

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
World Trade Centre, Centre No.1, 13<sup>th</sup> floor, Cuffe Parade, Mumbai 400 005.

**Case No. 7 of 2000**

**In the matter of  
Dispute between BSES Ltd. and Tata Electric Group of Companies (now Tata  
Power Co.) regarding payment of standby charges to the Maharashtra State  
Electricity Board**

**Shri P. Subrahmanyam, Chairman  
Shri Jayant Deo, Member  
Dr Pramod Deo, Member**

**INTERIM ORDER**

**Dated: November 10, 2003**

The Commission's Order dated 7.12.2001 was appealed against by both M/s Tata Power Company Ltd. (TPC) and M/s BSES Ltd. (BSES) in the High Court. The High Court's common Order dated 3.6.2003 in these appeals was challenged in the Supreme Court. The Supreme Court dismissed the appeals with certain observations, and directed the Commission to decide the dispute expeditiously, preferably within 3 months.

2. The High Court had, inter-alia, directed (at para 33 of its Order) as follows:

"So far as the arrears of standby charges from 1st April, 1999 till 30th June, 2003 are concerned, 80% of the amount of arrears shall be paid by BSES to TPC and the TPC shall immediately pay that amount to MSEB. 20% of the amount of arrears shall be paid by TPC to MSEB. In case both the parties namely BSES and TPC consider that they are entitled to any instalment in payment of arrears they may make an application before the Commission for grant of instalment after making payment of at least 50% of the amount payable by them. In case such an application is made, the Commission shall consider it in accordance with law".

3. BSES have filed an interim Application dated 28.10.2003 seeking inter-alia-  
"that pending the hearing and final disposal of Case No. 7 of 2000 this Hon'ble Commission be pleased to direct as and by way of interim measure that BSES pay/ deposit subject to final orders of this Hon'ble Commission, the balance amount of Rs 164.60 crores in four quarterly instalments, first of such quarterly installments to commence with effect from 1st April, 2004".

BSES have submitted that the prayer is made in pursuance of the leave granted by the High Court in its Order dated 3.6.2003 cited above. In their interim Application, BSES have submitted that they are currently facing considerable difficulty in meeting the outflow as a result of interim ad-hoc payments which are to be made and have set out the implications.

4. At the time of hearing in the remitted case by the Commission on 6.11.2003, arguments were made both in respect of the interim Application as well as partially on the main matter. In oral submissions, Counsel for BSES reiterated the contents of the interim Application. He submitted that the arrears as on 30.6.2003 amounted to Rs 411.5 crores. Taking into account further payments, and the directions regarding such payments by the High Court, BSES are now required to pay a balance of Rs 164.60 crores, the computation of which is set out in the interim Application. Having paid 50% of the alleged arrears, BSES are now approaching the Commission for permission to pay the balance of Rs 164.60 crores in 4 equal, quarterly instalments starting from 1.4.2004.

5. Counsel for TPC and MSEB both questioned BSES contentions regarding the extent of adverse impact of such payments on the financial position of BSES and its further implications. Counsel for TPC submitted that while the High Court had admittedly permitted the parties to approach the Commission for payment of a part of the amount in instalments under the stipulated circumstances, this could not be stretched over as long a period sought by BSES, particularly when the Supreme Court has directed that the main matter be disposed of by the Commission as far as possible within a period of 3 months, Counsel for MSEB submitted that, while they had no objection in principle to payment of the balance amount in instalments, the difficult cash flow position of MSEB needs to be taken into account also. The dispensation sought by BSES was unreasonable insofar as the instalments would only start at the beginning of the next financial year and would stretch over that year. Instead, he urged that, if instalments are allowed, they should be on an equated monthly basis, and be completed by the end of the current financial year itself.

5. Taking into consideration the mandate given by the High Court and the submissions made by BSES in their interim Application as well as oral submissions of Counsel for BSES, TPC and MSEB, the Commission considers it fair and equitable to permit BSES to pay the balance amount in four bi-monthly instalments starting from 1st January, 2004, subject and without prejudice to the final decision of the Commission in the main matter remitted to it.

Sd/-  
(Jayant Deo)  
Member

Sd/-  
(Dr Pramod Deo)  
Member

Sd/-  
(P. Subrahmanyam)  
Chairman, MERC

Sd/-  
(A.M. Khan)  
Secretary, MERC