ITEM NO.19 COURT NO.13 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 10542-10546/2026

MAHARASHTRA STATE ELECTRICITY
DISTRIBUTION COMPANY LIMITED Appellant(s)

VERSUS

DIWAKAR RENEWABLE & INFRA PVT. LTD.& ORS. ETC. Respondent(s)

FOR ADMISSION, IA No. 239152/2026 - APPLICATION FOR PERMISSION, IA No. 237651/2026 - STAY APPLICATION

Date : 09-09-2026 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.V. VISWANATHAN
HON'BLE MR. JUSTICE ARUN PALLI

For Appellant(s) Mr. Mukul Rohatgi, Sr. Adv.*
Mr. Basava Prabhu Patil, Sr.Adv.*
M/S. Cyril Amarchand Mangaldas, AOR

For Respondent(s) Mr. Sajjan Poovayya, Adv.
Mr. Aditya Jalan, Adv.
Mr. Abhijnan Jha , AOR
Mr./Ms.Bhagya Yadav, Adv.
Ms. Raksha Agarwal, Adv.

Mr. Vishrov Mukerjee, Adv.
Mr. Yashaswi Kant, Adv.
Mr. Ameya Vikram Mishra, Adv.
M/s Trilegal Advocates On Record, AOR

Mr. Hemant Singh, Adv.
Mr. Sourav Roy, AOR (through VC)
Mr. Lakshyajit Singh Bagdwal, Adv.
Ms. Lavanya Panwar, Adv.
Mr. Anshu R. Deshpande, Adv.
Mr. Harsh Anand, Adv.
Ms. Naina Agarwal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Heard Mr. Mukul Rohatgi, learned Senior Counsel, Mr.Basava Prabhu Patil, learned Senior Counsel, both appearing

for the appellant(s)-Maharashtra State Electricity Distribution Company Limited (for short, 'MSEDCL'), Mr. Sajjan Poovayya, learned Senior Counsel, Mr. Vishrov Mukerjee, Mr.Hemant Singh and Mr. Sourav Roy, learned counsels, all appearing on caveat for the respondents.

2. On 25.07.2025, the Request for Selection (for short, 'RfS') based on the Battery Energy Storage Systems (for short, 'BESS') guidelines dated 10.03.2022, issued by the Ministry of Power, Government of India(for short, 'MoP') for 2,000 MW/4,000 MWh BESS capacity award was issued by the appellant(s) initially providing for two cycles a days.

3. However, by addendum to the RfS dated 07.09.2025, the cycles were changed from two cycles a day to one cycle a day, i.e. 5,475 cycles over the 15 year contract period.

4. The respondents-bidders participated, between 03.11.2025 and 05.11.2025 the technical and financial bids were opened and lowest tariff was discovered at Rs.1,65,998/MW per month and 2,000 MW/4,000 MWh BESS capacity awards were allocated to the successful bidders. On 05.12.2025, MSEDCL has filed a petition for adoption of the discovered tariff before the Maharashtra Electricity Regulatory Commission (for short, 'MERC').

5. On 31.12.2025, the MoP approved one cycle a day, subject to the MSEDCL retaining the contractual right to use BESS for at least 6,300 cycles a day without any additional cost. Written submissions were exchanged.

6. On 06.03.2026, the MERC approved the discovered tariff at

Rs.1,65,998/MW per month and 2,000 MW/4,000 MWh BESS. Dealing with the contention on the memorandum of MoP dated 31.12.2025, the MERC recorded the following findings:-

"25. Issue(4): Increase in operating cycles.

25.1 Respondents and Intervener strongly opposed the enhancement of the lifecycle requirement from 5,475 cycles (1 cycle per day over 15 years) to approximately 6,300 cycles, pursuant to the Ministry of Power's letter dated 31 December 2025. It is contended that RfS and the bidding documents clearly contemplated the operation of the BESS at one cycle per day Over a 15-year contract period, which formed the basis for bid structuring. Accordingly, bidders factored in battery degradation, lifecycle performance, augmentation planning, and financing assumptions. Any post-bidding increase in minimum cycles during the contract period should alter the technical and financial assumptions of the bid, and the same should not be allowed.

25.2. MSEDCL, in its reply on this issue, clarified that RFS explicitly envisaged BESS projects with two hours of discharge and one cycle per day. Bid conditions and terms of the RfS remain unchanged. Regarding the 6300-cycle reference, it is from MoP's letter dated 31December 2025, in which the MoP clarified that it is a contractual right (not a mandatory obligation) to use BESS for at least 6300 cycles during the contract period. Therefore, there is no merit to the concerns raised by concerned bidders on this issue. Additionally, the condition mentioned pertains to VGF eligibility and is not part of the current proceedings.

25.3. In this regard, the Commission notes that the present bidding process for 2000MW/4000MWh has clearly specified 1 cycle/day and viability gap funding through PSDF. The Commission, in its earlier Order dated 31

December 2025, has approved the RfS with these conditions. Considering a 15-year contract period, 6300 cycles over that period exceed the 1cycle/day stipulation in the RfS. On perusal of MoP's letter dated 31 December 2025, it is observed that said letter was in reply to MSEDCL's proposal to consider 1 cycle/day, whichis in line with the RfS document. Relevant part of the MoP letter is reproduced below:

> *"1 am directed to refer to MSEDCL's letter dated 26.12.2025 on the above subject and to convey that the request made regarding deviation from existing guidelines to operate from1.5 cycles to single-cycle per day operation for the 2,000 MW / 4,000 MWh BESS project being implemented by MSEDCL under the VGF scheme supported through PSDF has been concurred by the Ministry subject to the condition that MSEDCL, the procurer, should retain the contractual right to use BESS for at least 6300 cycles during the contract period without any additional cost.”*

Thus, while allowing MSEDCL's request for single-cycle-per-day operation of BESS, MoP has imposed a condition that MSEDCL retain the contractual right to use BESS for at least 6300 cycles during the contract period. MSEDCL, in its reply, has stated that such contractual rights should not be considered mandatory obligations for bidders, and hence, there is no change to the RfS conditions.

25.4. The above MoP letter is related to VGF funding under PSDF. Respondents have apprehension about the non-availability of VGF if they do not meet the 6300 cycles condition, and their quoted tariff becomes financially unviable. Had MSEDCL received such clarification before the bid submission, bidders would have had the opportunity to appropriately factor this condition into *their financial calculations. Now, after the bidding process, imposing such anew condition would vitiate the bidding process itself. MSEDCL also would not like to do so, considering the urgent need of BESS to manage the increasing penetration of RE sources, and hence, in its Reply, MSEDCL has clearly stated that there is no change in the RfS condition, and the condition of 6300 cycles is just a contractual provision and will not be obligatory on successful bidders. By relying on MSEDCL's submission, the Commission rules that there is no change to the RfS condition for a single cycle per day; accordingly, the tariff adopted above will remain the same. The Commission also directs MSEDCL to extend all its support to successful bidders complying with RfS conditions to avail VGF under PSDF.”*

7. The conclusion was that the memorandum of 31.12.2025 issued by the MoP does not result in any change but just is a contractual provision and will not be obligatory on the successful bidders.

8. On 13.03.2026, letters of allotment were issued to the successful bidders for a period of 15 years at Rs.1,65,998/MW per month and 2,000 MW/4,000 MWh BESS.

9. The respondents carried the matter to the Appellate Tribunal for Electricity (for short, ‘APTEL’) in March, 2026. The APTEL by the impugned order, for the reasons recorded thereon, set aside the order(s) of the MERC and quashed the bidding process. The letters of intent issued to the respondents have also been quashed and the MSEDCL has been directed to return the security deposit within four weeks.

10. The APTEL was not satisfied with the undertaking of the

MSEDCL. Aggrieved, the MSEDCL is before us.

11. At the very outset, learned Senior Counsels appearing for the MSEDCL submits that the MSEDCL would stick to the original tender conditions as amended by the addendum of 07.09.2025. The Clause 1.2 of the RfS which learned Senior Counsel drew attention, reads as under:-

> *"1.2 Under this RfS, the BESSD shall be required to set up a Battery Energy Storage System (BESS), with the primary objective of making the energy storage facility available to MSEDCL for charging/discharging of the BESS, on an "on demand" basis. MSEDCL seeks to utilize energy storage systems, on a "On-Demand" basis, suited to the requirements of the State DISCOMs during the peak and off-peak hours.*
>
> *In view of the above, MSEDCL invites proposals for setting up Battery Energy Storage Systems (BESS), connected to the STU, with a total storage capacity of 2000 MW/4,000 MWh (2-hour discharge, 1 cycle per day)."*

12. In short, their submission is that they would only insist on one cycle a day i.e. 5,475 cycles over 15 years. According to them, they would not enforce the office memorandum of the MoP issued on 31.12.2025. Alternatively, they submit that in case, for any reason, the MoP does not give the Viability Gap Funding Scheme (for short, 'VGF Scheme'), the MSEDCL would step in and subsidize the bidders.

13. Learned Senior Counsel appearing for the MSEDCL submits that in view of this there is absolutely no prejudice to the respondents to stick to their original bid and the discovered tariff/price and they submit that to merely latch onto the

memorandum of 31.12.2025 issued by the MoP is only an attempt to renege from the bid.

14. The submissions are strongly opposed by Mr. Sajjan Poovayya, learned Senior Counsel and the other learned counsel appearing for the respondents. They submit that it is beyond the jurisdiction of MSEDCL to give any such undertaking. They submit that they have calibrated their bid and made their investments based on the single cycle i.e. 5,475 over 15 years and today to insist even as a contractual right 6,300 cycles would throw their investments into disarray and also put their claim for the VGF Scheme in serious jeopardy.

15. We are of the opinion that in view of the undertaking given by the MSEDCL, the impugned order, for the time being, deserves to be stayed.

16. We, however, are of the opinion that the Union of India should be heard on the matter.

17. Let a copy of these appeals be handed over to Mr.Tushar Mehta, learned Solicitor General of India.

18. Issue notice to the respondents, returnable on 02nd November, 2026.

19. Mr.Tushar Mehta, learned Solicitor General of India shall obtain instructions from the Union of India and address us on the next date of hearing, on the stand of MoP.

20. Till the next date of hearing, there shall be stay of operation of the impugned order(s) 05.06.2026 passed by the Appellate Tribunal for Electricity at New Delhi.

21. Additionally, we also order s*tatus quo as on today,* on

condition that the concerned bank guarantees are kept alive by the respondents.

22. We make it clear that we are confining this order to the contesting respondents before us, who were appellant(s) before the APTEL. This order will not come in the way of those successful bidders who are willing to go ahead with the contract from executing the project.

23. Call on 02nd November, 2026.

24. Pleadings to be completed in the meantime.

(NIRMALA NEGI)
ASTT. REGISTRAR-cum-PS

(MANOJ KUMAR)
COURT MASTER (NSH)

*appearance not given