Reserved on : 21.02.2026
Pronounced on : 27.03.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.9206 OF 2025 (GM – KEB)

BETWEEN:

GLOBAL ENERGY PRIVATE LIMITED
A COMPANY AS PER THE PROVISIONS
OF COMPANIES ACT, 2013, AND
THROUGH MR. HARRY DHAUL,
ITS SUCCESSFUL RESOLUTION APPLICANT,
HAVING HIS RESIDENCE AT FLAT NO.4A,
AMAYAND RESIDENCY, NO.9,
RACE COURSE ROAD,
BENAGLURU – 560 001.

... PETITIONER

(BY SRI SAJAN POOVAYYA, SR.ADVOCATE FOR
SRI M.H.HIDAYATHULLA, ADVOCATE)

AND:

1 . BANGALORE ELECTRICITY
SUPPLY COMPANY LIMITED
A COMPANY AS PER THE
PROVISIONS OF THE COMPANIES ACT, 2013,
THROUGH ITS MANAGING DIRECTOR,

HAVING ITS REGISTERED AT
CORPORATE OFFICE, BESCOM
K. R. CIRCLE, BENGALURU – 560 001.

2 . POWER COMPANY OF KARNATAKA LIMITED
A COMPANY AS PER THE PROVISIONS
OF THE COMPANIES ACT, 2013
THROUGH ITS MANAGING DIRECTOR,
HAVING ITS REGISTERED OFFICE AT
5TH FLOOR, KPTCL BUILDING,
KAVERI BHAVAN,
BENGALURU – 560 009.

3 . GOVERNMENT OF KARNATAKA
THROUGH THE ADDITIONAL CHIEF SECRETARY,
ENERGY DEPARTMENT, ROOM NO. 236,
2ND FLOOR, VIKASA SOUDHA,
DR. B.R AMBEDKAR STREET,
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI SHAHBAAZ HUSAIN, ADVOCATE FOR R-1 AND R-2;
SRI M.RAJAKUMAR, AGA FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO A. DIRECT BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (RESPONDENT NO. 1) AND/OR POWER COMPANY OF KARNATAKA LIMITED (RESPONDENT NO.2) HONOUR ITS ADMITTED PAYMENT OBLIGATIONS, AND REIMBURSE GLOBAL ENERGY PRIVATE LIMITED FOR THE OVERDRAWAL CHARGES PAID BY GLOBAL ENERGY PRIVATE LIMITED (PETITIONER) TO MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED ON BEHALF OF BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (RESPONDENT NO.1); B. DIRECT BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (RESPONDENT NO.1) AND/OR POWER COMPANY OF KARNATAKA LIMITED (RESPONDENT NO.2) TO CLEAR THE INVOICES DATED 09.03.2017 (ANNEXURE-AZ)/17.04.2017 (ANNEXURE-BC) FOR THE

OVERDRAWAL CHARGES BETWEEN 11.07.2014 AND 31.08.2016, AT LEAST AT THE ADMITTED RATE OF INR.4.85/UNIT; C. DIRECT BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED (RESPONDENT NO.1) AND/OR POWER COMPANY OF KARNATAKA LIMITED (RESPONDENT NO. 2) TO PAY LATE PAYMENT SURCHARGE (AT 15 PERCENT P.A.) FROM THE DATE WHEN PAYMENTS IN RESPECT OF OVERDRAWAL BECAME DUE AND PAYABLE AND TILL ACTUAL PAYMENT.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.02.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before the Court seeking the following prayer:

"a. Pass an appropriate writ, order and/or direction, in the nature of mandamus, or such other writ, order and/or direction that this Hon'ble Court may deem fit, and direct Bangalore Electricity Supply Company Limited (Respondent No.1) and/or Power Company of Karnataka Limited (Respondent No.2) to honour its admitted payment obligations, and reimburse Global Energy Private Limited for the overdrawal charges paid by Global Energy Private Limited (Petitioner) to Maharashtra State Electricity Distribution Company Limited on behalf of Bangalore Electricity Supply Company Limited (Respondent No.1).

b. Pass an appropriate writ, order and/or direction, in the nature of mandamus, or such other writ, order and/or direction that this Hon'ble Court may deem fit, and direct

Bangalore Electricity Supply Company Limited (Respondent No.1) and/or Power Company of Karnataka Limited (Respondent No.2) to clear the invoices dated 09-03-2017 (Annexure-AZ)/17-04-2017 (Annexure-BC) for the overdrawal charges between 11-07-2014 and 31-08-2016, at least at the admitted rate of INR 4.85/unit.

c. Pass an appropriate writ, order and/or direction, in the nature of mandamus, or such other writ, order and/or direction that this Hon'ble Court may deem fit, and direct Bangalore Electricity Supply Company Limited (Respondent No.1) and/or Power Company of Karnataka Limited (Respondent No.2) to pay late payment surcharge (@ 15% p.a.) from the date when payments in respect of overdrawal became due and payable and till actual payment.

d. Grant such other relief as this Hon'ble Court may deem fit in the facts and circumstances of the present case."

2. Heard Sri Sajan Poovayya, learned senior counsel appearing for the petitioner, Sri Shahbaaz Husain, learned counsel appearing for respondents 1 and 2 and Sri M. Rajakumar, learned Additional Government Advocate appearing for respondent No.3.

3. Facts, in brief, germane are as follows: -

3.1. The petitioner is a Company registered under the Companies Act, 2013 involving in the business of power transmission and distribution. The 1st respondent/Bangalore

Electricity Supply Company Limited (‘BESCOM’), a Government of Karnataka Company and electricity distribution licensee under the Electricity Act. These are the two protagonists in the case at hand. The State of Karnataka was, at the relevant point in time, undergoing severe power deficit and was seeking power at the rates of ₹7 to 10 per unit. The situation was compounded by constrained transmission connectivity with other States and regions. All existing transmission corridors were exhausted owing to long term and medium term power delivery, which led a proposal to bring supply of power through untapped Chikkodi-Talangade and Chikkodi-Mudasangi transmission lines (hereinafter referred to as ‘the transmission lines’) connected to States of Maharashtra and Karnataka in a radial mode, where power flows in one direction from the source to the loads with no alternate supply path. This mode ensured guaranteed supply of additional power to the State of Karnataka at a lower cost.

3.2. As observed hereinabove, due to dire need for power in the State of Karnataka, the Power Company of Karnataka Limited (‘PCKL’ for short) acting as authorized representative of various distribution licensees including BESCOM notifies request for proposal (‘RFP’) for procurement of 75 MW to 110 MW of power round the clock through interstate transmission lines noted hereinabove. It is through a competitive bidding process.

3.3. The RFP included a schedule of estimated hour-wise power requirement in a day within the broader range of 75 MW to 110 MW, in the event the power would be supplied by the successful bidder through the transmission lines. The petitioner participates in the tender with an offer of ₹4.85 per unit for supply of 75 MW to 110 MW of power indicating the generators location to be in the State of Maharashtra. The supply was to be through the transmission lines. The bid of the petitioner was accepted and a letter of intent was issued by the PCKL, to which BESCOM was a party. Accordingly process for drawing power through the transmission lines began pursuant to the letter of intent issued as noted hereinabove. The transmission lines were radial links connecting the States of Maharashtra and Karnataka. Geographically, parts of Chikkodi Transmission lines were located in both the States.

3.4. The generator located in Maharashtra was connected to 220 KV Kolhapur sub-station and the distribution lines in Karnataka were connected to 220 KV Chikkodi sub-station. The operationalize power supply transmission of open access and use of transmission lines to transmit power was necessary to avail this route of drawal and distribution of power. Since the lines were not synchronized with rest of the Karnataka grid, they were ultimately considered to be intra-state Maharashtra transmission lines. This determination took some time on account of grant of transmission open access. Certain disputes have arisen between the parties which are pending before various *fora*. The issue that is projected in the subject case is not with regard to pending proceedings elsewhere. It is with regard to the amount to be paid by BESCOM for overdrawing power from the inception.

3.5. A Standby Power Agreement ('SPA') was executed between BESCOM and the petitioner. After the execution of the SPA and grant of transmission open access, BESCOM and the petitioner executed a power purchase agreement ('PPA') for supplying a contracted quantum of 75 to 110 MW at ₹4.85 per unit. The averment in the petition is that BESCOM began deviating the schedule drawal of power by overdrawing power under the SPA. Consequent thereto, the Maharashtra State Electricity Development Corporation Limited commenced issuing frequent invoices indicating BESCOM's overdrawal of power beyond what was permissible from September, 2014 onwards. These invoices were issued to the petitioner and overdrawals by BESCOM had to be compensated. That the invoices were raised by the Maharashtra State Electricity Company and payments were being demanded. But, overdrawal of power by BESCOM never stopped. The petitioner, in terms of plethora of letters right from 10-07-2015 to 9-08-2016 repeatedly requested BESCOM to revise schedules to avoid over drawal, as the same was attracting higher tariff based upon the SPA. The petitioner also requests BESCOM to tie up additional power and the cap of BESCOM's liability to ₹4.85 per unit to be applied only in cases of unintentional overdrawal. The overdrawal incurred at ₹11.85 per unit, as against ₹4.85 per unit as per the agreement between the parties.

3.6. The petitioner began to demand amount from BESCOM in terms of invoices raised. Instead, BESCOM issued another invoice claiming underdrawal amounts between July, 2014 to June 2016 at ₹4.85 per unit. Dispute then subsisting between underdrawals and overdrawals reached this Court in a writ petition filed by the petitioner in Writ Petition No.53570 of 2016. BESCOM then comes forward to redress the grievance of the petitioner. Therefore, the petitioner filed a memo seeking to withdraw the petition and the said petition comes to be disposed of as withdrawn. Then begins the communication between the quarters of the State and reaches the Board of BESCOM. The Board resolves to pay the petitioner the admitted amount at the rate of ₹4.85 per unit which would be set off against any other claim of underdrawal or overdrawal at the relevant point in time. This resolution of the Board was not implemented. Therefore, the petitioner is now before the Court seeking implementation of the resolution of the Board along with consequential relief including payment of interest for the delayed payment of the admitted amount at the rate of ₹4.85 per unit.

4. The learned senior counsel Sri Sajan Poovayya appearing for the petitioner would take this Court through the documents appended to the petition like invoices, pending proceedings before the NCLT or APTEL and even KERC and would contend that pending all those disputes, if there has been any overdrawal or underdrawal, it can be set off at a later point in time. The petitioner needs money to be disbursed in terms of the resolution of the Board. This forms an admitted amount. Therefore, this Court must direct the respondents to pay the admitted amount by clearing invoices as sought in the prayer at the admitted rate of ₹4.85 per unit with certain interest.

5.1. The learned Sri Shahbaaz Husain representing the respondents 1 and 2 would vehemently refute to contend that the petitioner has an efficacious and alternative remedy of preferring an appeal under Section 86(1)(f) of the Electricity Act, which mandates that disputes between the licensees must be adjudicated before the Karnataka Electricity Regulatory Commission. Therefore, the learned counsel submits that the petition should not be entertained. The learned counsel would contend that the Appellate Tribunal for

Electricity - APTEL in the order dated 23-02-2011 in an appeal preferred by the **MANGALORE ELECTRICITY SUPPLY COMPANY LIMITED** v. M/S **PUNE POWER DEVELOPMENT PRIVATE LIMITED** has considered the issue and directed that these matters to be heard only before the Regulatory Commission under Section 86 (1)(f) of the Electricity Act. The learned counsel submits that it is an added circumstance where the appeal ought to be preferred and not a writ petition seeking the aforesaid prayer. He would submit that no liability can be attributed to BESCOM owing to the Board's resolution. Reliance being placed on the resolution of the Board is misconceived is his emphatic submission, as it is an internal document. Neither, it is addressed nor communicated to the petitioner. It cannot be that it is a legally pending admission of liability or commitment enforceable against the 1st respondent. The learned counsel submits that inter-departmental communications, unless culminating in final form and communicated, would not create an enforceable obligation.

5.2. The learned counsel submits that claims of overdrawal by the BESCOM in terms of invoices are all erroneous; they require adjudication and they are pending before the Maharashtra Electricity Regulatory Commission ('MERC' for short) in Case No.71 of 2014. Therefore, the case must await the decision of MERC, as the BESCOM and the petitioner have entered into a contract which provides for underdrawal benefits also. Under the contract it is the BESCOM which is entitled to a sum of ₹9.24 crores with interest on account of such underdrawals and not the amount in terms of invoices to be paid to the petitioner on account of claimed overdrawal. He would, in all, seek dismissal of this writ petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts, dates, link in the chain of events are all a matter of record. A request for proposal was notified by BESCOM owing to circumstances as narrated hereinabove for the purpose of purchase of power and its distribution. RFP was notified on 12-11-2013. The petitioner participates and emerges successful.

The RFP had some pre-requisites or pre-requirements. It would be germane to notice those pre-requisites. They are as follows:

"**<u>Pre-requirements, permits and clearances to be obtained by the Successful Bidder(s) for supply of power through Chikkodi-Talangade & Chikkodi-Mudasangi Interstate Lines in radial mode</u>**

Sl. No	Technical / Operational / Commercial / Regulatory issues	Action Required	Approving / Issuing Authority	Responsibility to whom
1	220 KV & 110 KV Bus splitting at Chikkodi S/S; Generation & loads separation; arrangement of switching over Chikkodi load on Maharashtra System; Patrolling & Maintenance of Lines before operation; Checking Healthiness of Metering / Protection system at both ends	220 KV / 110 KV Bus Splitting at Chikkodi S/S; and related activities to ensure operational healthiness	MSETCL / KPTCL	KPTCL / Karnataka Discom / MSETCL
2	Operational Modality at both end under supervision / monitoring of switching operation as when required	Coordination of both SLDC	SLDC Maharashtra / SLDC Karnataka	KPTCL / Karnataka Discom
3	Approval of SLDC Maharashtra / SLDC Karnataka	Consent of both SLDC	SLDC Maharashtra / SLDC Karnataka	Successful Bidder
4	Approval of SRLDC / WRLDC	Consent from SRLDC / WRLDC	SRLDC / WRLDC	Successful Bidder
5	Approval of SRPC / WRPC	Consent from SRPC / WRPC	SRPC / WRPC	Successful Bidder
6	Stand-By arrangement for Generator with MSEDCL	Agreement between (Successful) Bidder & MSEDCL	MSEDCL & Successful Bidder	Successful Bidder
7	Application; Payment of Transmission Charges; Schedule of Power; Duration; Undertaking for UI Payment & Losses	Approval of SLDC Maharashtra (if Bilateral) OR Approval of WRLDC (if Inter-State)	SLDC Maharashtra OR WRLDC as the case may be	Seller Responsibility, (CERC Open Access Regulations applicable for settling UI and payment as per RFP & PPA conditions)
8	Energy Accounting Methodology; Data submission; Joint Meter-Reading; UI Bill	Submission of fortnightly Meter reading data at Chikkodi MUSS to SLDC Maharashtra for Energy Accounting & UI	SLDC Maharashtra	Field Officers of MSETCL/ MSEDCL and KPTCL/Karnataka Discoms
9	Intimation to respective State Regulatory Commission	Submission of all details of Transaction to respective State Regulatory Commission for approval	MERC / KERC	STU of Maharashtra (or Successful Bidder) & PCKL to their respective State Regulators

Note: Bidders shall ensure that the pre-requirements/approvals indicated in Annexure-2"

In terms of the RFP, the petitioner made application before the BESCOM and the Maharashtra State Electricity Transmission Company. The Maharashtra State Electricity Transmission Company gave the petitioner open access in terms of a communication dated 12-02-2014. Likewise, the State of Karnataka also gave its open access approval. A power purchase agreement is entered into between the petitioner and BESCOM. Certain clauses of power purchase agreement is germane to be noticed. Article-4 reads as follows:

"**ARTICLE 4**

CAPACITY, AVALIABILITY AND DISPATCH

4.1 Availability

4.1.1 The Seller shall be responsible to ensure that the Developer shall comply with the provisions of the applicable Law regarding Availability including, in particular, to the provisions of the ABT and Grid Code from time to time relating to declaration of Availability and the matters incidental thereto.

4.2 Scheduling and Dispatch

42.1 The Seller shall be responsible to ensure that the Developer shall comply with the provisions of the applicable Law regarding Dispatch Instructions, in particular, to the provisions of the ABT and Grid Code from time to time relating to scheduling and Dispatch and the matters incidental thereto.

4.2.2 In case of exigencies either party may request to other party for revision of agreed Schedule as per the Grid Code.

4.2.3 Variation between scheduled energy and actual energy at the Delivery Point shall be accounted for through UI as per the provisions of the Grid Code and UI regulations issued from time to time. For any over-drawal by the procurer at the delivery point, the applicable UI charges payable above the quoted tariff of Rs 4.85 per unit shall be to the Sellers Account as voluntarily agreed by the Seller."

Article 4.2.3 observes that variation between scheduled energy and actual energy at the delivery point shall be accounted for through Unscheduled Interchange as per the provisions of the grid code. It was further observed that any overdrawal by the procurer at the delivery point, the applicable charges payable would be above ₹4.85 per unit. Therefore, there was an observation by way of agreement with regard to overdrawal as well.

8. The BESCOM, right from the inception began to overdraw power, which could not be stopped by the petitioner, but continuous invoices began to be generated by the Maharashtra Electricity Supply Company Limited. All these invoices were communicated to BESCOM at intermittent intervals which led BESCOM then to modify

the power purchase agreement. Article 4.2.3 stood modified by way of supplemental power purchase agreement entered into on 06-12-2014. The modified clause reads as follows:

"**ARTICLE 4 CAPACITY, AVALIABILITY AND DISPATCH**

4.2 Scheduling and Dispatch-4.2.3

As existing:

Variation between scheduled energy and actual energy at the Delivery Point shall be accounted for through UI as per the provisions of the Grid Code and UI regulations issued from time to time. For any over-drawal by the procurer at the delivery point, the applicable UI charges payable above the quoted tariff of Rs 4.85 per unit shall be to the Sellers Account as voluntarily agreed by the Seller.

Modified:

Deviations due to system dynamics/unintentional deviation to be settled between Seller/Procurer shall be as per the agreed terms of Final Balancing and Settlement Mechanism of Maharashtra or any other regulations applicable in Maharashtra from time to time. However, the settlement rate for overdrawal by the Procurer shall be at the quoted tariff of Rs 4.85 per unit and any impact of the same over and above the quoted tariff shall be borne by the Seller. In case of underdrawal by the procurer, the same shall be settled as per the applicable FBSM rate of Maharashtra State subject to the issue of the corresponding FBSM account by the appropriate authority in Maharashtra and to the extent of receipt and realization of the same by the Seller. The seller shall inform the procurer, status of FBSM of Maharashtra, by 15th of each month."

The admitted amount at the rate of ₹4.85 per unit was also not paid. Therefore, the petitioner registers several claims before

BESCOM. One such communication for settlement of claim is as follows:

"DO No. BESCOM/MD/GM (Elec) (Elee)/PP/BC-39/2016-17/94

DATE 4 DEC

Sub: Settlement of claims between BESCOM and M/s Global Energy Pvt Ltd (GEPL)-Reg.

Ref:- 1. Letter dated 17.11.2016 of M/s Global Energy Pvt Ltd.

2. Letter No. BESCOM/MD/D(F)/GM(Elec)/PP/BC-39/2016-17/90-93 dated 25.11.2016.

3. Meeting of Board of Directions of BESCOM on 26.11.2016.

4. Legal opinion from Law officer of BESCOM on 14.12.2016.

****

1. In continuation of the letter cited under reference (2), the payment of GEPL's claims of under drawal/over drawal during the contract period, invoice amount of August-2016 and transmission charges are placed before the Board of Directors meeting of BESCOM held on 26.11.2016. The Board of BESCOM had directed to seek legal opinion on the subject.

2. The Law officer, BESCOM had opined that the second fort night bill of August-2016 may be processed after withdrawing the invoices presented to Bank for LC invoked since it is a undisputed claim.

3. The over drawal / under drawal issue is pending before KERC/Hon'ble High Court of Karnataka. Hence, these claims will be settled after outcome of the final orders. The payment of transmission charges is yet to be

confirmed by PCKL. The second fort night bill is undisputed and to be paid as per legal opinion.

4. Hence, it is requested to withdraw the involves from Bank, furnish the confirmation from Bank for withdrawing the invoices to BESCOM. BESCOM will pay the August-2016 invoice amount of Rs 9.312 Crore immediately.

Approved By MD, BESCOM

Your's Sincerely,
Sd/-
(P. Krishnamurthy)"

Since no amount was paid, Writ Petition No.53570 of 2016 comes to be filed. This comes to be withdrawn by the petitioner pursuant to letter of BESCOM by filing following memo:

"**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

WRIT PETITION NO. 53570/2016 (GM-KEB)

BETWEEN:

Global Energy Pvt Ltd PETITIONER

AND:

KERC & Others RESPONDENTS

<u>Memo for Withdrawal</u>

The undersigned Counsel respectfully submits that Petitioner is before this Hon'ble Court challenging the ex-parte order dated 03.10.2016 passed by the Respondent No. 1 KERC in OP No. 82/2016 (Annexure-A) in restraining the invocation of Letter of Credit. It is submitted that in view of settlement negotiation and correspondences between the parties subsequent to institution of the above petition and settlement terms agreed between the parties, the Petitioner hereby craves leave of this Hon'ble Court to withdraw the above writ Petition as not pressed. The copies of the said letters between the parties are produced herewith for kind consideration of this Hon'ble Court.

Wherefore, in view of the correspondences dated 14.12.2016 and 16.12.2016 between the parties i.e., BESCOM, Petitioner/GEPL and the SBM, it is humbly prayed that the Hon'ble Court may be pleased to dispose of the above writ petition as not pressed and in terms of the above referred letters between the parties in the interest of justice and equity.

Bangalore
17.12.2016

Sd/-
Advocate for Petitioner"

Even then the amount was not paid. Therefore, the petitioner represented again, which was met by a reply from BESCOM. The reply reads as follows:

"NO: BESCOM/MD/D(F)/GM(Ele)/PP/BC-39/14-4

Date: 05-05-2017

The Managing Director,
M/s Global Energy Pvt Limited,
6th Floor, Le Meridien Commercial Tower,
Raisina Road,
New Delhi-110001.

Sir,

Sub:- Payment of outstanding amount of Rs 63,06,38,435/- owed to GEPL towards the power over drawals by BESCOM - Reg.

Ref:- Global Energy Pvt Limited Letter dated 21.04.2017.

Referring to the above, GEPL vide letter cited under reference had explained in detail the transactions between Global Energy Pvt Limited, PCKL, MSLDC, MSEDCL and BESCOM with regard to the contract executed with BESCOM and extended subsequently through supplemental PPAs for procurement of power through 220 Kv Chikkodi Kholapur Line on radial mode. Global Energy Pvt Limited is requesting for release of Rs 63.06 Crore as outstanding dues payable by BESCOM on following issues and remarks of BESCOM on these issues are as furnished below.

1. **Over drawal Charges as per contracted price of Rs 4.85 per Kwh Rs 24,28,70,976/-**

MERC vide orders dated 27.04.2015 and 28.04.2015 in Petition No. 181/2015 and 38/2015 had upheld that FBSM is not applicable to Global Energy Pvt Limited since it is not a State pool participant of FBSM. The applicability of FBSM to GEPL is pending before APTEL. in Appeal No. 245 and 246 of 2016 filed by PCKL. and in the Petition OP No. 85/2016 before KERC filed by BESCOM.

On 25th July-2016, the Director of Global Energy had given an undertaking stating that the claim for over drawal will be made on BESCOM only after settlement of under drawal of BESCOM after the outcome of final order in Appeals filed by PCKL.

Global Energy Pvt Limited has to settle the under drawal of 141 Mu by BESCOM before seeking payment for over drawal. Further, the assumption of Global Energy Pvt Limited that over drawal by BESCOM as willfull and intentional is to be sorted out by the Nodal Agency PCKL since BESCOM neither schedule the power nor monitor the Grid Operation.

The Chief Engineer (Elec), Chikkodi had given the schedules and SLDC had monitored the Grid. Hence, the allegation of willfull and intentional over drawal is not attributable to BESCOM alone.

2. **Late payment surcharge at 15% per annum on over drawal Rs 6,06,43,802/-.**

The applicability of Rs 4.85 per unit for over drawal is under dispute in the cases pending before APTEL and KERC. If Global Energy Pvt Limited insists for late payment surcharge for over drawal, contrarily Global Energy Pvt Limited has also to pay late payment surcharge Rs 17,08,68,822/- on under drawal amount if calculated at Rs 4.85 per unit for under drawal of 141 Mu which works out to Rs 68,38,50,000/- (141 Mu * Rs 4.85). Hence, the late payment surcharge claim is denied.

3. **Penalty levied by MSEDCL on deliberate over drawal by BESCOM Rs 23,74,88,976/-.**

BESCOM had not agreed to pay the penalty imposed by MSEDCL in original PPA and subsequent supplemental PPA. BESCOM had never over drawn the power. As per Energy balancing certified by SLDC, KPTCL, BESCOM is continuously under drawing the power. BESCOM had under drawan 2834 Mu and 1245 Mu during FY-16 and FY-17 respectively. The willfull/intentional/deliberate over drawal mentioned by Global Energy Pvt Limited is not acceptable by BESCOM. Hence, BESCOM is not concerned with the penalty levied by MSEDL.

4. **Late payment surcharge at 15% Pa on penalty levied by MSEDCL Rs 7,16,58,507/-.**

As BESCOM is not accepting the penalty levied by MSEDCL itself, the payment of late payment surcharge on that penalty is denied in toto. Since, BESCOM is not a party in the Standby Agreement between MSEDCL and Global Energy and there is no contractual binding on BESCOM to bear the exorbitant costs.

5. **Open Access charges due to revision in power scheduled to BESCOM Rs 1,79,76,173/-.**

BESCOM vide letter No. 6316 dated 19th Steptember-2016 had referred this issue to PCKL for clarification and clarification from PCKL is still awaited. Hence, this claim is not considered for payment.

The above details are for information and it is requested not to raise frivolous claims on BESCOM which are not at all agreed elsewhere in contracts between Global Energy and BESCOM.

Yours faithfully,
Sd/-
Managing Director,
BESCOM, Bangalore."

Therefore, the lurking dispute between the two led to an opinion to be sought from the hands of the learned Advocate General. What was opined is as follows:

"…. …. ….

- Under the circumstances, in my considered view; it would not be justifiable to withhold GEPL's payment until the disposal of proceedings before APTEL and KERC. Even after the disposal of matters before APTEL and KERC, it cannot be said with certainty that, either party to such proceedings will not pursue its remedies by way of Appeal/s before the appropriate forum. In view of the totality of circumstances, it would be fair to opine that GEPL's claim for over drawls may be honoured expeditiously, along with contractual late payment surcharge.

- In any event, if issues are not to be settled per advise and claim; <u>it is certainly advisable, as a goodwill measure, for BESCOM to, at least, pay GEPL at the agreed rate of Rs. 4.85 per unit, if not more</u>. As stated earlier, GEPL has been subject to high penal charges of Rs. 12.82 per unit of overdrawn power. It appears to be highly unjust for GEPL to bear such high charges, and <u>yet</u>

not be reimbursed any amounts, for overdrawals by BESCOM.

The Queries are answered accordingly.

21st December 2017

Sd/-
(MADHUSUDAN R NAIK)
ADVOCATE GENERAL
ಕರ್ನಾಟಕ ರಾಜ್ಯದ ಅಡ್ವೋಕೇಟ್ ಜನರಲ್‌ರವರು, ಬೆಂಗಳೂರು
Advocate General for Karnataka,
Bangalore."

If the opinion had remained an opinion it would not be necessary to notice the same in this order. The opinion was placed before the Board. The Board, in its meeting held on 20-02-2018, resolves as follows:

"**CERTIFIED COPY OF THE RESOLUTIONS PASSED AT THE 87TH MEETING OF THE BOARD OF DIRECTORS OF BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED HELD ON FEBRUARY 20TH 2018**.

1. Agenda Item No. BODM 87/21: Procurement of power through Chikkodi-Kolhapur Lines Regarding settlement of Deviations(over drawal/under drawal).

Ref: DO No. PCKL/MD/PS/2017-18/2939-42 dated 26.12.2017.

The Managing Director explained the background of the proposal to the Board as below:

(1) PCKL has issued Letter of intents for procurements of power from Maharashtra through the Trader M/s Global Energy Pvt Limited under short term contract through the Chikkodi - Kolhapur radial lines from 02.07.2014. The Power Purchase Agreement (PPA) was executed between M/s Global Energy Pvt Limited and BESCOM for procurement of power at Rs 4:85 per unit.

(2) Before expiry of term of PPA, PCKL had obtained approval of it's Board and KERC for renewal and extention of term of PPA for varied capacities PCKL had informed BESCOM to execute Supplemental -PPA after approvals. Accordingly BESCOM had executed the Supplemental PPAS

(3) As per agreed PPA, the payments were made for scheduled energy and the difference between actual energy and scheduled energy is to be settled through "Final, Balancing Settlement Mechanism" (FBSM) as stated by PCKL in the letter dated 19.11.2014. In the Petition filed by M.s Global Energy Pvt Limited OP No. 181 of 2014 and 38 of 2014 before MERC, it was ordered by MERC that the FBSM is not applicable to M/s Global Energy Pvt Limited since it is a trader but not a Generator or Distribution Licensee.

(4) Under certain emergent circumstance, BESCOM had filed a Petition Op No. 82 of 2016 before KERC requesting to adopt UI Mechanism of CERC for deviation settlement based on MERC order. PCKL had filed two Appeals 244 & 245 of 2016 before Appellate Tribunal of Electricity for settlement of deviation account as per FBSM. The Petitions and Appeals are pending for Final orders.

(5) M/s Global Energy Pvt. Limited is frequently approaching GOK, PCKL and BESCOM for release of payment for over drawal energy. PCKL has placed the issue before the 49th PCKL Board of Directors meeting. As there was difference of opinion in settlement of deviation account between PCKL and BESCOM, the Board of PCKL has suggested to refer the matter to Advocate General of Karnataka for considered opinion.

(6) PCKL vide letter No. DO No. PCKL/MD/PS/2017-18/1689 dated 12.09.2017 had referred the matter along with supporting documents to Sri Madhu Sudhan R Naik, Advocate General of Karnataka for opinion.

(7) The Advocate General of Karnataka has furnished the opinion on 23.12.2017 to PCKL and PCKL vide letter No. DO No. PCKL/MD/PS/2017-18/2939-42 dated 26.12.2017. The PCKL had forwarded the opinion to BESCOM.

(8) The opinion of Advocate General is as below.

(a) It would not be justifiable to withhold M/s Global Energy Pvt Limited's payment until the disposal of proceedings before APTEL and KERC. Even after the disposal of matter before APTEL and KERC, it cannot be said with certainty that, either party to such proceedings will not pursue. ………… Appeals before the appropriate forum. In view of the totality of Circumstances, it would be fair to opine that M/s Global Energy Pvt Limited's claim for over drawals may be honored expeditiously, along with contractual late payment surcharges.

(b) In any event, of issues are not to be settled per advise and claim it is certainly advisable, as a goodwill measure, for BESCOM to, at least, pay M/s Global Energy Pvt Limited at the agreed rate of Rs 4.85 per unit, if not more. As stated earlier, M/s Global Energy Pvt Limited has been subject to high penal charges of Rs 12.82 per unit of overdrawn power. It appears to be highly unjust for M/s Global Energy Pvt Limited to bear such high charges, and yet not be reimbursed any amounts, for over drawals by BESCOM

(9) It is advised in the legal opinion that PCKL has to ascertain the facts regarding the over drawals/under drawals schedules and settle the issue relating to over drawal/under drawal by BESCOM.

(10) According to the opinion of Advocate General of Karnataka, BESCOM at least pay M/s Global Energy Pvt Limited at agreed rate of Rs 4.85 per unit for energy overdrawn as per settlement issued by PCKL regarding over drawal/under drawal.

(11) Present proposal is submitted to the Board seeking direction/orders for making payment of energy over drawn at Rs 4.85 per unit as per settlement issued by PCKL for over drawl/under drawal pending final orders in Appeals and Petitions filed by PCKL and BESCOM respectively.

(12) During deliberations, GM(PP) was called to explain, who explained that as per Agreed PPA the payments are made

for scheduled energy. During real time operation the over drawal and under drawals will happen. As per PPA between GEPL and BESCOM, the over drawal/under drawal initially agreed at UI Mechanism of CERC and then as per FBSM of Maharashtra in supplemental PPAs based on PCKL letter dated 19.11.2014. GEPL had Stand by Power Agreements with MSEDCL where It was agreed between GEPL and MSEDCL for deviation settlement, under which, over drawal at temporary tariff initially and later at HTI (A) tariff. For over injection (under drawal) the units will be lapsed in grid. The standby Power Agreements are executed at the risk of GEPL BESCOM is not a party to that standby Power Agreement. The quantum of energy details given by GEPL for over drawal and under drawl from 11.07.2014 to 31.07.2016 are 49.924 Mu and 114.468 Mu respectively. BESCOM had paid for scheduled energy which includes the under drawl quantum of 114.468 Mu. Hence under drawal of 114.468 Mu had already paid by BESCOM to GEPL at Rs 4.85 per unit which works out to Rs 55.52 Crore. Hence, the under drawal 114.468 Mu is to be refunded by GEPL either at UI rate or at FBSM rate. But GEPL is insisting for payment over drawal energy of 49.924 Mu at Rs 4.85 per unit which works out to Rs 24.21 Crore. As BESCOM had already paid for scheduled energy which includes underdrawal quantum of 114.468 Mu, amounting to Rs 55.52 Crore (which is not yet settled) the payment for overdrawal quantum of 49.924 Mu, amounting to Rs 24.21 Crore will amounts to double payment to GEPL without settlement of deviation account. Hence, the finance of BESCOM shall be safe guarded to avoid unnecessary burden on Consumers.

Board went through the proposal discussed and debated at length in view of safeguarding the funds of BESCOM.

(a) ACS was on the considered opinion that a justifiable & fair solution needed at this point of time and further expressed that M/s Global Energy Pvt Ltd (GEPL) is demanding settlement/Payment for energy overdrawn. However. for underdrawal component, they are not prepared to pay at this point of time and their contention is to pay it later after the decision of pending appeal petition in APTEL.ACS further expressed that, without obtaining a relevant bank guarantee for the money due to BESCOM from GEPL, it is not appropriate to pay as demanded by M/s.Global Energy Pvt Ltd, without keeping in mind the security for BESCOM finance.

(b) MD also expressed the same view and re-iterated the necessity of security for BESCOM money in the interest of safeguarding against unjust claim if any by M/s.GEPL and further strongly opposed the demand and proposal of M/s Global Energy Pvt Ltd for settlement without looking at the security for BESCOM finance.

(c) Board further perused the correspondences made by the MD, PCKL with Advocate General of Karnataka dtd 12.09.2017 and opinion of Advocate General thereon and certain significant points were noted as below:

(i) It is indicated in PPA that will overdrawal intentional or unintentional are to be settled at the rate of Rs.4.85 per unit.

(ii) PCKL, has to ascertain the authenticated facts and details regarding Overdrawals, schedule of drawal etc. for settlement of claims against overdrawal/under drawal by BESCOM.

(iii) Penal charges claimed by GEPL is at abnormal level, whether the same is sustainable under agreement clauses in the eyes of law, need to be looked into.

(d)Board debated further at length in view of safeguarding the finance of BESCOM besides adherence to legally valid agreement clauses of PPA. After a lengthy and elaborate discussion the other Board members/ Board of Directors intervened at this point of time and expressed that the issue need to be looked into the Advocate General's opinion in this behalf which is already given and BESCOM can proceed accordingly. After a detailed discussion Board passed the following resolutions in this context:

"**RESOLVED THAT, for the reasons explained, approval be and is hereby accorded to admit the claims of M/s Global Energy Pvt. Ltd(GEPL) for settlement at the agreed**

rate of Rs.4.85 (Rs four and ps eighty five only)for energy overdrawn during the period of power agreement. The approval is subject to the following:

(1) The claim of M/s GEPL for overdrawal and underdrawal energy and scheduled energy shall be accurately ascertained by authentic. scrutiny/comprehensive verification by PCKL as per the opinion of Advocate General.

(2) Final settlement of deviation account (overdrawal/underdrawal) shall be on disposal of pending appeal case and final orders thereon in APTEL. An authenticated and accurate amount to be paid to BESCOM shall be ascertained by GM(PP), BESCOM in co-ordination with PCKL. Also regarding interim settlement, if any, made by PCKL pending final orders in respective Appeal petitions filed with APTEL and KERC.

(3) The D(T), BESCOM and GM(PP) shall ensure re-imbursement of claim already made, if any, by GEPL for overdrawal as penal charges at Rs.12.82 per unit, and payment, if any, made, within the ambit of legal provisions."

"RESOLVED FURTHER THAT, the D(T) and GM(PP), BESCOM be and are hereby authorized to take all further necessary actions within the ambit of legal provisions as required under all applicable laws for settlement of disputed claims. The GM(PP) be and is hereby authorized to co-ordinate with M/s PCKL to take necessary action on deviation settlement within the legal framework and contractual obligation between BESCOM and GEPL. The GM(PP) shall make proper and valid documentation in this behalf within the legal framework."

The Board has opined that for the reasons explained in the opinion of the learned Advocate General and the deliberations by the Board, approval was accorded to admit claims of the petitioner for settlement at agreed rate of ₹4.85 per unit for the energy overdrawn during the period of the agreement. This is further amplified by the subsequent clauses by authorizing BESCOM to take all necessary steps within the ambit of law to make proper and valid documentation in furtherance of the said resolution. This resolution is not acted upon for a long time. Communications between the two galore and the petitioner files the subject petition seeking a mandamus for release of admitted amount.

9. The contention of the learned counsel appearing for the respondents is that the petitioner has to prefer an appeal under Section 86(1)(f) of the Electricity Act, as it is a dispute between two distribution Companies – one the petitioner and the other BESCOM. Insofar as admitted amount at the rate of ₹4.85 per unit, one need not be driven to the Appellate Authority under Section 86(1)(f). If it were to be inter-departmental correspondence between the two officers it would have become unenforceable *per se*. No doubt it is an inter-departmental correspondence, but it is by the highest body of BESCOM. The Board is the highest body of BESCOM. The Board admits the liability way back in the year 2018. 8 years passed by;

not a rupee is paid to the petitioner. Rupee I mean, not even the admitted amount. Therefore, the petitioner becomes entitled to admitted amount, subject to all the claims that would spring in future with regard to various disputes pending between the parties before any *fora*, including before the Maharashtra Electricity Regulatory Commission. Therefore, the petition deserves a mandamus for release of the amount, not a mandamus simpliciter, but with certain amount of interest, for the reasons that the resolution of the Board is 8 years old and the amount to be paid to the petitioner is struck with the respondents for the last 8 years, notwithstanding unequivocal and emphatic resolution of the Board.

10. For the aforesaid reasons, the following: -

<u>O R D E R</u>

(i) Writ Petition is **allowed.**

(ii) Mandamus issues to 1st respondent/BESCOM to pay the petitioner in terms of resolution of the Board in pursuance of invoices dated 9-03-2017 and 17-04-2017, wherein the petitioner had demanded disbursal of admitted amount at the rate of ₹4.85 per unit.

(iii) Since the resolution of the Board is of the year 2018 which had remained unimplemented even today, I deem it appropriate to direct the 1st respondent to disburse the amount within an outer limit of 8 weeks from the date of receipt of a copy of this order, along with interest at the rate of 6% per annum, from the date of the resolution of the Board till the date of payment.

(iv) In the event the 1st respondent/BESCOM would not paid the amount within 8 weeks, the petitioner becomes entitled to interest at 9% per annum from the date of resolution till the date of payment.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ