

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 95 of 2007**

**In the matter of**  
**Complaint filed by Bajaj Auto Ltd., under Sections 142 and 146 of the**  
**Electricity Act, 2003**

**Shri A. Velayutham, Member**  
**Shri S. B. Kulkarni, Member**

M/s. Bajaj Auto Limited  
Mumbai-Pune Road  
Akurdi  
Pune – 33

... Complainant

Versus

Maharashtra State Electricity Distribution Company Ltd  
Prakashgad, Bandra (E),  
Mumbai 400 051

... Opponent

**ORDER**

**Dated: July 15, 2008**

M/s. Bajaj Auto Ltd. filed a complaint on February 4, 2008 alleging (i) inappropriate action on behalf of MSEDCL based on its misinterpretation of the Commission's order dated November 20, 2007 in Case No.33 of 2007; and (ii) non compliance of Commission's Order dated November 24, 2003. The complaint has been filed under Sections 142 and 146 of the Electricity Act, 2003 ("EA 2003"). In this complaint, the complainant has also sought a clarification as to whether a licence is mandatory when due to the proposed de-merger of Bajaj Auto Ltd., 100% self use of wind energy will become 100% sale to third party. In the relief clause, the complainant has sought a direction that the tariff determined under the Commission's Order dated November 20, 2003 for wheeling of energy for self-use/third party sale from Group-II projects will apply even after 8 years after the date of commissioning. The complainant also contended that the open access charges determined by the Commission under the



Multi-Year Tariff Order of MSEDCL are not applicable to wind power transactions. The complainant further contended that the existing 2% wheeling charges and 5% transmission loss charges would continue for self-use/third party sale transactions in line with the MERC (Transmission Open Access) Regulations, 2005 and that no other/additional charges would be applicable. It is the further contention of the complainant that wheeling charges, transmission loss charge and transmission charges under the multi-year tariff order of MSEDCL are applicable to procurement from conventional sources, which should not be applied to wind power for captive use or third party sale or sale to licensee as separate tariff orders have already been issued by the Commission. The complainant sought a clarification that wind energy is neither captive generation nor generating station as per Section 9 or Section 7 of the Electricity Act, 2003 (EA 2003) but it is renewable energy, which will be regulated as per Section 86(1)(e) of EA 2003 only. It is averred in the complaint that billing charges and transmission charges as levied by MSEDCL appear to be unreasonable. The complainant has also sought for guidelines from the Commission to be issued to MSEDCL on account of above issues.

2. MSEDCL filed its reply on April 21, 2008 essentially contending that the complaint is not maintainable, in view of the fact that the relief claimed in the complaint cannot be adjudicated upon under Section 142 and 146 of the EA 2003.

3. An admissibility hearing was held on April 23, 2008. Shri S.P. Shende appeared for the complainant. Shri Devdatta Kamat along with Shri Abhishek Khare, Advocates, appeared for MSEDCL. Counsel for MSEDCL submitted that the reliefs claimed for in the present complaint cannot be entertained as a complaint under Section 142 and/or Section 146 but may have to be treated as a review proceeding or entertained under any other appropriate statutory provision but certainly so long as the complaint has been filed under section 142, the complainant would need to point out specifically as to which order and/or direction or provision of EA 2003 or rules/regulations thereunder have been contravened by MSEDCL. If the complainant fails to point out to the specific contravention, the jurisdiction of the Commission for providing clarification and/or guidelines in Section 142 proceedings as sought by the complainant, would be barred. Counsel for MSEDCL stressed that the complainant in the prayers made in the complaint has not only sought guidelines and clarifications from Commission but has also raised certain open ended issues, which can never be taken up in a complaint proceedings within the meaning of Section 142 or Section 146 of the EA 2003. Counsel relied upon the prayers made by the complainant in its Petition as under:

*“Humble Request to Hon’ble Commission”*

*Following clarifications are requested for smoothening wind energy transactions and accordingly, guidelines may please be issued to MSEDCL with immediate effect.*



1. *Continuation of existing wind power tariff order [WPTO] dated 24.1.2003 or wheeling of energy to third party –sale and/or self-use, to wind energy transaction of Group-II projects during and after 8 years from date of commissioning for those projects have not availed option of power sale to licensee under PPA since commissioning.*
2. *In view of the proposed de-merger of Bajaj Auto Ltd and MSEDCL's requirement whether license for part or full sale of Renewable energy from existing wind power project to any Industrial consumer is required.*
3. *Open Access charges as per MYT of MSEDCL and illustration tables 1.1 to 1.4 included in MERC's order dated November 20, 2007, Case No.33 of 2007 are not applicable to wind power transaction for full or part Self use/TP sale as preexisting WPTO dated November 24, 2003.*
4. *Existing 2% Wheeling and 5% Tr. Loss charges would continue for full or part wind energy transaction for Self use/TP sale as per Open Access regulation 2005 and no any other/additional charges would be applicable.*
5. *MERC's ruling is required in line with the WPTO dated November 24, 2003 that licensees MYT tariff of conventional grid power sale, Purchase transaction etc. should not be applied to Wind power (RE) for captive use or third party sale or sale to licensee, where as per Section 86 (1) of EA 2003, RE wise separate tariff orders, regulations etc. are available. Besides, wind energy is neither Captive Generation' nor 'Generating station' as per Section 9 or 7 of EA 2003 but, it is Renewable Energy would be regulated as per Sec. 86 (1)(e) of EA 2003 only."*

4. Counsel for MSEDCL further argued that the complainant ought to have had prayed for an order levying penalty, which the complainant has not done in his prayers. As such, the only remedy under Section 142 being penalty that may be levied, no clarification and/or guidelines can be taken up for issuance in the present proceedings within the meaning of Section 142 of EA 2003. Counsel for MSEDCL further submitted that the complainant may withdraw the present complaint and file an appropriate Petition either seeking review of relevant Orders or under other appropriate statutory provision.

5. During the hearing, the complainant submitted that MSEDCL has served a copy of its reply on the complainant during the hearing itself. As such, the complainant was permitted to file rejoinder, if any, within 10 days from the date of the hearing. The complainant filed its rejoinder on May 2, 2008.



6. Having heard the parties and after considering the materials placed on record, the Commission is of the view that neither the averments in the complaint nor oral submissions/ rejoinder of the complainant satisfies the aspect of maintainability. The prayers made under the complaint cannot be taken up in the complaint proceedings, as no contravention has been pointed out. The prayers made under the complaint seek clarifications and do not seek to impose penalty on MSEDCL. It has to be noted that there is a specific order passed by the Commission in the matter of Bajaj Auto Ltd. dated November 7, 2007. The complainant has not been able to point out any contravention by MSEDCL. The issue as to whether the open access charges levied by MSEDCL is in contravention of the multi-year tariff order of MSEDCL or the Order dated November 20, 2007 has not been explained by the complainant. The Commission cannot go into the merits of the case since the complainant has not been able to satisfy the Commission as regards the maintainability of its complaint under Section 142 or 146 of the EA 2003. It appears from the complaint that the real reason for filing of the same is the financial impact of various charges that will need to be borne by the complainant post the expiry of the Energy Purchase Agreement. These aspects cannot be taken up under the present proceedings. Furthermore, the complainant has also not been able to explain as to how the present complaint can be treated as a Review Petition. Consequently, the complaint as filed is dismissed as not maintainable.

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(A. Velayutham)  
Member



(P.B. Patil)  
Secretary, MERC