provisions like Section 5 or Section 14 of the Limitation Act. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory.***" (Emphasis supplied)

In view of the above discussions, the Commission answers the issue framed in affirmative i.e. the Limitation Act, 1963 is squarely applicable in the instant case, which is three years from the date the right to sue accrues, as specified in Article 113 of the Schedule of the Limitation Act, 1963.

The next thing to be examined is the date when the right to sue accrues. In this regard, Petitioner has claimed that it has been continuously following up with the Respondent Nigam for refund of UI charges through letters as well as personal meeting. Therefore, the claim can't be termed as barred by law. The Petitioner has further submitted that the order of settlement of the underdrawn electricity, drawn from various sources, was not clear to the Respondent Nigam. The Petitioner further submitted a letter no. 650 dated 03.02.2020 from Sr. A.O./open access, DHBVNL to SDO (Op.) sub-Division, Civil Lines, DHBVNL, Hisar, stating that after obtaining clarification of the same from Commission, the Imbalance Charges in respect of M/s. JSL, for the period from Dec., 2013 to Oct., 2016,

have been calculated & pre-audited at Rs. 5,78,86,922/- and submitted for further necessary action. The letter has been issued with the approval of Chairman Cum Managing Director, DHBVN/UHBVN. Per-contra, the Respondent No. 1 i.e. DHBVNL, vehemently argued that the calculation was made by one section of the Nigam, so that another section of the Nigam can comply the further orders of the Commission. In this case, right to sue accrued on the date(s) of the Petitioner's underdrawl of electricity and non-settlement/non-payment of alleged UI Charges in the month succeeding the open access transaction of underdrawl.

The Commission observes that the right of the Petitioner to sue occurs when the time limit specified in the HERC OA Regulations, for making the payment by the Respondent expires. Regarding, the extension of such time line by filing representations through letters and meetings, it is relevant to note the judgement of Hon'ble Supreme Court in State of Tripura and Ors. vs. Arabinda Chakraborty and Ors.: MANU/SC/0342/2014, wherein it has been held as under:-

"11. In our opinion, the suit was hopelessly barred by law of limitation. Simply by making a representation, when there is no statutory provision or there is no statutory appeal provided, the period of limitation would not get extended. The law does not permit extension of period of limitation by mere filing of a representation. A person may go on making representations for years and in such an event the period of limitation would not commence from the date on which the last representation is decided. ...

..

14. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the Respondent and if the Respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The Respondent kept on making representations one after another and all the representations had been rejected. Submission of the Respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done."

Thus, as per the abovementioned Supreme Court judgement, which is the law of land, unless challenged or changed by constitutional amendment, the representations made by

the Petitioner can't extend the limitation period. Therefore, the right of the Petitioner to sue occurs when the time limit specified in the HERC OA Regulations, for making the payment by the Respondent expires. The time limit for making payment of Imbalance Charges has been specified in the HERC OA Regulations, as reproduced hereunder:-

- "24(4) Deviations between the schedule and the actual injection / drawl in respect of open access consumers / generating company with load / generation capacity above 10 MW shall be settled based on the composite accounts for imbalance transactions issued by SLDC on a weekly cycle based on net metering.*
- 24(5) Payment of imbalance charges shall have a high priority and the concerned constituents, including the transmission licensee, distribution licensees or the open access consumers as the case may be, shall pay the indicated amounts within 10 (ten) days of the issue of the statement, into a State Imbalance Pool Account operated by the SLDC. Thereafter, the person who has to receive the money on account of imbalance charges shall be paid out from the State Imbalance Pool Account, within three (3) working days.*
- 24(6) If payments against the above imbalance charges are delayed by more than two days, i.e., beyond twelve (12) days from the date of issue of statement, the defaulting party shall have to pay simple interest @ 0.04% for each day of delay. The interest so collected shall be paid to the person who had to receive the amount, payment of which got delayed. In case of persistent payment defaults, the SLDC shall initiate action against the defaulter as may be provided in the detailed procedure."*

In view of the above discussions, the Commission observes that the Limitation Act, 1963 is squarely applicable in the instant case, which is three years from the date the right to sue accrues, as specified in Article 113 of the Schedule of the Limitation Act, 1963 and the right to sue accrues on the date when the amount became due to the Petitioner, as per the provisions of HERC OA Regulations. Accordingly, the Commission observes that the recovery claim preferred by the Petitioner against the Respondents is time barred as per the Limitations Act, 1963, in respect of the claims preferred for the period prior to 31.07.2016.

Article 113 of the Schedule of the Limitation Act, 1963, provides as under:-

PART X.—SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD

<i>Article</i>	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>113</i>	<i>Any suit for which no period of limitation is provided elsewhere in this Schedule.</i>	<i>Three years.</i>	<i>When the right to sue accrues</i>

Conclusion:-

8. Having answered the above issues, the Commission is of the considered view that the recovery claim preferred by the Petitioner against the Respondents is time barred as per the Limitations Act, 1963, in respect of the claims preferred for the period prior to 31.07.2016. The Respondent No. 1 i.e. DHBVNL is directed to pay the Imbalance Charges due to the Petitioner in respect of the claims from 01.08.2016 to 30.11.2016 not barred by the Limitation Act, 1963, within 15 days from the date of issue of this Order, failing which DHBVNL shall be liable to interest @ 12% p.a. on the adjustment amount due from the date of such default to the date of actual payment.
9. In terms of the above Order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 24.02.2020.

Date: 24.02.2020 (Naresh Sardana)
Place: Panchkula Member

(Pravindra Singh Chauhan)
Member