



MEGHALAYA STATE ELECTRICITY REGULATORY COMMISSION

New Administrative Building, Left Wing, 1st Floor
Lower Lachumiere, Shillong - 793001

MSERC Case No. 11 of 2022 with

MSERC Case No. 12 of 2022

MSERC Case No. 13 of 2022

MSERC Case No. 14 of 2022

MSERC Case No. 15 of 2022

MSERC Case No. 16 of 2022

MSERC Case No. 17 of 2022

MSERC Case No. 18 of 2022

MSERC Case No. 19 of 2022

MSERC Case No. 20 of 2022

In the matter of:-

Petition under Section 61 and 62 of the Electricity Act, 2003 read with the MSERC (Electricity Supply Code) Regulations, 2018.

And

In the matter of:-

1. Meghalaya Cast & Alloys Pvt. Ltd. with
2. RNB Cements (P) Ltd.
3. Pawan Castings (Meghalaya) Pvt. Ltd.
4. Green Valley Industries Ltd.
5. M/s Sriram Wire Products (Meghalaya).
6. Hills Cements Company Ltd.
7. M/s Shillong Ispat and Rolling Mills.
8. M/s Ri-Bhoi Ispat and Rolling Mills.

9. Meghalaya Steels Ltd.
10. Meghalaya Cements Ltd.

...Petitioner (s)

-VERSUS -

1. Meghalaya Energy Corporation Ltd
Lumjingshai, Shillong.
2. Meghalaya Power Distribution Corporation Ltd.
represented by its Director.
3. The Director (Distribution), MePDCL
Lumjingshai, Shillong.
4. The Chief Engineer (Distribution),
MePDCL, Lumjingshai, Shillong.
5. The Addl. Chief Engineer Distribution (EZ)
MePDCL, Lumjingshai, Shillong.

...Respondent (s)

6. Byrnihat Industries Association,
13th Mile, Tamulikuchi, Byrnihat,
Ri-Bhoi District, Meghalaya-793101.

...Proforma Respondent (s)

Coram

Shri. Chandan Kumar Mondol, Chairman

Shri. Ramesh Kumar Soni, Member (Law)

Appearance for the Petitioner (s): Mr. K. Paul, Sr. Adv. with
Mr. S. Chanda, Adv.
Mr. S. Khyriem, Adv.

Appearance for the Respondent (s): Mr. A. Singh, Adv.
Mr. G. Dkhar, Senior Law Officer, MeECL.
Mr. Syed Saif Abbas, Consultant, MeECL

Date of Order: 4th July 2025

1. The above batches of Petitions/Cases are filed by the individual Members of Byrnihat Industries Association (BIA in short) against the same respondents. The facts and issues involved and the reliefs prayed are also same. Thus, the above stated batches of Petitions/Cases are hereby disposed of by a common order.
2. Before proceeding with the present petitions and the prayer thereof, let us briefly state the backdrop facts and circumstances leading to the present appeal of the petitioners.
3. A Memorandum of Understanding (MOU) was entered between Meghalaya Power Distribution Corporation Ltd (hereinafter referred as Respondent) and Byrnihat Industries Association (hereinafter referred as Proforma Respondent) on 7th October 2020 for sale of power to its member industrial houses at a Special Tariff for an initial period of 3 (three) years with effect from the date of issuance of MSERC order on approval of Special Tariff.
4. Salient feature of MoU are as given below:-
 - a. *That it is agreed upon that the special power rate applicable to the BIA Industrial Consumers will be charged at the rate of INR 4.90/KVAH inclusive of demand charges, for an initial period of three years, from the date of implementation of this MOU, subsequent to approval by the Ld. Meghalaya State Electricity Regulatory Commission.*
 - b. *That this period of three years may be further extended by another three years subject to approval of Ld. Meghalaya State Electricity Regulatory Commission and with mutual consent of both Parties.*
 - c. *That in turn Industrial Consumers undertake to increase their load factor to a tune of 68% minimum.*
 - d. *That in case the BIA member Industries fail to maintain minimum load factor of 68%, for reasons other than force majeure and/or grid failure or major breakdown at consumer end, a penal charges of INR Rs. 1.20/KVAH and INR Rs. 1.00/KVAH will be applicable on 33kV level IHT Consumer and 132 Kv EHT level Consumer respectively, for non-drawl of units upto the agreed load factor of 68%. The load factor of 68% would be calculated pro rata on the actual power supplied by MePDCL. That load factor of 68%*

would be adjustable +/- over each six months consumption period in each year i.e. Oct. – March & April – Sept.

- e. That MePDCL undertakes to supply uninterrupted, unrestricted and stable quality power supply to the BIA Member Industries.*
- f. That MePDCL will incorporate the special power tariff rate as decided in this MoU while filing their ARR or Business Plan or MYT to Meghalaya Electricity Regulatory Commission.*
- g. That the parties may amend or vary any of the Clauses of this MoU as required from time to time by mutual consent by duly obtaining approval from the Ld. Meghalaya Electricity Regulatory Commission.*
- h. That in case of dispute the provisions of Electricity Act, 2003 will be applicable with the jurisdiction lying with the Ld. Meghalaya State Electricity Regulatory Commission.*
- i. That the parties undertake to abide by the rules, regulations and orders of the Ld. Meghalaya State Electricity Regulatory Commission.*
- j. That this special tariff shall be applicable to the BIA Members from the date of execution of MSERC Order against Petition filed by MeECL / MePDCL and intervention Petition filed by BIA on 14.09.2020.*
- k. The special tariff will be available / provided to only those industries who are:-*
 - a) Members of Byrnihat Industries Association, who express their consent to draw power in this special tariff.*
 - b) Who are paying energy bills regularly and have no overdue bill payments.*
 - c) For Byrnihat Industries Association members, who have outstanding over dues, this Special Tariff will be made available to such members only if they express consent to one time settlement of clearing all outstanding dues under applicable scheme. In case one opts for the one time settlement and drawl of discounted power, but does not pay any dues as per the OTS terms and conditions, the Special Tariff will be withdrawn for such industry and the said industry shall be liable to pay the energy cost as per the original / prevailing tariff for the usage done in the preceding months.*

- l. This arrangement can be terminated by either of the two parties after giving 3 months advance notice.*
 - m. Force majeure- Neither party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations due prior to occurrence of force majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a force majeure event) beyond the reasonable control of the party experiencing such delay or failure, including the occurrence of the, Acts of God; Typhoons, floods, lightening, cyclones, Hurricanes, draught, famine, epidemic, or other natural calamities; Acts of war or Civil Unrest; Any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority; Earthquakes, explosions etc.*
5. Thereafter, the Respondent had approached this Commission for approval of the Special Tariff. Accordingly, MSERC vide Order dated 19.10.2020 approved a Special Tariff for an initial period of 3 (three) years effective from 1st November 2020. Relevant paras of the Order are quoted below:

'The petitioner and the respondents have arrived at a consensus for a special power rate that will be applicable to BIA industrial consumers, who will be charged at the rate of INR 4.9/KVAH including demand charges, as against the original proposal of INR 6/KVAH that was submitted by MePDCL. This will be for an initial period of three years.

Among other terms and conditions, the MOU also includes the condition that the Industrial Consumers undertake to increase their load factor to the tune of 68% minimum, and that in case the BIA member industries fail to maintain minimum load factor of 68%, for reasons other than force majeure, a penal charge of INR 1.2/KVAH and INR 1.00/KVAH will be applicable on 33 KV IHT consumer and on 132 KV EHT level consumer respectively.

The MePDCL undertakes to supply uninterrupted, unrestricted and stable quality power to the BIA members industries.

The MePDCL will also incorporate the special power tariff rate as decided in the MOU while filing their Business Plan or MYT to MSERC.

Amendment or modification of any clause in the MOU will only be done with the mutual consent of the parties involved and with the approval of MSERC. In case of any disputes the Electricity Act, 2003 will apply and shall be within the jurisdiction of MSERC

The Commission perused all documents and materials submitted, including the petition, the additional petition and the MOU, and we find that the proposed special tariff of INR 4.9/KVAH for the industrial consumers, and that the terms and conditions of the MOU are just and reasonable. Besides, we also find that the terms and conditions agreed upon between the parties which are reduced in writing as Memorandum of Understanding, signed by the respective parties along with witnesses and that the terms and conditions agreed upon between the parties are legal and enforceable between the parties and accordingly the MOU dated 07/10/2020 is allowed, accepted and incorporated in the present order.

In the result the Commission approves the petition for special tariff for an initial period of 3 years to the industrial consumers of the Respondent, BIA as per the terms and conditions provided in details of the MOU executes between MePDCL and BIA, as reproduced at para 20 above.

Parties are directed to complete all the formalities on or before 31st October, 2020 and the implementation of load supply shall commence from 1st November 2020 onward.'

6. Consequent and in pursuant to the Commission's approval, the following ten (10) industries (herein referred as Petitioners) affiliated to BIA approached the Respondent

and entered into an agreement individually for supply of Electricity at a Special Tariff as under.

Sl. No.	Name of Industries	Date of Agreement
1	Meghalaya Cast & Alloys Pvt. Ltd.	01.11.2020
2	RNB Cements (P) Ltd.	-
3	Pawan Castings (Meghalaya) Pvt. Ltd.	-
4	Green Valley Industries Ltd.	14.01.2021
5	M/s Sriram Wire Products (Meghalaya).	07.01.2021
6	Hills Cements Company Ltd.	14.01.2021
7	M/s Shillong Ispat and Rolling Mills.	26.11.2020
8	M/s Ri-Bhoi Ispat and Rolling Mills.	26.11.2020
9	Meghalaya Steels Ltd.	01.11.2020
10	Meghalaya Cements Ltd.	19.11.2020

Relevant paras of the sample agreement with Meghalaya Cast and Alloys Pvt. Ltd dated 1st November 2020, are reproduced below:

- a. *That the total connected load shall be 6600 KVA (Meghalaya Cast & Alloys Pvt. Ltd) as declared by the consumer.*
- b. *That the consumer shall draw power of not less than 75% and not more than 100% of the contracted load.*
- c. *That it is agreed upon that the special power rate applicable will be charged at the rate of INR 4.90/KVAH inclusive of demand charges, for an initial period of three years from the date of implementation of this agreement as approved by the Ld. Meghalaya State Electricity Regulatory Commission.*
- d. *That the consumer shall maintain minimum load factor of 68%. That in case the consumers fails to maintain the same for reasons other than force majeure and/or grid failure or major breakdown at consumer end, a penal charges of INR Rs. 1.20/KVAH and INR Rs. 1.00/KVAH will be applicable on 33 Kv level IHT Consumer and 132 Kv EHT level Consumer respectively, for non-drawal of units upto the agreed load factor of 68%.*

The load factor of 68% would be calculated pro rata on the actual power supplied by MePDCL. That load factor of 68% would be adjustable +/- over each six months consumption period in each year i.e. October – March & April – September.

- e. That this agreement can be terminated by either of the two parties after giving three months advance notice.*
 - f. Force majeure- Neither party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations due prior to occurrence of force majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a force majeure event) beyond the reasonable control of the party experiencing such delay or failure, including the occurrence of the, Acts of God; Typhoons, floods, lightening, cyclones, hurricanes, draught, famine, epidemic, or other natural calamities; Acts of war or Civil Unrest; Any requirement, action or omission to act pursuant to any judgment or order of any court or judicial authority; Earthquakes, explosions etc.*
7. In line with the Order dated 19.10.2020 issued by the Commission on Special Tariff, Special Tariff provision was incorporated by the Respondent and approved by the Commission in the MYT Order of MePDCL for FY 2021-22 to FY 2023-24.
8. Respondent issued Notice to the Proforma Respondent on 26.10.2021 for termination of MOU dated 7th October 2020, citing non-compliance of condition precedent of 68% load factor and thereby incurring revenue loss. The Petitioners came to know about the Termination Notice dated 26.10.2021 of the MOU issued by Respondent, from the Secretary BIA. Relevant para of the Notice dated 26.10.2021 is reproduced below:

'Due to failure to maintain minimum average load factor (ALF) of 68% by all seven BIA members industries and consequential revenue loss to the MePDCL, the MePDCL has decided to invoke Clause 17 of the aforesaid MoU for termination of the Memorandum of Understanding dated 07.10.2020. In this regard, the instant letter may be treated as an advance

Notice for termination of the “Memorandum of Understanding” dated 07.10.2020.’

9. That the Proforma Respondent had filed a reply to the Termination Notice of MOU vide letter No. BIA/MePDCL/2021-22/820, dated 09.12.2021, to the Respondent highlighting the issues that were not considered by the Respondent and while highlighting the fact that the unilateral invocation of termination clause was arbitrary and against the Order of the Commission, requested the Respondent to make available details of load factor penalty and the amount paid by the individual industries along with the details of power supplied during the 6 month period from April 2021 to September 2021 and further requested the Respondent to withdraw the Notice. However, no response has been made by the Respondent.
10. Subsequently, the Respondent on 17.01.2022, issued letter to the Petitioners for discontinuation of Special Tariff. Relevant para is reproduced below:

‘...the Agreement for supply of Power under Special Tariff would end on 25th January, 2022. As such, if your Company desire to continue to avail power from the Meghalaya Distribution Corporation Limited (MePDCL), the same shall be considered as per the regular / normal tariff applicable to IHT/IEHT consumers as determined by the Hon’ble Meghalaya State Electricity Regulatory Commission (MSERC) vide order dated 01.04.2021 and after execution of fresh agreement and payment of security deposits as per the contract load.’
11. Thereafter, the Respondent started billing as per the normal tariff for HT and EHT consumers.
12. Aggrieved with the said Notice issued by the Respondent, the Petitioners had preferred a series of Writ Petitions registered as WP(C) 5 to 14 of 2022 before the Hon’ble High Court of Meghalaya challenging the letter of termination for discontinuation of Special tariff. The Hon’ble High Court after hearing the matter, vide Order dated 01.07.2022, allowed their petition.
13. That the said Order dated 01.07.2022 passed in WP (C) No. 5 to 14 of 2022, was challenged by the Respondent, vide Writ Appeal No. 33 of 2022 before the Division Bench of the Hon’ble High Court of Meghalaya. The Court vide Order dated 5.09.2022

disposed of the said appeal, thereby setting aside the Order dated 1.07.2022 with a liberty to the parties to approach the State Electricity Regulatory Commission in accordance with law. Relevant paras of the Order dated 5.09.2022 are reproduced below:

“ 17. There is no basis to the writ petition and the writ petitioner appears to have failed to meet a condition precedent as indicated in its governing agreement to be entitled to the beneficial tariff. Since the writ petitioner raised disputes pertaining to the failure to meet the load factor, the writ petitioner had to carry the grievance to the State Electricity Regulatory Commission and not invite the writ court to go into the disputed facts.

18. For the reasons aforesaid, the judgment and order dated July 1, 2022 are set aside and the writ petition is dismissed with liberty to the parties to approach the State Electricity Regulatory Commission in accordance with law.

19. It is made clear that the observations herein are for the purpose of adjudication of the appeal and will not prejudice either party in course of any future proceedings before any other authority, including the State Electricity Regulatory Commission.

20. WA No.33 of 2022 is allowed as above.

21. MC (WA) No.13 of 2022 stands disposed of.

22. There will, however, be no order as to costs.”

14. Thereafter, the Petitioners filed the present Petitions before the Commission on 11.10.2022, with a prayer for giving directions to the Respondent to withdraw, recall and or otherwise forebear from giving effect to the notice dated 17.01.2022; quash and set aside the said notice; allow the Petitioner to pay electricity dues as per the Special Tariff, interim relief; restraint the Principal Respondent from disconnecting supply of electricity and pass any other order deem fit.

15. The Commission admitted the Petitions on 12.10.2022 and registered these Petitions as under:

Sl. No.	Name of Industries	Case No.
1.	Meghalaya Cast & Alloys Pvt. Ltd	MSERC Case No. 11 of 2022.

Sl. No.	Name of Industries	Case No.
2.	RNB Cements(P) Ltd.	MSERC Case No. 12 of 2022
3.	Pawan Castings (Meghalaya) Pvt. Ltd.	MSERC Case No. 13 of 2022
4.	Green Valley Industries Ltd.	MSERC Case No. 14 of 2022
5.	M/s Sriram Wire Products (Meghalaya)	MSERC Case No. 15 of 2022
6.	Hills Cements Company Ltd.	MSERC Case No. 16 of 2022
7.	M/s Shillong Ispat and Rolling Mills	MSERC Case No. 17 of 2022
8.	M/s Ri- Bhoi Ispat and Rolling Mills	MSERC Case No. 18 of 2022
9.	Meghalaya Steels Ltd.	MSERC Case No. 19 of 2022
10.	Meghalaya Cements Ltd.	MSERC Case No. 20 of 2022

16. Along with the above petitions the Petitioners also filed a series of Interlocutory Applications registered as IA(s) Case No 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10 of 2022 respectively, seeking stay of the Notices issued by the Respondent dated. 24/09/2022; 28/09/2022; and 29/09/2022 for disconnection of power supply and also prayed to pass ex-parte ad-interim order to stay the operation of the said notices.

17. On hearing the Ld. Counsel for the Petitioners and on examining the applications and the Petitions including the materials on record, ex-parte ad-interim order was issued on 13.10.2022. Relevant paras of the Order are reproduced below:

‘

Accordingly, the respondent MePDCL is hereby ordered to maintain status quo ante as on the date of filing the MSERC Case No. 11 of 2022 thereby restraining the respondent MePDCL from giving effect to its Order/notice dt. 24.09.2022 or from disconnecting Electricity supply to the Petitioner’s company until further order.

Issue notice against the respondent as to why this ex-parte ad interim order should not be made absolute till the disposal of the main Case.

Fix 27th October 2022 at 1PM for appearance, written objections if any and hearing.

.....’

18. On issuing Notice, the Respondent appeared before the Commission and filed application with a prayer to vacate the interim relief granted to the Petitioners vide Order dated 13.10.2022 and to dismiss the Petition filed by the Petitioners or pass order as the

Commission may deem fit and proper. The Commission admitted the application submitted by the Respondent and thereafter hearing on the IA(s) was fixed by the Commission on 22.11.2022.

- 19.** Subsequently, hearing on IA(s) were taken up on 22.11.2022 and Order was passed on 5.12.2022. Relevant paras are quoted below:

‘Accordingly, considering all the facts and circumstances of the case as stated in the foregoing, we find and hold that it would be just and proper that the ex-parte ad-interim order dated 13/10/2022 passed by this Commission be made absolute till the disposal of the main Petition so as to avoid multiplicity of proceedings and for the end of justice.

Hence, it is hereby ordered that, the Principle Respondent, Meghalaya Power Distribution Corporation Ltd. is hereby restraint from giving effect to the termination notice and subsequent notices issued by the Principle Respondent as stated above and or from disconnection supply of electricity to the applicants/petitioners’ company till the disposal of the main petition.

However, it is categorically made clear that, the Principal Respondent No.2 may recover due of the energy consumed by the applicants/petitioners based on the said special tariff rate approved by this Commission as also incorporated in the MOU and Tariff for FY 2022-23 and that the applicants/petitioners shall pay the bill within 30 days from the date of this order, if not already paid. The Principle Respondent may take step for realization of the bill as stated above.

The arrear if any payable by the applicants/petitioners shall be subject to the outcome of the main Petition.

The applications are accordingly disposed off with the above directions.

Put up the main petitions’

20. Upon disposal of the aforementioned IA's, the Chairman CGRF was directed to establish the actual facts regarding the adherence to the load factor as per the terms laid down in the said Order dated 5.12.2022. Extract of the said Order is reproduced below:

'.....

1) Whether the Petitioners maintain minimum average load factor of 68% as per the MOU.

2) If the petitioners failed to maintain 68% load factors, what was the reason?

3) Whether the Respondent, MePDCL imposed penalty against the petitioners for non-maintaining load factor of 68%. Find out the detail facts and circumstances including the period, MOU may be referred.

4) Whether the penalty imposed, if any by the Respondent, are paid by the Petitioners or not?

5) If penalty is not imposed by the Respondent, in spite of non-maintaining minimum load factor by the Petitioners, what was the reason?

6) The above facts are to be verified from the effective date of the MOU till 26/10/2021, when the Respondent issued termination notice of the MOU.

.....

CGRF may hold sitting for investigation/enquiry/facts finding at any appropriate place but within Shillong and the same shall be intimated to the parties.....

Further, the CGRF is to find out the above facts supported by documentary evidences, but may also record oral evidences of the parties.

.....

The CGRF shall submit the report in writing along with all the documents on or before 15th of February 2023.

.....'

21. The Chairman, CGRF, Shillong after obtaining extension of time submitted its report on 15.03.2023 and the same was intimated to the parties for their responses. Extract of the CGRF report is reproduced below:

‘In conclusion, it may be stated that for the period under consideration, there is only one petitioner namely M/s Green Valley Industries Ltd. who maintained the minimum average load factor of 68% as per MoU for special tariff between the parties. The other 9 (nine) petitioners failed to maintained the desired value of load factor. In such cases, penalty bills were served by the Respondent, MePDCL but there are petitioners who default on payment of these bills as summarized above. The reasons for inability to maintain required minimum average load factor cited by the consumers include non-availability of raw materials, interruptions in power supply by the department, market fluctuations, natural calamities like heavy rainfall, factory maintenance, ageing of plant leading to frequent breakdown and effect of Covid on the market leading to lower productions.’

- 22.** On receiving responses on the CGRF report, the Commission fixed 25th April 2023, for further proceedings on the Petitions. However, on the request of the Respondent the hearing was not taken up on 25th April 2023, thereby adjourned to 18th May 2023, whereas the Petitioners was not present.
- 23.** On 18th May 2023, only the Respondent appeared and has filed written statement on the Petitions in the form of Counter Affidavit. Further hearing was fixed on 29th May 2023.
- 24.** On 29th May 2023, both the parties appeared. During the hearing, the Respondent submitted that they have no objection to the CGRF report. Whereas, the Petitioners submitted that the report is inconclusive. Argument hearing was taken up but could not be completed, whereas the Respondent prayed for vacating the interim order dated 13.10.2022.
- 25.** Further, hearing on the Petitions was taken up on 7th June 2023, but was differed due to Review Petitions of the Tariff Order for the FY 2023-24 accompanied with IA(s)
- 26.** These series of Review Petition filed by the Petitioners were registered as MSERC Case No. 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of 2023 respectively. The Review Petition filed is against the Tariff Order for the FY 2023-24, wherein the Petitioners aver that, non-inclusion/incorporation of Special Tariff in the Tariff Order for the FY 2023-24 is an apparent error on the face of the Tariff Order for the FY 2023-24 and as such the

Petitioners sought for incorporation of the Special Tariff as per the MOU. Along with the Review Petitions, the Petitioners also filed a series of interlocutory applications seeking stay of the disconnection notices dated 01.06.2023 issued by the Respondent. These applications were registered as IA Case No 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10 of 2023 respectively. Thereafter, the Commission vide Order dated 11th July 2023 disposed of these IA (s) by reiterating that the Order dated 5.12.2022 is subsisting and shall operate till the disposal of the main case (herein referred as the Petitions). Extract of the Order is reproduced below:

'Accordingly, in the result, it is hereby reiterated and ordered that, the Order dated 05/12/2022 passed in IA No.1 to 10 of 2022 is subsisting and shall operate till the disposal of the main case vide MSERC Case No. 11 to 20 of 2022 or till the order is set aside/modified/alterd by a competent authority/forum or till the completion of the initial period of three years and or subject to its outcome thereof, whichever is earlier and until then the parties shall strictly adhere the said order.

The principle respondent (MePDCL) shall generate bill at the rate of special tariff and that the petitioners/applicants shall diligently make prompt payment for the energy consumed as per the rate of special tariff till the disposal of the main case vide MSERC Case No. 11 to 20 of 2022.

The principle respondent (MePDCL) shall not disconnect supply of power to the petitioners/applicants. However, in the event of default of payment for the periodical current bill by the petitioners/applicants under the special tariff rate, the principle respondent (MePDCL) may resort to the general provision of the Electricity Act, 2003 in regards to issue of notice for disconnection including DPC.

The arrear, if any, shall be subject to the outcome of the main case.

Before parting with this case record, I would like to place on record my appreciation to the Ld. Counsel appearing for the parties for their professionalism and also look forward for speedy disposal of the main case.

Send an extract copy of this order to the parties for information and strict compliance.

.....”

27. Thereafter, the Petitions were taken up. However, the Petitioners further filed a series of Miscellaneous Application under Section 142 read with Section 146 of the EA, 2003 in the matter of willful and deliberate violation of the Common Order(s) dated 5.12.2022 and 11.07.2023 passed by the Commission. These applications were registered as Misc. Application 1, 2, 3, 4 & 5 of 2023.

28. In the meantime, Respondent had filed Writ Petitions WP (C) 242 of 2023 before the Hon’ble High Court of Meghalaya and the same was disposed vide Order dated 15.02.2024, directing MSERC to decide the pending cases and applications on their own merits and in accordance with law. Relevant paras are reproduced below:

‘ 3. Accordingly, with the consent of the parties, these writ petitions are disposed of with a direction to the Meghalaya State Electricity Regulatory Commission (MSERC) to decide the pending cases and applications on their own merit, and in accordance with law. With regard to the tariff collected by the petitioner Corporation (MePDCL), and also the special tariff paid by the respondent/consumer herein, the same shall be subject to the final adjudication by the Meghalaya State Electricity Regulatory Commission (MSERC).

4. It is made clear that this Court has not entered into or expressed its opinion on the merit of these cases, leaving all the questions of law and facts to be decided by the Meghalaya State Electricity Regulatory Commission (MSERC). These matters involving public revenue, it is expected that the same shall be expeditiously disposed of by the Meghalaya State Electricity Regulatory Commission (MSERC).’

29. Consequently, the Commission on 12th March 2024, had taken up the Misc. Application. However, it was adjourned as the parties are in consensus that initially the Main Case, i.e. MSERC Case No. 11,12,13,14,15,16,17,18,19 & 20 of 2022 be taken up for hearing and decision and thereafter these applications can be taken up.

30. Furthermore, hearing on Review Petitions was also taken up and the matter was disposed of vide Order dated 13.03.2024. Extract of the relevant para of the Order is reproduced below:

‘Commission considers no error was crept in on the face of the Tariff Order for FY 2023-24 dated 11.04.2023.

Regulation 23.1 of MSERC MYT Regulations 2014 specifies that – “No Tariff or part of any tariff may be ordinarily amended, more frequently than once in any financial year” The Review of Tariff Order already issued for FY 2023-24 is not possible as per the Regulations.

Thus, the Petition filed by Green Valley Industries Ltd. and others stands disposed off.’

31. Petitions were taken up for hearing on 28th August 2024. However, the Advocate for the Petitioner prayed for adjournment on account of the inability of the Senior Counsel Mr. K. Paul to attend the hearing due to compelling circumstances. The prayer was allowed and further proceedings were fixed on 18th September 2024, with a direction to the parties to submit the following information by 11th September 2024 or before the next hearing date.

- i. Respective industry to submit year wise detail of connected load, electricity consumption, loading factor, production capacity and capacity utilization factor from the FY 2018-19 onwards till FY 2024-25.*
- ii. Month wise actual data of rainfall since effective date of Special Tariff till termination date from the concerned government authority along with normal rainfall data.*
- iii. MePDCL to submit month wise interruption of power supply to these industries and if it has affected loading factor as per the agreement.*
- iv. MePDCL to submit month wise penalty billed and payment received from the respective industry.*
- v. Industry and MePDCL to submit detail of force majeure events invoked till the termination of the agreement.*

32. On 11th November 2024, hearing was taken up on virtual mode. However, Advocate on behalf of the Petitioners requested for adjournment due to unavailability of their Senior

Advocate and also requested that the matter being critical in nature may be held in physical mode. Furthermore, it was confirmed that the Advocates will be representing only for 8 (eight) industries bearing Petition No. 12,14,15,16,17,18,19 & 20 and prayed that the next hearing may be taken up on 3rd December 2024. Advocate on behalf of the Respondent has no objection for hearing to be held on 3rd December 2024. Accordingly, the Commission after hearing both the parties agreed for physical hearing on 3rd December 2024. Notice was also issued to the industries bearing Petition No. 11 and 13 informing them to engage their lawyer/representative to present personally-

Furthermore, the Commission expressed that this Case which has been referred by the Hon'ble Division Bench of High Court of Meghalaya on 05.09.2022 is yet to be heard. Based on the request made by the Advocate on behalf of industries, a number of times the Case has been adjourned. Advocate of both the parties agreed that in case hearing is again adjourned on 3rd December 2024, the Commission will be free to issue order based on the written submission by the parties.

- 33.** Hearing was taken up on 3rd December 2024. Advocate on behalf of the Petitioners further requested for adjournment as their Senior Advocate Mr. K. Paul is not available. The same was agreed by the Advocate on behalf of Respondent. It was further submitted that the two industries namely Meghalaya Cast & Alloys Pvt. Ltd. and Pawan Casting (Meghalaya) Pvt. Ltd. submitted Vakalatnama stating that Mr. K. Paul (Sr. Advocate) will be appearing on their behalf for the Petition No. 11 & 13 of 2022.

The Commission after hearing both the parties agreed for their request and adjourned the matter beyond winter vacation, provided the new dates to be given by both the parties and accordingly hearing will be scheduled.

- 34.** Since, both the parties have not come up with the new dates, the Commission on its own listed the matter on 12th May 2025, vide its Notice dated 23rd April 2025. Advocate on behalf of Petitioners/Industries further requested for adjournment, stating that their Senior Advocate, Mr. K. Paul is occupied with matters in the Hon'ble Supreme Court. The Commission reiterated that the Cases were initially listed on 28th August, 2024 and adjourned at the request of the Counsel of the Petitioners/Industries to 11th November, 2024 and then again it was adjourned to 3rd December, 2024, due to unavailability of their Senior Counsel. The Commission after hearing both the parties on 3rd December,

2024, agreed to the request of both parties and adjourned the matter beyond winter vacation. It was agreed that new dates will be provided by both the parties and accordingly hearing will be scheduled. However, both the parties did not come forward with the new date and accordingly, hearing was scheduled.

It was also pressed by the Commission that the Hon'ble High Court of Meghalaya, vide its Order dated 15.02.2024, reverted the Writ Petitions filed by the Petitioners for adjudication of MSERC. Relevant paras of the Order are reproduced below:-

“Accordingly, with the consent of the parties, these writ petitions are disposed of with a direction to the Meghalaya State Electricity Regulatory Commission (MSERC) to decide the pending cases and applications on their own merit, and in accordance with law. With regard to the tariff collected by the petitioner Corporation (MePDCL), and also the special tariff paid by the respondent/consumer herein, the same shall be subject to the final adjudication by the Meghalaya State Electricity Regulatory Commission (MSERC). “It is made clear that this Court has not entered into or expressed its opinion on the merit of these cases, leaving all the questions of law and facts to be decided by the Meghalaya State Electricity Regulatory Commission (MSERC). These matters involving public revenue, it is expected that the same shall be expeditiously disposed of by the Meghalaya State Electricity Regulatory Commission (MSERC).”

- 35.** The Commission is of the observance that Hon'ble High Court directed the Commission to expeditiously dispose of the Cases as it involves public revenue. The Commission after hearing both the parties, as the last opportunity, listed the matter on 10th June 2025 on Hybrid Mode, vide its Order dated 13.05.2025 and with a direction that if either party is unable to attend the hearing, the Commission will be at liberty to pass the Order taking into consideration the Written Submissions of both parties, already available with the Commission.
- 36.** After multiple adjournments and procedural delays, the matter was finally taken up for hearing on 10th June 2025 through Hybrid Mode. Ld. Counsel Mr. K. Paul on behalf of the Petitioners as well as the Ld. Counsel Mr. A. Singh for the Respondents made their

submission on the Petitions. It was also prayed that written submission will be submitted in due course.

The Commission heard both parties at length and also allowed for submission of written submissions before disposing the matter. However, till date no written submission has been submitted.

37. The Division Bench of the Hon'ble High Court of Meghalaya while disposing of the Writ Appeal vide Order dated 05.09.2022, has made an observation at para 19 as reproduced below:

19. "It is made clear that the observations herein are for the purpose of adjudication of the appeal and will not prejudice either party in course of any future proceedings before any other authority, including the State Electricity Regulatory Commission."

The Commission takes note of the judgment and Order dated 05.09.2022, as well as the subsequent observations of the Hon'ble High Court. Specifically, the Commission notes paragraph 19 of the High Court's decision, wherein it is clarified that the observations made are for the purpose of adjudicating the appeal and shall not prejudice the rights of the parties in any future proceedings before any other authority, including this Commission.

Accordingly, while the Commission may refer to the High Court's judgment as part of the background, it proceeds to dispose of the matter on the basis of the material placed on record and in accordance with the statutory provisions and regulations applicable. The present decision is therefore arrived at independently and on its own merits

38. The Commission considering urgency of the matter, shall dispose of the matter based on the materials on records and submission made during the hearing. Further, the Hon'ble High Court in its Order dated 15.02.2024, has directed the Commission to disposed of the matter expeditiously as it is involving public revenue. Relevant para of the Order is reproduced below:

'4. It is made clear that this Court has not entered into or expressed its opinion on the merit of these cases, leaving all the questions of law and facts to be decided by the Meghalaya State Electricity Regulatory

Commission (MSERC). These matters involving public revenue, it is expected that the same shall be expeditiously disposed of by the Meghalaya State Electricity Regulatory Commission (MSERC).’

39. The Commission shall consider and deliberate upon the following questions to reach a conclusion

Question 1: Can termination of MOU lead to automatic termination of the agreements signed by the industries?

- 1) MOU was signed by MePDCL and BIA on 07.10.2020 for providing incentives to the industries in the State to promote growth. BIA which is an association of the industries is not a consumer nor a licensee under the Electricity Act 2003. Special Terms and Conditions mentioned in the MOU were just an understanding between BIA and MePDCL, which is evident from the heading ‘**The Parties set forth their understandings under this MOU as under.**’ Special Terms and Conditions including Special Tariff were applicable to only those industries who are members of BIA and who meet certain criteria as laid down under clause 16 of the MOU. MOU on its own was not an operational agreement as BIA is neither a consumer nor a licensee and had no obligation under this MOU. MOU became operational only when the eligible industries entered into an agreement with MePDCL. Ten industries namely Meghalaya Cast & Alloys Pvt. Ltd, RNB Cements (P) Ltd, Pawan Castings (Meghalaya) Pvt. Ltd, Green Valley Industries Ltd, M/s Sriram Wire Products (Meghalaya), Hills Cements Company Ltd, M/s Shillong Ispat and Rolling Mills, M/s Ri-Bhoi Ispat and Rolling Mills, Meghalaya Steels Ltd and Meghalaya Cements Ltd, entered into separate agreement individually with MePDCL under which they were drawing power under Special Tariff. We would like to discuss here the difference between a MOU and an Agreement

Agreement and Memorandum of Understanding (MOU) may appear similar at first glance. However, there are significant differences between them that are worth highlighting. Generally before signing of any agreement, MOU is signed to arrive at broad understanding. Memorandum of Understanding (MOU) is a non-binding

document that outlines the general terms and understanding of the parties. It is often used as a preliminary step before negotiating a formal agreement. While it does not have the legal force of an agreement, an MOU can help clarify the intentions of the parties involved and provide a framework for further negotiations. Further, the terms and conditions of MOU including the Tariff became legally enforceable only after approval of this Commission on 19th October 2020. Whereas, an agreement is a legally binding document that include the specific terms and conditions between the parties. It is a contract that can be enforced in a court of law, and it will require the signature of the parties involved. The main difference between Agreement and Memorandum of Understanding (MOU) is their legal enforceability.

In the instant case, MOU was signed by BIA on behalf of their industries to have an arrangement with broad terms and conditions and left it to the discretion of individual industries whether to avail this facility or not. This MOU was valid for three years from the date of approval of MSERC. As can be seen from the individual agreements, that ten industries availed this scheme from their respective effective dates. Agreements include demand of the respective industry, minimum offtake of not less than 75% of their demand load (which is at variance with MOU) including the terms and conditions as envisaged under the MOU. In our view, this MOU was an arrangement or special scheme developed by the parties and offered by MePDCL to the eligible industries for a period of three years. It is also evident from the Clause 17 of the MOU that **'This arrangement can be terminated by either of the two parties after giving 3 months advance notice'**. Any eligible industry can enter into an agreement within the three-year period to avail the Special Tariff upto a period of maximum three years from the effective date of the Commission's Order, dated 19th October 2020, i.e. 01.11.2020. **Since upon notice of termination of MOU, BIA has not challenged the termination, MOU stands automatically terminated after three months of serving the notice.**

We will now look into the termination of MOU and its effect on the agreement. MePDCL has issued termination notice to BIA on 26.10.2021 as per clause 17 of the MOU which is reproduced below:

'This arrangement can be terminated by either of the two parties after giving 3 months advance notice.'

Termination of MOU, in our opinion once effective from 3 months after serving notice i.e., with effect from 26.01.2022, means nonexistence of this arrangement/scheme and no further eligible industry will have opportunity to avail this scheme while entering into separate agreement. However, we observe that no notice has been served to the individual industry as agreed by both the parties under their respective agreement, which states ***'That this agreement can be terminated by either of the two parties after giving three months advance notice'***. Industries were aware of the fact only when MePDCL served notice dated 17th January 2022, for disconnection of power supply in case they do not enter into fresh agreement.

We have gone through the MOU and all the agreements signed by Industries respectively and do not find any clause stating that termination of MOU will lead to termination of agreements automatically. Further, it may be noted that this Commission vide Order dated 19th October 2020, had approved terms and conditions of MOU including Special Tariff and stated as below:

'The Commission perused all documents and materials submitted, including the petition, the additional petition and the MOU, and we find that the proposed special tariff of INR 4.9/KVAH for the industrial consumers, and that the terms and conditions of the MOU are just and reasonable. Besides, we also find that the terms and conditions agreed upon between the parties which are reduced in writing as Memorandum of Understanding, signed by the respective parties along with witnesses and that the terms and conditions agreed upon between the parties are legal and enforceable between the parties and accordingly the MOU dated 07/10/2020 is allowed, accepted and incorporated in the present order.'

In the result the Commission approves the petition for special tariff for an initial period of 3 years to the industrial consumers of the Respondent, BIA

as per the terms and conditions provided in details of the MOU executed between MePDCL and BIA, as reproduced at para 20 above.

Parties are directed to complete all the formalities on or before 31st October, 2020 and the implementation of load supply shall commence from 1st November 2020 onwards. '

MePDCL should have served termination notice to the individual industry as per the relevant clause under their respective agreements. Mere termination of MOU does not lead to termination of the Agreement for special tariff.

Question 2: Can MePDCL charge tariff other than what had been approved by this Commission?

Commission vide Order dated 19th October 2020, approved Special Tariff to certain industries. Relevant paras are quoted below:

'.....

The Commission perused all documents and materials submitted, including the petition, the additional petition and the MOU, and we find that the proposed special tariff of INR 4.9/KVAH for the industrial consumers, and that the terms and conditions of the MOU are just and reasonable. Besides, we also find that the terms and conditions agreed upon between the parties which are reduced in writing as Memorandum of Understanding, signed by the respective parties along with witnesses and that the terms and conditions agreed upon between the parties are legal and enforceable between the parties and accordingly the MOU dated 07/10/2020 is allowed, accepted and incorporated in the present order.

In the result the Commission approves the petition for special tariff for an initial period of 3 years to the industrial consumers of the Respondent, BIA as per the terms and conditions provided in details of the MOU executed between MePDCL and BIA, as reproduced at para 20 above.

Parties are directed to complete all the formalities on or before 31st October, 2020 and the implementation of load supply shall commence from 1st November 2020 onwards.'

It can be seen that Special Tariff of Rs 4.90/kVAh was approved to certain industries for a period of 3 years effective from 1st November 2020. Section 62 of Electricity Act 2003 provides as follows:

'Section 62. Determination of tariff.

(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for--

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) wheeling of electricity;

(d) retail sale of electricity:

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption

of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.'

It is very clear that no licensee can recover charges other than what has been approved by the Appropriate Commission. It is further emphasized that while determining Annual Revenue Requirement (ARR), Commission takes into account actual revenue received from the previous period based on the tariff notified by the Commission and any shortfall/surplus is adjusted against the next tariff period. Charging any tariff without the proper approval of the Commission will disturb the ARR and thereby will have impact on the tariff for all individual categories.

In line with the Clause 20 of the MYT Regulation 2014, Commission issues distribution tariff for MePDCL for each financial year. MePDCL is bound to charge tariff from its consumers strictly as per tariff order issued by the Commission. Commission approved MOU in totality and Special Tariff of Rs. 4.90/kVAh on 19th October 2020 which was to be effective from 01.11.2020. Relevant paras of Commission's Order dated 19.10.2020 regarding Special Tariff is reproduced below:

'21. We have perused and considered the entire materials on record and conclude as follows:

The Commission examined the proposal for special tariff submitted by the Petitioner MePDCL, and also the views and responses of the Respondents BIA. The MOU between the Petitioner and the Respondent based on a consensus agreement between the parties was also taken into consideration.

The other factor taken into consideration was the priority of protecting the Consumers' interests and the Commission noted the views expressed by the industrial consumers represented by the Respondent BIA regarding the rate for power.

It is also the Commission's duty to take into consideration the need to ensure that the distribution and supply of electricity by MePDCL is done on commercial principles, and that the cost of electricity is recovered in a reasonable manner.

The Commission noted that the proposal of the petitioner MePDCL for a special tariff, was based on the objective of promoting and encouraging industrial consumption of electricity, and that this could also provide an impetus for industrial growth and development. It is also expected to increase HT: LT sales mix, which will go towards helping MePDCL in reducing its T&D losses, and thereby leading to overall operational efficiency of MePDCL up to some extent.

At this stage, it is also pertinent to state that under the National Tariff Policy 2016, the Ministry of Power resolution dated 28/01/2016, vide Para 8.4 reads as- "Licensee may have the flexibility of charging lower tariffs than approved by the State Commission if competitive conditions require so without having a claim on additional revenue requirement on this count in accordance with section 62 of the Act." Thus, charging lower tariffs than approved by the State Commission is permissible provided the conditions are fulfilled.

In the instant case, the Petitioner has clearly differentiated for the proposed special tariff, based on consumer's load factor, power factor, voltage, total consumption, the nature of supply and the purpose for which the supply is required.

The petitioner and the respondents have arrived at a consensus for a special power rate that will be applicable to BIA industrial consumers, who will be charged at the rate of INR 4.9/KVAH including demand charges, as against the original proposal of INR 6/KVAH that was submitted by MePDCL. This will be for an initial period of three years.

Among other terms and conditions, the MOU also includes the condition that the Industrial Consumers undertake to increase their load factor to the tune of 68% minimum, and that in case the BIA member industries fail to maintain minimum load factor of 68%, for reasons other than force majeure, a penal charge of INR 1.2/KVAH and INR 1.00/KVAH will be applicable on 33 KV IHT consumer and on 132 KV EHT level consumer respectively.

The MePDCL undertakes to supply uninterrupted, unrestricted and stable quality power to the BIA member industries.

The MePDCL will also incorporate the special power tariff rate as decided in the MOU while filing their Business Plan or MYT to MSERC.

Amendment or modification of any clause in the MOU will only be done with the mutual consent of the parties involved and with the approval of MSERC. In case of any disputes the Electricity Act, 2003 will apply and shall be within the jurisdiction of MSERC.

The Commission perused all documents and materials submitted, including the petition, the additional petition and the MOU, and we find that the proposed special tariff of INR 4.9/KVAH for the industrial consumers, and that the terms and conditions of the MOU are just and reasonable. Besides, we also find that the terms and conditions agreed upon between the parties which are reduced in writing as Memorandum of Understanding, signed by the respective parties along with witnesses and that the terms and conditions agreed upon between the parties are legal and enforceable between the parties and accordingly the MOU dated 07/10/2020 is allowed, accepted and incorporated in the present order.

In the result the Commission approves the petition for special tariff for an initial period of 3 years to the industrial consumers of the Respondent, BIA as per the terms and conditions provided in details of the MOU executed between MePDCL and BIA, as reproduced at para 20 above.

Parties are directed to complete all the formalities on or before 31st October, 2020 and the implementation of load supply shall commence from 1st November 2020 onwards.'

It may be seen that Special Tariff has to be part of distribution tariff of MePDCL for the respective years. It cannot be independent of distribution tariff, as any revenue loss as a result of Special Tariff (which is lower than the average tariff) is compensated by the other consumers and also revenue gap of respective years is added to arrive at the distribution tariff of the subsequent year.

Special Tariff was part of distribution ARR and tariff till 2022-23. MePDCL was aware of the termination of MOU/agreement and discontinuation of Special Tariff. However, while filing petition for the year 2022-23, it continued with the Special Tariff. Commission, accordingly approved Special Tariff for the financial year 2022-23. MePDCL cannot charge tariff other than what was approved by the Commission for the respective years. During 2023-24, MePDCL excluded Special Tariff proposal, based on which Commission did not include Special Tariff for the period 2023-24. It was an oversight on the part of the Commission. The Commission had approved the Special Tariff in its Multi Year Tariff Order for FY 2021-22 till 2023-24, for a period of 3 years with effect from 01.11.2020 upto 31.10.2023.

In our opinion, MePDCL should have approached this Commission for termination of MOU and also the Agreement as the case may be. In fact, Tariff Order issued by this Commission for FY 2021-22 and FY 2022-23 had Special Tariff of Rs 4.90/kVAh. Special Tariff would remain in force till 31.10.2023.

40. We would also like to deal with the load factor as it was cited as reason for termination of the MOU. We have already concluded that the termination of MOU does not lead to automatic termination of the individual agreements entered with the industries. However, all

the industries were served with disconnection notice due to their inability to maintain 68% load factor, on 17th January 2022.

Special Tariff was approved by the Commission with one of the conditions that the industry will increase their load to 68%. There was no pre condition attached in the MOU as well as the Agreements signed by the industries. There has been a penal provision in case the industry fails to achieve threshold load factor of 68%. It was primarily incorporated to get additional compensation so that burden to other consumers is reduced as there will be shortfall in revenue recovery at the time of true up.

The Commission assigned the work of verifying the claim by MePDCL that the industries did not adhere to the commitment of maintaining 68% load factor to the CGRF on 5th December 2022. CGRF submitted its report after discussion with the industries and MePDCL on 15th March 2023 and has concluded as follows:

“In conclusion, it may be stated that for the period under consideration, there is only one petitioner namely M/s Green Valley Industries Ltd. who maintained the minimum average load factor of 68% as per MoU for special tariff between the parties. The other 9(nine) petitioners failed to maintained the desired value of load factor. In such cases, penalty bills were served by the Respondent, MePDCL but there are petitioners who default on payment of these bills as summarized above. The reasons for inability to maintain required minimum average load factor cited by the consumers include non-availability of raw materials, interruptions in power supply by the department, market fluctuations, natural calamities like heavy rainfall, factory maintenance, ageing of plant leading to frequent breakdown and effect of Covid on the market leading to lower productions.”

- 41.** As per report of CGRF, Industry has raised certain issues like non-availability of raw materials, interruptions in power supply by the department, market fluctuations, natural calamities like heavy rainfall, factory maintenance, ageing of plant leading to frequent breakdown and effect of Covid as possible reasons for not achieving the 68% load factor.

Force Majeure clause in MOU as well as respective agreements signed by BIA and the Industry provide as follows:

“18. Force majeure- Neither party shall be responsible or liable for or deemed in breach hereof because of any delay or failure in the performance of its obligations hereunder (except for obligations due prior to occurrence of force majeure events under this Agreement) or failure to meet milestone dates due to any event or circumstance (a force majeure event) beyond the reasonable control of the party experiencing such delay or failure, including the occurrence of the, Acts of God, Typhoons, floods, lightening, cyclones, Hurricanes, draughts, famine, epidemic, or other natural calamities; Acts of war or Civil unrest; Any requirement, action or omission to act pursuant to any judgement or order if any court or judicial authority; Earthquakes, explosions etc.”

Commission vide its order dated 28th August 2024, directed the industries and MePDCL to submit the following information's:

- i. Respective industry to submit year wise detail of connected load, electricity consumption, loading factor, production capacity and capacity utilization factor from the FY 2018-19 onwards till FY 2024-25.
- ii. Month wise actual data of rainfall since effective date of Special Tariff till termination date from the concerned government authority along with normal rainfall data.
- iii. MePDCL to submit month wise interruption of power supply to these industries and if it has affected loading factor as per the agreement.
- iv. MePDCL to submit month wise penalty billed and payment received from the respective industry.
- v. Industry and MePDCL to submit detail of force majeure events invoked till the termination of the agreement.
- vi. Concerned officers from the respective industry and MePDCL should be present at the time of next hearing.

42. Observation on the information furnished by the industries:

Particulars	Observation
Meghalaya Cast & Alloy Pvt Ltd	
Connected Load	The connected load of 6600 KVA remained the same throughout the period under consideration which implies that there was no enhancement of connected load.
Electricity Consumption	The Average Electricity Consumption during FY 2019-20 is less in comparison to FY 2018-19. However, it has increased in the FY 2020-21, FY 2021-22 after availing special tariff. Then it falls down again in the FY 2022-23 and FY 2023-24 after the MoU has been terminated.
Loading Factor	The Average Load factor varies between 39% to 48% over the years and the maximum reported load factor is 57.18% i.e. in FY 2021-22.
Production Capacity	It was observed that the production capacity remained constant.
Capacity Utilization Factor	The Capacity utilization factor for FY 2018-19 and FY 2020-21 has not been reported. However, the highest reported CUF was 80.13% in FY 2021-22 which coincided with the highest electricity consumption during that period.
Force Majeure invoked	Not reported, which implies that no force majeure was invoked.
Conclusion	It was observed from the period under consideration that the electricity consumption has improved. However, the industry has failed to maintain the minimum Average Load factor of 68%. Further, since force majeure was not reported, the party cannot make any claim for failing to meet the targeted load factor.
RNB Cements(P) Ltd.	
Connected Load	The connected load of 6000 KVA remained the same throughout the period under consideration which implies that there was no enhancement of connected load.
Electricity Consumption	The Average Electricity Consumption increases year on year.
Loading Factor	The Average Load factor from Nov' 2020 to March 2021 was 16%. However, from April 2021 to August 2024, the Average Load Factor were in the range of 36% to 51%.
Production Capacity	It was observed that the production capacity remained constant.
Capacity Utilization Factor	The Capacity utilization factor from Nov'2020 to March 2021 is 15%. However, from April 2021 to August 2024, it has increase from 50% to 110% which implies that the capacity has been overutilized.
Force Majeure invoked	Not reported, which implies that no force majeure was invoked.
Conclusion	It was observed from the period under consideration that the electricity consumption has improved over the years. However, the industry has failed to maintain the minimum Average Load factor of 68%. Further, since force majeure was not reported, the party cannot make any claim for failing to meet the targeted

Particulars	Observation
	load factor.
Pawan Castings (Meghalaya) Pvt. Ltd.	
Connected Load	The connected load of 3000 KVA remained the same throughout the period under consideration which implies that there was no enhancement of connected load.
Electricity Consumption	The Average Electricity Consumption in the FY 2019-20 was less in comparison to FY 2018-19. There was no improvement in energy consumption during the period of special tariff.
Loading Factor	The Average Load factor during the FY 2018-19 was 29% and reduces to 28% and 26% in the FY 2019-20 & FY 2020-21 and further increased to 29% in FY 2021-22 and eventually reduces again in FY 2022-23, FY 2023-24. The highest reported Load Factor was 29% i.e prior to availing special tariff.
Production Capacity	It was observed that the production capacity remained constant.
Capacity Utilization Factor	The Capacity utilization factor was not reported.
Force Majeure invoked	Not reported, which implies that no force majeure was invoked.
Conclusion	It was observed that the electricity consumption has not improved even after availing special tariff. The industry has also failed to maintain the minimum Average Load factor of 68%. Further, since force majeure was not reported, the party cannot make any claim for failing to meet the targeted load factor.
Green Valley Industries Ltd.	
Connected Load	The connected load of 9440 KVA remained the same throughout the period under consideration which implies that there was no enhancement of connected load.
Electricity Consumption	The Average Electricity Consumption increases over the years.
Loading Factor	The Average Load factor from FY 2020-21 to FY 2024-25 (upto August) were in the range of 73% to 84%. Further, Green Valley has availed special tariff from 14.01.2021. Assuming on pro-rata basis the Average Load Factor from April 2020 to December 2020 was 63%, this implies that the industry has efficiently used its connected load after availing special tariff.
Production Capacity	It was observed that the production capacity remained constant.
Capacity Utilization Factor	The Capacity utilization from FY 2020-21 to FY 2024-25 (upto August) ranges from 70% to 102% which implies that the capacity has been utilized efficiently.
Force Majeure invoked	Not reported, which implies that no force majeure was invoked.
Conclusion	From the data, it can be concluded that the special tariff has helped the industry optimize its connected load , and the improvement in the Average Load Factor is evidence of this. The industry was able to consistently operate above the target load factor of 68% , which is a positive sign of better load utilization and operational efficiency.
M/s Sriram Wire Products (Meghalaya)	
Connected Load	The connected load of 500 KVA remained the same throughout the

Particulars	Observation
	period under consideration, which implies that there was no enhancement of connected load.
Electricity Consumption	The Average Electricity Consumption reduces substantially over the years.
Loading Factor	The Average Load factor from FY 2018-19 to FY 2019-20, prior to availing special tariff, ranged between 45.59% and 44.65%. Further, Sriram Wire Products has availed special tariff from 07.01.2021 and it has been observed that the loading factor from FY 2020-21 to FY 2024-25 (upto August) were in the range of 11.17 to 30.41% which implies that there is under-utilization of the connected load.
Production Capacity	It was observed that the production capacity remained constant.
Capacity Utilization Factor	The Capacity utilization from FY 2018-19 and FY 2019-20 were 35.99% and 34.14%. From FY 2020-21 to FY 2024-25 (upto August) it has decreased from 19.05% to 7.036% which implies that the capacity has been not been utilized efficiently.
Force Majeure invoked	Not reported, which implies that no force majeure was invoked.
Conclusion	It can be concluded from the above that no effort has been made by the industry to improve the load factor and the capacity is underutilized. Further, since force majeure was not reported, the party cannot make any claim for failing to meet the targeted load factor.
Hills Cements Company Ltd	
Connected Load	In the initial period FY 2018-19, the connected load was 8400 kVA and it has increased to 8600 kVA in the FY 2019-20 and remained constant till FY 2022-23. However, there is enhancement again to 9950 kVA from FY 2023-24, which implies that their capacity has increased.
Electricity Consumption	The Average Electricity Consumption for the initial period FY 2018-19 was high in comparison to FY 2021-22. However, for the FY 2019-20 and FY 2020-21, no energy consumption has been reported. For the FY 2022-23 the consumption has increased. However, for FY 2023-24 it has reduces substantially. This implies that despite enhancement of connected load no positive reflection in the electricity consumption.
Loading Factor	The Average Load factor prior to availing special tariff was 61.51%. However, post special tariff the Average Load factor drop down in the FY 2021-22 and increased to 72% in the FY 2022-23. Further, it reduced to 23.25% and 13.64% in the FY 2023-24 and FY 2024-25 (up to August).
Production Capacity	It was observed that the Average production capacity remained constant despite enhancement of connected load.
Capacity Utilization Factor	The Capacity utilization for FY 2018-2019 was not reported. However, for FY 2019-20 to FY 2024-25 (upto August) it ranges from 70% to 110%. It was further observed that during FY 2018-19 electricity consumption was reported, but Capacity Utilization was

Particulars	Observation
	not reported. Whereas, for FY 2019-20 and FY 2020-21 no electricity consumption was reported. However, there is Capacity utilization.
Force Majeure invoked	Not reported, which implies that no force majeure was invoked.
Conclusion	It can be concluded from the above that although the connected load has increased however, there is no positive rise in the electricity consumption. Secondly, there is a discrepancy in the data wherein the average loading factor for FY 2022-23 was 72% and the CUF was approximately 100%. Whereas, in FY 2023-24 the average loading Factor was 23.25% and the CUF exceeds 100% which is not possible. The industry was not able to maintained the minimum average load factor for period under consideration except in FY 2022-23. Further, since force majeure was not reported, the party cannot make any claim for failing to meet the targeted load factor.
Meghalaya Steel Ltd	
Connected Load	The connected load was 9000 kVA from FY 2018-19 to June 2021. However, from July 2021, it has reduced to 7500 kVA.
Electricity Consumption	The Average Electricity Consumption increased in the FY 2021-22 and FY2022-23. Thereafter, it reduced in the FY 2023-24.
Loading Factor	The Average Load factors were in the range of 19% to 26% during FY 2018-19 to FY 2020-21. However, post special tariff it has risen to 40% in the FY 2021-22 and subsequently dropped down to 37% in FY 2023-24. For FY 2024-25 no data was furnished.
Production Capacity	Production capacity reported for Billets and TMT Bars. It was observed that the production capacity remained constant even after reduction in the connected load.
Capacity Utilization Factor	The maximum capacity utilized was 73% in the FY 2021-22. However, in general it varies from 29% to 66%
Force Majeure invoked	Reported as NA, which implies that no force majeure was invoked.
Conclusion	It can be concluded from the above that the industry has failed to maintained the minimum Average Load Factor and further the connected load has reduced post special tariff. Further, since force majeure was not reported, the party cannot make any claim for failing to meet the targeted load factor.
Meghalaya Cement Ltd	
Connected Load	The connected load was 13000 kVA from FY 2018-19 to 6 th January 2022. However, from 7 th January 2022, it has been enhanced to 17000 kVA.
Electricity Consumption	The Average Electricity Consumption increases over the year. Thereafter, it reduced in the FY 2023-24.
Loading Factor	The Average Load factors were in the range of 21% to 22% during FY 2018-19 to FY 2019-20. However, post special tariff it has increased up to 57% in the FY 2022-23 and thereafter it dropped to 17% in the FY 2023-24.

Particulars	Observation
Production Capacity	Production capacity varies over the years.
Capacity Utilization Factor	The maximum average capacity utilized was 57% in the FY 2022-23. However, it varies from 16% to 22%
Force Majeure invoked	Not reported, which implies that no force majeure was invoked.
Conclusion	It can be concluded from the above that the industry has failed to maintain the minimum Average Load Factor. Further, since force majeure was not reported, the party cannot make any claim for failing to meet the targeted load factor.
M/s Shillong Ispat and Rolling Mills. & M/s Ri-Bhoi Ispat and Rolling Mills.	They have not furnished the data as required by the Commission.

43. Replies of MePDCL on the information sought and observation of the Commission.

Queries	Replies	Observation
Month wise actual data of rainfall since effective date of Special Tariff till termination date from the concerned government authority along with normal rainfall data	Rainfall Data at Thamar and Jarain station submitted.	The rainfall is normal.
MePDCL to submit month wise interruption of power supply to these industries and if it has affected loading factor as per the agreement	MePDCL submitted the month wise interruption to all industries along with the computation of load factor. Further, it was submitted that the interruption has no impact on the computation of the load factor for the particular month since as per the provision of the contract agreement, the load factor is to be computed on pro-rata basis in case of non-supply of power from MePDCL.	From the data submitted, it has been observed that outage hours have been duly considered in the computation of the load factor. Therefore, the claim made by industries that power interruptions are responsible for non-maintenance of the load factor is not justified.
MePDCL to submit month wise penalty billed and payment received from the respective industry	MePDCL submits that the load factor penalty was billed on half yearly basis as per the terms and conditions of the contract.	It was observed from the data that the penalty bill has been raised by the Respondent and also paid by the industries except for Hill Cement Company Ltd. for the period 30.09.2021 to 25.01.2022 where no penalty has been charged. Further, no penalty has been raised against M/s Green Valley Industries Ltd. which implies that the minimum load factor has been met.
Industry and MePDCL to submit detail of force majeure events invoked till the termination of the agreement	MePDCL submits that there was no event of force majeure invoked by any industry during the period of the contract till termination.	Since, force majeure was not reported, the party cannot make any claim for failing to meet the targeted load factor.

44. Following can be concluded based on the submission made by the industries, MePDCL and CGRF report:

- 1) None of the industry invoked Force Majeure event for not achieving 68% load factor.
- 2) There has not been any effort by the industries except for Green Valley Industries Ltd. to improve consumption and thereby load factor in line with the agreement and MOU. In fact, load factor remains stagnant for the period of consideration. Production capacity also remained more or less constant.
- 3) With regards to the interruption of supply by MePDCL we have perused the methodology of calculation of load factor by MePDCL, wherein, interruption period is excluded from the calculation of load factor and thereby, no impact on the load factor.
- 4) There has not been any abnormal rain fall leading to Force Majeure, which is otherwise also not invoked by any industry.
- 5) CGRF report also points out Covid 19, breakdown of equipment, unavailability of raw material, as possible reasons claimed by the industry. Equipment breakdown, non-availability of raw material is not a part of Force Majeure incident as per the agreement/MOU.
- 6) Agreements with the industries were entered into by MePDCL after 31st October 2020. COVID 19 started in December 2019. Industry was well aware of the fact of COVID 19 and its impact. Since, agreements were signed after the COVID 19, it cannot be claimed as Force Majeure.

As discussed above we accept the CGRF report in full and conclude that except for M/s Green Valley Industries Limited as on the date of report of the CGRF, other industries have failed to maintain 68% load factor as per MOU/ agreement. A suitable penal provision was incorporated in the Agreements to get compensation to reduce the burden on other consumers.

Conclusion:

1. The CGRF report is accepted in totality.
2. Industry will pay Special Tariff till 31.10.2023 and thereafter Normal Tariff.
3. Industry will pay penalty for not achieving 68% (those who have not achieved 68% load factor) load factor in line with the MOU/agreement.

4. MePDCL is given liberty to claim shortfall in the net revenue during this period for next tariff period..
5. MePDCL will charge normal tariff with effect from 01.11.2023 to the respective industry.

Accordingly, all the petitions, bearing Case No. 11, 12, 13, 14, 15, 16, 17,18,19, and 20 of 2022 respectively stand disposed of.

Sd/-
Ramesh Kumar Soni,
Member (Law)

Sd/-
Chandan Kumar Mondol,
Chairman