

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400 005
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Case No. 4 of 2008

**In the matter of
Complaint filed by M/s. Ajanta Limited under Sections 142 and 146 of the
Electricity Act, 2003**

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

M/s. Ajanta Limited
Orpat Industrial Estate,
Rajkot Highway,
Morbi – 363 641

... Complainant

Versus

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

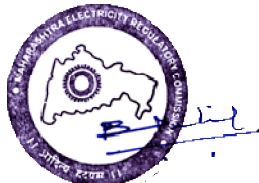
... Opponent

ORDER

Dated: July 16, 2008

M/s. Ajanta Ltd. filed a Petition on March 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"). The Petitioner has alleged that MSEDCL has deviated from the Order dated November 24, 2003 and started applying conventional energy tariff to Non-conventional (RE), w.e.f. April 1, 2007, amounting to the running of Group II projects – Self Use/ TP becoming unviable.

2. The complainant also alleged that since MSEDCL had started applying its MYT Order to Wind Power transactions for self-use/ TP sale to Group II projects in line with the Conventional Energy transactions w.e.f. April 1, 2007 and had issued Recovery Notices on January 17, 2008 to the project owners and warned that in absence of the payments, Credit Notes shall not be issued from January 2008 onwards, discouragement of wind power projects would be caused.



3. In the aforesaid complaint, the complainant also requested the Commission to clarify that the present 2% wheeling and 5% transmission loss charges would continue as per the present Order dated November 24, 2003 for wind power transactions for self-use/ Third Party sale during and after 8 years of the project life with respect to Group II projects.

4. The complainant has requested for clarifications 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.

5. Based on the above allegations and clarifications sought, the complainant made the following prayers in the aforesaid Petition:

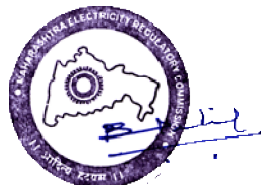
“Humble Request to Hon’ble Commission”

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

- (i) *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.*
- (ii) *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.*
- (iii) *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.*
- (iv) *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.”*

6. MSEDCL replied to the abovementioned complaint on April 21, 2008 with the following prayer:

“ 1) Honourable Commission may direct petitioner to honour MERC’s directives dated November 7, 2008 and November 20, 2007 to give credit



adjustment for such open access wheeling transactions by recovering applicable wheeling charge and transmission loss, after expiry of eight years validity period from date of commissioning of the Project.

2) The Honourable Commission may pass such orders which it may deemed fit in the interest of justice”

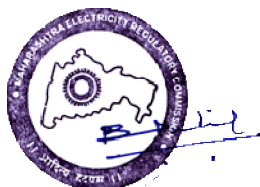
7. MSEDCL also raised a preliminary objection in the aforesaid complaint by filing its ‘Preliminary Objections’ with the Commission stating that the complaint was not maintainable in view of the fact that the relief claimed in the complaint could not be adjudicated upon under Sections 142 and 146 of the EA 2003.

8. An admissibility hearing was held on May 13, 2008. Shri. S.P. Singh appeared for the complainant. Shri Abhishek Khare, Advocate, appeared for MSEDCL. Counsel for MSEDCL raised the preliminary objection of maintainability and submitted that the reliefs claimed for in the present complaint could not be entertained as a complaint under Section 142 and/or Section 146 and that the present complaint seemed to be a Review Petition. Since the complaint had 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 failed to point out to the specific contravention, the jurisdiction of the Commission for providing clarification and/or guidelines in Section 142 proceeding as sought by the complainant, would be barred. Counsel relied to the prayers made by the complainant in the Complainant’s Petition as mentioned above and affirmed that the prayers were not maintainable under Section 142 of the EA 2003.

9. The Commission in the hearing granted 10 days time to the complainant to file a written submission to MSEDCL’s reply dated May 12, 2008 from the date of the abovementioned hearing.

10. The complainant filed its written submission dated May 21, 2008 on May 23, 2008. In this written submission, the complainant stated amongst other things the following in response to the points raised by MSEDCL’s Counsel in the aforesaid hearing:

- “1. Once an offence was committed, subsequent rectification will not escape penal action. MSEDCL had stopped wheeling when the complainant filed the abovementioned petition and hence MSEDCL was liable to penal action under section 142 of the EA 2003. The petition could not be rejected on the ground that cause of action did not exist.*
- 2. No EWA was executed by the complainant and hence the tenure of 8 years was not applicable in the complainant’s case and stoppage of wheeling certificates by MSEDCL was in violation of the MERC’s order and guidelines. The complainant had filed complaint requesting the commission to restrain MSEDCL from charging wheeling and transmission charges for current and subsequent period as it was not economically viable which can challenged by MSEDCL only by filing a review of Tariff petition and providing data for re-*



determination of wheeling and transmission charges in accordance with the provisions of Section 62 of the EA 2003.

3. *MSEDCL is liable for penal action under section 142 of EA 2003 for non-compliance of tariff order. ”*

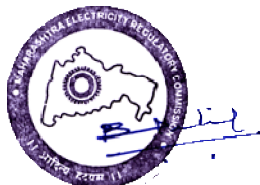
11. In its written submissions, the complainant submitted that the Petition filed by it was correct and maintainable. The complainant further stated therein that the complainant felt that MSEDCL had not intentionally contravened the Order of the Commission. The complainant requested the Commission to direct MSEDCL to follow the order or any other directive, which the Commission may feel proper in the facts and circumstances of the case. In spite of this, if MSEDCL felt that they had not contravened any order/ provisions then the complainant requested the Commission to take strict compliance of the provisions of Section 142 of the EA 2003.

12. In its written submissions, the complainant stated the following in response to the prayers made by MSEDCL in its reply to the complaint:

“1. *MSEDCL should understand that the 8 year tenure is applicable to Gr. II project for energy sale purpose and not for wheeling purpose. MSEDCL fails to understand that, there is no tenure for exclusive wheeling of wind energy for Self Use or TP sale in Maharashtra as per MERC’s order dated November 7, 2007. MSEDCL should pray to the Commission and indicate that applicability of wheeling MYT to RE projects become unviable, hence existing 2% wheeling charges and 5% Tr. Loss charges are to continue as per WPTO dated November 24, 2003.*

2. *MSEDCL has not prayed to the Commission to reject the aforesaid petition under section 142 and 146 of the EA 2003 on the basis of its maintainability indicating the fact that MSEDCL is not firm on applicability of MYT wheeling tariff of conventional energy to RE for self use/ TP sale. ”*

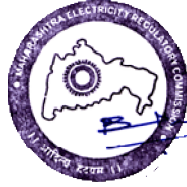
13. Having heard the parties and after considering the materials placed on record, the Commission is of the view that neither the averments in the complaint nor oral submissions/rejoinder of the complainant satisfies the aspect of maintainability. The prayers made under the complaint cannot be taken 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. The complainant has not been able to point out to 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