

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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CASE No. 42 of 2002

In the matter of
Application dated 6th January 2003 filed by M/s Nagreeka Exports Limited
Regarding Payment of Security Deposit and Refund of Interest on Security Deposit
by the Maharashtra State Electricity Board (MSEB).

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

ORDER

Dated: **February 20, 2003**

The Maharashtra Electricity Regulatory Commission (MERC), in exercise of the powers vested in it under Section 29 of the electricity Regulatory Commissions Act, 1998 and all other powers enabling it in this behalf, has, vide its Order dated May 05, 2000 in Case No.1 of 1999, and 10th January 2002 in Case No. 1 of 2001, determined the tariff for supply of electricity after considering the proposal submitted by the Maharashtra State Electricity Board (MSEB).

2. M/s Nagreeka Exports Limited, At/Post Yavluj, Tal. Panhala, Dist. Kolhapur has submitted an affidavit under letter No. NEL/311/.02-03 dated 6th January 2003 regarding payment of Security Deposit and refund of Interest on Security Deposit by the Board. The Company is a HTP-II consumer of the MSEB and is getting power supply from the Kale Sub-station of the Board. The Applicant submitted that they had already paid a Security Deposit of Rs.23.00 lakhs and was paid interest for the financial year 1994-95 to 1996-97. However, interest on SD has not been paid for 1997-98 and 1998-99.

3. The admissibility hearing in the matter was held on 17th February 2003. The Managing Director of the Applicant, appearing late without intimation, requested for adjournment on the plea of having received MSEB's parawise remarks late on weekend. The Commission turned down the request and directed the MSEB to state facts of the case before applicant's submission.

4. Shri Mustafa Doctor, Counsel for the MSEB submitted that the Applicant has been sanctioned HT connection for a contract Demand of 2450 kVA in May 1994. As per the Conditions of Supply prevalent at that time, based on the assessed consumption (from April to March), a Security (Energy) Deposit of Rs.28,15,000 was claimed from the Applicant vide letter dated 13th May 1994. Thereafter, on the request vide its letter dated 15th April 1995 of the Applicant for his inability to pay the said amount at once, the Applicant was permitted vide letter dated 3rd May 1995 to make the payment in four instalments i.e. Rs.13 lakhs being first instalment and balance amount in three equal instalments payable with the monthly energy bill. The Applicant had failed to fulfill its obligation and the last instalment was paid only on 16th November 1999. However the Board by oversight paid interest on the Security Deposit already collected till 1996-97.

5. The Counsel further submitted that the matter was taken up further on 16th March 1999, while reviewing their request for installation of 860 kVA Captive DG set, with the Applicant for payment of additional due Security Deposit of Rs 5.00 lakhs (based on their average bill during preceeding period). This amount was also requested for grant of instalment (ten equal monthly instalments) by the applicant vide its letter dated 30th March 1999. This request was also granted by allowing them to pay 5 equal monthly instalments vide letter No. 25265 dated 26th May 1999. It was pointed out during the internal audit, that the Board had erroneously (based on guideline of Commercial Circular No.543 dated 5th January 1994) credited the interest since the Applicant has defaulted in not paying the last instalment of Security Deposit. Thereafter a claim to recover this amount back was sent by the MSEB vide its letter dated 19th March 2002. A list of compilation of correspondence with the Applicant has been placed before the Commission for its perusal. A copy of the said compilation has also been given to the Applicant.

6. The Counsel further submitted that the Applicant has now preferred to file an affidavit before the Honourable Commission challenging the decision of the MSEB to reverse the grant of interest on partial Security Deposit payment and also seeking direction to MSEB on payment of interest. In any case, the claim is time barred (16th March 1999 being the date for cause of action

by the Law of Limitation, which is only for three years. He further submitted that the matter is a sort of dispute between the MSEB and the Applicant. However, the Applicant has not made any dispute on the total amount of Security Deposit to be paid by it to the Board in 1994. The counsel further submitted that the Applicant has neither mentioned any relevant Section of the ERC Act, 1998 / MERC (Conduct of Business) Regulations, 1999, and, also since the period of dispute is related to the earlier period before the constitution of the Commission, the petition is ought to be rejected at the admission stage itself.

7. Shri S. Patwari, Managing Director of the Applicant, while apologizing for appearing late requested the Honourable Commission to permit him to make his presentation. He submitted that, having received the MSEB's parawise remarks only on 15th February 2003 after office hours, he is not in a position to make any meaningful rejoinder.

8. Shri Patwari further submitted that the Board has given electricity supply connection in 1994 for an estimated contract demand of 2450 kVA. As per the Terms of Supply during the prevalent period, the Security Deposit is normally linked to the consumption of energy. Since the company has started full-fledged production only after an year i.e. in 1995, the claimed Security Deposit amount based on estimation is totally wrong. Besides, the Board has also demanded additional security deposit of Rs.2,30,260/- vide its letter dated 19.3.2002.

9. The counsel for the MSEB submitted that though the amount of Security Deposit of Rs.28,15,000/- is an estimated figure, the same was not paid in full. Besides based on the actual consumption of the Applicant, it is seen that in 1995-96 itself, his bill amount crossed the threshold of security deposit received and during subsequent years, it has shown an increasing trend through out the period.

10. To a query as to why there was no upward / downward revision of Security Deposit, the Counsel for the MSEB submitted that such condition was incorporated in the Terms & Conditions of Supply only in November 1998, and accordingly, the Board has demanded additional Security Deposit of Rs.2,30,260/-. He further submitted that the Applicant has neither disputed payment of Security Deposit / Additional Security Deposit, nor challenged the Commercial Circular, but his only claim is that interest on Security Deposit should be credited to his account before making further payments towards Security Deposit. He drew Commission's attention to the MSEB's parawise remarks letter No. 4877 dated 15.2.2003 - CC No.543 dated

9.1.1994 “*whenever a consumer is permitted to pay the security deposit / additional security deposit in instalments, then interest shall not be paid to the consumer on the amount of security deposit paid in instalments, till the total amount or security deposit / additional security deposit is paid by the consumer*”.

11. The Commission observes that there is a need for the MSEB to strengthen its internal system for periodic checking of such Security Deposit available with the Board vis-à-vis the consumer's energy bill and take corrective action in time.

12. In light of the above oral submissions of both the contesting parties, and in face of the written documents on record, the Commission observes no merit on the prayer of the Applicant, and, therefore, rejects the present petition.

Thus ordered.

Sd/-

(Shri Jayant Deo)
Member

Sd/-

(Dr Pramod Deo)
Member

Sd/-

(Shri P. Subrahmanyam)
Chairman, MERC

(M.K. Kundu)
Director (EE) & Officiating Secretary, MERC