

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 21 of 2008

**In the matter of
Petition of Ban-Bro Metals Pvt. Ltd., seeking review of Clarificatory Order
dated 17.12.2007 to the extent of applicability of ASC and
determination of bench mark consumption.**

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

Ban-Bro Metals Pvt. Ltd.
L-4, M.I.D.C. Area
Ahmednagar – 414 111

... Petitioner

Versus

Maharashtra State Electricity Distribution Co. Ltd.,
Through it's S.E. (TRC)
5th Floor, Prakashgad, Bandra (East),
Mumbai – 400 051.

... Respondent

ORDER

Dated: August 5, 2008

M/s. Ban-Bro Metals Pvt. Ltd., the Petitioner herein, filed a Review Petition on May 5, 2008 under the provisions of Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 *inter alia*, seeking review of the Commission's Clarificatory Order dated 17.12.2007 to the extent of applicability of ASC and determination of bench-mark consumption, read with Clarificatory Orders dated 24.8.2007 and 11.9.2007 so far as they relate to the applicability of ASC. It is averred in the Petition that the impugned order dated 17.12.2007 creates imparity and discrimination amongst the consumers of same category and causes grave injustice to the Petitioner. It is averred in the Petition that the Petitioner was not a party in Case No.26 of 2007 and Case No. 65 of 2006 which has culminated into the said Order dated 17.12.2007, and as such to drive home its point, has submitted that it was not aware of the said Order dated 17.12.2007 till it received MSEDCL's energy bill for the month of February 2008 dated 22.2.2008, which it



received on 25.2.2008. Thus, as per the Petitioner, the cause of action arose on 25.2.2008, and therefore, this Petition is filed within time. It is averred that in case the Commission finds a delay, the same be condoned. The Petitioner has also filed an application seeking condonation of delay, along with its Petition.

2. The Petitioner has prayed as under:

“a) Review and modify the clarificatory order dated 17-12-2007 to the extent of its applicability of ASC and determination of Bench-mark consumption by suitably amending/or by inserting following example/clarification. “That while calculating the Benchmark consumption due effect be given to the number of days during which the unit is closed due to holidays, breakdown of machinery, maintenance or for any other like reason. For example if a unit is closed for certain days then the daily average consumption be calculated by dividing the recorded consumption by number of working days and thereafter the Benchmark consumption be calculated by multiplying the average daily consumption by 30.

b) All other just and equitable reliefs be granted for the effective adjudication of the subject matter involved in this petition and for its implementation.”

3. A hearing was held on June 17, 2008. Shri S.C. Karandikar, Advocate appeared for the Petitioner. Shri Abhishek Khare, Advocate along with Shri R.G. Sonawane, S.E. (TRC) appeared for MSEDCL.

Counsel for the Petitioner submitted that there was no intentional delay on the part of the Petitioner to file the Review Petition and the reasons have been given in the Petition, which is, according to him, sufficient ground to condone the delay. Counsel cited certain judgments in this regard to contend that if there are sufficient grounds then as far as condonation of delay is concerned, a liberal view should be taken.

4. The case of the Petitioner, briefly stated, is that its production Units in its factory have consumed less electricity during the month of November 2005 since they were completely closed for three days due to Diwali, one production Unit was closed for 6 days and other Unit was closed for 13 days due to maintenance and market recession. The Petitioner has submitted that there is certain ambiguity in the calculation of benchmark consumption, although the Commission has passed certain orders in this regard. However, the gravamen of the Petitioner has arisen on account of an additional demand of Rs.3,96,896.99 raised by MSEDCL, whereunder the stand taken by MSEDCL is that the bench mark consumption was revised with retrospective effect due to the revision in the bench mark consumption specified by the Commission in its Clarificatory Order dated 17.12.2007 read with Orders dated 24.8.2007 and 11.9.2007. The Petitioner has also submitted that determination of Additional Supply Charge by the Commission under its Tariff Order dated 20.10.2006 is not in accordance with the National Tariff Policy. The Petitioner further submits that the Commission has wrongly estimated losses in the said Tariff Order. The net out come of the Petitioner's submission is that, although, the National Tariff Policy provides that consumers may



pay a tariff which reflects “efficient costs” and accordingly, will have the right to get uninterrupted 24 hours supply of quality power, the Petitioner is paying higher cost due to inefficient working of MSEDCL. The Petitioner also submitted that MSEDCL has calculated the bench mark consumption of the Petitioner arbitrarily and incorrectly.

5. Counsel for MSEDCL opposed the Review Petition on grounds of the same being time barred.

6. Having heard the parties and after considering the materials placed on record, the Commission is of the view that due public involvement has been ensured in all proceedings relating to tariff determination before the Commission, since consumer representatives authorised on a standing basis under Section 94(3) of the Electricity Act, 2003, are given notice of the hearings and proceedings. As per Regulation 87 of the MERC (Conduct of business) Regulations, 2004, all proceedings before the Commission are open to the public. These proceedings have culminated into the Tariff Order dated 18.5.2007. Clarificatory Orders are part of the said proceedings. In view thereof, the Commission does not sustain the argument that the Petitioner being not individually served the notice regarding the hearing of Case No. 26 of 2007 and Case No. 65 of 2006, there was no opportunity for the Petitioner to plead its case. Moreover, Tariff Orders and Clarificatory Orders are not open to all types of permutations, combinations and situations involving a specific consumer, as contended and put forth by the Petitioner. The Tariff Orders and Clarificatory Orders thereunder are generic in nature and cannot take into account all types of eventualities and all types of problems of individual consumers. The Commission is of the view that due to isolated cases of consumers’ individual billing grievances, orders passed by the Commission would not be liable to be reviewed and as such, these isolated billing grievances do not amount to mistake or error in the order. The gravamen of the Petitioner has arisen on account of an additional demand of Rs.3,96,896.99 raised by MSEDCL whereunder the stand taken by MSEDCL is that the bench mark consumption was revised with retrospective effect due to the revision in the bench mark consumption specified by the Commission in its Clarificatory Order dated 17.12.2007 read with Orders dated 24.8.2007 and 11.9.2007. In case, as contended by the Petitioner, there is a grievance relating to wrong calculation of bench mark consumption by MSEDCL which culminates into an incorrect bill it may be a fit case for the Petitioner to approach the concerned Consumer Grievance Redressal Forum of MSEDCL as the said forum will have the jurisdiction to decide and redress a grievance in respect of any case involving non-compliance of any order of the Commission or any action to be taken in pursuance thereof within the jurisdiction of the said forum. The Commission will have no jurisdiction to entertain a case involving a billing dispute between a consumer and a distribution licensee. All other contentions raised by the Petitioner against the very validity of Additional Supply Charge determined under the Order dated 20.10.2006, may, if at all, be a subject matter of appeal and cannot be admitted under review proceedings. The grounds for the maintainability of review have not been satisfied when tested with the requirements of Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004.



7. However, it should be noted that in Appeal No. 135 of 2007 filed by M/s Eurotex Industries and Exports Limited before the Hon'ble Appellate Tribunal for Electricity (ATE), the Appellant had prayed that the benchmark period should be considered after a minimum period of six months after increase in the Contract Demand, and the linkage it to the third month in which the Billing Demand has exceeded the Contract Demand should be removed. In its Judgment dated May 12, 2008, the ATE ruled as under:

“20. So far as the applicability of the condition of increase in contract demand by 25% is concerned, the Appellant quantifies the condition as increase in the contract demand in its case is to the extent of 63.33 percent (increase from 3000 KVA to 4900 KVA). Further, the modification of the clause by introducing “third occasion of the consumer utilizing at least 75% of the increased sanctioned load/contract demand” will invariably be achieved in the third month after increasing the contract demand because the monthly maximum demand in each of the three months could be achieved without reaching the system stabilization. This leads to denial of the opportunity to Appellant for achieving optimum level of energy consumption and thereby making it difficult to claim ASC incentives for reduction in energy consumption as per the scheme. The expanded system to reach the maximum demand of 75% of the contract demand has still not reached the plateau of steady operation as it is within the given period of stabilization of six months. The two conditions are unequal insofar as the time period allowed for stabilization is concerned. Also, if the same time period is allowed in both the options for fixing the reference period “after six months” there is no relevance of the condition of “whichever is earlier” mentioned in the original clause 7.4(g) of the tariff order dated 18 May 07. Further, since the billing is based on both maximum demand and as well as energy consumption it appears reasonable and fair that second option of the clause 7.4(g), needs to be appropriately modified.

21. In view of the above we modify Clause 7.4(g) of the Tariff Order dated 18 Mar 07 to read as under:

*“In the case of consumers whose sanctioned load/contract demand had been duly increased after the billing month of December, 2005 the reference period may be taken as billing period after six months of the increase and the sanctioned load / contract demand **OR** the billing period after six months in which the consumer has utilized at least the same ratio of energy consumption as percentage of increase contract demand that has been recorded prior to the increase in sanctioned load/contract demand.”*



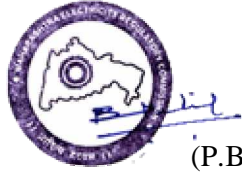
22. *We also direct the first respondent to refund and adjust against future billings, the amount of energy charges and other incidental charges paid by the Appellant on the basis of the benchmark units fixed in the third month (i.e. June 2006) and additional supply charges be calculated accordingly.”(emphasis added)*

8. Since the ATE has modified the relevant paragraph of the Clarificatory Order, MSEDCL has to revise the bills of all similarly placed consumers, including the Petitioner, and accordingly refund/adjust the amount of energy charges and ASC, with effect from May 1, 2008.

With the above observations, the Review Petition filed in Case No. 21 of 2008 is hereby dismissed.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC