

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 75 of 2010

In the matter of
Payment of interest on Regulatory Liability Charges collected by MSEDCL in view of
Judgment of Hon'ble Appellate Tribunal in Appeal Nos. 70 & 110 of 2008.

Shri. V. P. Raja, Chairman
Shri. Vijay L. Sonavane, Member

M/s. Lloyds Steel Industries Ltd. Petitioner
V/s	
Maharashtra State Electricity Distribution Company Ltd. (MSEDCL)Respondent

ORDER

Dated: 30th December, 2010

M/s. Lloyds Steel Industries Ltd. submitted a Petition under affidavit before the Commission on October 28, 2010, seeking for payment of interest on Regulatory Liability Charge (RLC) collected by MSEDCL, in view of the Judgment of Hon'ble Appellate Tribunal in Appeal filed by M/s. Ispat Industries Ltd. in Appeal Nos. 70 & 110 of 2008.



2. The Petitioner, in its Petition, prayed as under:

- “
1. *That the respondents to be directed to pay interest @18% per annum as per the calculation made by the Petitioner amounting to Rs 93.00 Crs till 15/09/2010 and on the same rate on and from 15/09/2010 till date of payment in monthly energy bills.*
 2. *That the respondents may be directed to refund this amount in monthly energy bill of Petitioner by crediting the same in equal installments such as the refund of interest is paid over within the period of 24 months.”*

3. The Petitioner, in its Petition submitted as under:

- a. The Petitioner is a company named M/s. Lloyds Steel Industries Ltd., engaged in the business of manufacturing of steel mainly the hot rolled/cold rolled coils and plates at their works located in the village of Bhugaon, District Wardha. It is one of the largest consumer of electricity having the supply of Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) at Extra High Voltage (EHV) i.e., 220 kV.
- b. The Commission in the Tariff Order dated March 10, 2004 in Case No. 2 of 2003 introduced the concept of RLC which provided the subsidising categories like the Petitioner to contribute the amounts of Maharashtra State Electricity Board (MSEB), the predecessor of the Distribution Company, keep afloat and thus enable it to meet the cost of the excess Transmission and Distribution Loss. The Tariff Order inter alia provided for refund of the amount to these consumer categories in future through the tariff when the Transmission and Distribution Losses are reduced.
- c. As per the said Order of the Commission, the Respondent MSEDCL charged the Petitioner the RLC along with its Energy Charge from March 2004 to October 2006. The MSEDCL recovered the RLC amounting to Rs. 67.08 Crore from the Petitioner.
- d. Subsequently, the Commission in its Tariff Order dated October 20, 2006 in Case No. 54 of 2005 directed MSEDCL to stop the recovery of RLC with effect from October



1, 2006. The Commission also directed MSEDCL to refund the collected RLC amount to the consumers. MSEDCL accepted that the RLC has to be refunded to the consumers.

- e. The Commission through its Tariff Order dated May 18, 2007 in Case No. 65 of 2006 for FY 2007-08 with respect to RLC refund directed MSEDCL to refund the RLC of Rs. 500 Crore out of the total amount of Rs. 3225 Crore to the specified consumer categories.
- f. The Commission in the above referred Order has specifically directed MSEDCL to refund Rs. 500 Crore as RLC which were given like a loan by the subsidising categories like the Petitioner to the Distribution Company i.e., MSEDCL.
- g. But in the year 2007, MSEDCL failed to refund the RLC in the bills issued for the month of May and June 2007.
- h. MSEDCL filed an application before the Commission seeking clarification on the directions given by the Commission in the Order dated May 18, 2007. The Commission vide its Order dated August 24, 2007 in Case No. 26 of 2007 and Case No. 65 of 2006 issued a Clarificatory Order. The relevant section of the Order is reproduced below:

“The refund is to be made to the category as a whole, and not to the respective consumer. Further, the refund has to be made in the same proportion as the contribution of RLC by the respective consumer category. The Commission has specified below, the amount of RLC refund in paise/kWh for the respective consumer category, to ensure ample clarity on the matter. Further, since the refund in paise/kWh has been computed on the basis of the annual sales projected for FY 2007-08, the actual amount of category-wise refund will have to be trued up at the end of the year, depending on the actual sales to the respective consumer category.

...

Since MSEDCL has not refunded the RLC for the bills issued till date during the period May 2007 to August 2007, the Commission has determined the monthly RLC refund in such a manner that the entire refund of Rs. 500 crores occurs over the



balance seven-months of the year, as computed above. This will also enable MSEDCL to overcome any liquidity constraints, which could occur if MSEDCL were directed to combine the refund of past three months with that due in August 2007, and give the balance refund thereafter.”

Further, the Commission in the Order held that the refund has to be made in the same proportion as the contribution of RLC by the respective consumer category.

- i. MSEDCL again filed a Review Petition on September 24, 2007, seeking for review of the Order dated August 24, 2007. However, the Commission dismissed the Petition of MSEDCL on November 1, 2007 in Case No. 47 of 2007.
- j. Aggrieved by the Commission’s decision, MSEDCL filed an Appeal before the Hon’ble Appellate Tribunal for Electricity (ATE) in AFR No. 1386 of 2007 against the Commission’s Order dated November 1, 2007.
- k. One of the subsidising consumers M/s Ispat Industries Ltd. filed an application for impleading in Appeal No. 109 of 2007 seeking a direction to MSEDCL for refund of the RLC pursuant to the dismissal of the Review Petition.
- l. The Hon’ble ATE allowed the AFR No. 1386 of 2007 filed by MSEDCL by setting aside the Order passed by the Commission and ruled as under:

“We find that the order dated November 1, 2007 rejecting the review petition is inter-alia based on the assumption that the appellant besides having filed the review petition had also preferred an appeal from the order of the MERC dated August 24, 2007 and the appeal was pending before this Tribunal. This assumption was not correct as no appeal was presented or pending against the order of the MERC dated August 24, 2007. This being so, the Order of the MERC dated November 1, 2007 in review petition filed against the order dated August 24, 2007, which proceeds on erroneous assumption, is required to be set aside.”

- m. In pursuance of the above, the Commission passed an Order dated April 2, 2008 in Case No. 47 and 92 of 2007 and directed MSEDCL to refund the RLC, ruling that the



Review Petition is allowed and the RLC amounts that are required to be returned would be effected by reduction in tariffs of the subsidised consumer categories that had contributed the RLC while at the same time MSEDCL is permitted to claim these amounts as expenses in its ARR so that all the consumers equally bear the RLC.

“the net result is that the review petition is allowed and the RLC amounts that are required to be returned would be effected by reduction in tariffs of the subsidized consumer categories that had contributed the RLC while at the same time MSEDCL is permitted to claim these amounts as expenses in its ARR so that all consumers equally bear the RLC. This direction would be in consonance with the order dated January 10, 2002 that that no single consumer category can be held responsible for the high level of T&D losses and all the consumers were required to be held equally responsible for the same. Commercial losses are caused by consumers who did not contribute the RLC amounts. Therefore, RLC would be a part of the regular tariff, which all consumers have to pay. This direction would be in consonance with the stated position in the minutes of the Technical Validation Session dated January 3, 2008 in Case No. 72 of 2007 that MSEDCL should propose RLC refund in FY 2008-09, so that entire liability of Rs. 3225 crore may be liquidated over a period of time. The Commission also clarified that MSEDCL may include the amount of RLC refund under the ARR as it would do for any other loan refund.

...

In view of the above observations and directions, no interest would be payable by MSEDCL to the contributing subsidising categories, with regard to the amount of RLC not refunded till date.”

- n. Further, the Commission passed a Tariff Order dated June 20, 2008 for the FY 2008-09. In this Order, the Commission directed MSEDCL to refund Rs. 500 Crore as against the entire amount of Rs. 3225 Crore collected by MSEDCL through RLC during the period of March 2004 and October 2006.



- o. One of the subsidising consumers, Ispat Industries Ltd. filed an Appeal before the Hon'ble ATE in Appeal No.70 of 2008 seeking payment of interest on the collected RLC against the Commission's Order dated April 2, 2008. It also filed an Appeal No. 110 of 2008 against the Tariff Order dated June 20, 2008. The Hon'ble ATE vide its Judgment dated August 5, 2010 ruled as under:

“we hold that the Appellant is entitled to the payment of interest along with the principal amount. To this extent, impugned orders are set aside. The Appellant claims the interest to be calculated at 18% p.a. However, in our opinion, it would be appropriate to direct the State Commission to fix the rate of interest keeping in view the prevalent prime lending rate.”

- p. The Petitioner had partially received the principal amount from MSEDCL which is of Rs. 30.44 Crore out of Rs. 67.08 Crore. Thus, the balance amount works out to Rs. 36.64 Crore. The interest rate on the total principle amount works out to Rs. 93.38 Crore as on September 15, 2010.
- q. Further, the Petitioner vide its letter dated September 7, 2010 demanded MSEDCL to increase the quantum of RLC refund and include the part of interest also in the monthly refund amount which is given in the monthly energy bill of the Petitioner.
- r. MSEDCL in reply to the Petitioner's letter informed the Petitioner that they have denied their liability to pay stating that there is no specific order from the competent authority and regarding the increase in the quantum of RLC refund will be considered only after Commission's directives. Hence, the Petitioner has approached the Commission.

4. The Commission vide its Notice dated November 9, 2010 scheduled a hearing in the matter on November 25, 2010 at 16.00 hrs in the presence of four authorised Consumer Representatives under Section 94(3) of the Electricity Act, 2003 (herein after referred to as EA 2003).

5. During the hearing, Advocate Shri. Rajneesh Agarwal appeared on behalf of Lloyds Steel Industries Ltd.(Petitioner) while Advocate Shri. Rahul Sinha, and Advocate Shri.



Abhishek Mitra appeared on behalf of MSEDCL, the Respondent. The key points discussed during the hearing are summarised as under:

- a) Advocate Shri. Abhishek Mitra stated that MSEDCL filed an Appeal with a Dairy No. 32593 of 2010 before the Hon'ble Supreme Court against the APTEL's Judgments, and this Appeal is slated for admissibility hearing on December 3, 2010. Therefore, the present matter may be deferred till the outcome of the said Appeal before the Hon'ble Supreme Court.
- b) Advocate Shri. Rajneesh Agarwal of Lloyds Steel Industries submitted that the Order of the Commission is applicable to all the consumers of MSEDCL. Based on that Order, he further stated that if such an Order of the Commission is challenged before the Hon'ble Appellate Tribunal by one consumer only, it does not mean that the outcome of the Hon'ble APTEL Order would be applicable to only that Appellant/consumer. Shri. Agarwal submitted that the Commission cannot discriminate the consumers of the Distribution Licensee. Therefore, the Petitioner's claim for interest on the RLC is justifiable.
- c) By referring to various Hon'ble Supreme Court Orders (Civil Appeal No. 4790 of 2006, U.P. Jal Nigam versus Jaswant Singh and Civil Appeal No. 1061-62 of 1998, Union of India versus West Coast Paper Mills Ltd.) Advocate Abhishek Mitra of MSEDCL refuted the claim of Lloyds Steel for inclusion of their claim and further submitted that the Hon'ble APTEL Order is applicable only to Ispat Industries Ltd. Moreover, MSEDCL had already filed a Civil Appeal before the Hon'ble Supreme Court with Dairy No. 32593 of 2010 against the Hon'ble ATE's Judgment dated August 5, 2010.

6. The Commission vide its Notice dated November 26, 2010 scheduled a hearing in the matter on December 15, 2010 at 15.00 hours in the presence of four Consumer Representatives authorised under Section 94(3) of the EA 2003 along with Case 44 of 2010.

7. During the hearing held on December 15, 2010, Advocate Rajneesh Agarwal of Lloyds Steel Industries and Advocate Subir Kumar of MSEDCL were present for the hearing, Shri. Digraskar, EE (TRC), MSEDCL was also present for the hearing.



8. During the hearing Advocate for MSEDCL Shri. Subir Kumar stated that the matter is seized before the Hon'ble Supreme Court and is to finally determine the liability to pay interest, if any, to the M/s. Ispat Industries Limited. In this view of the matter, it is respectfully submitted that MSEDCL's submissions herein are without prejudice to MSEDCL's stand before the Hon'ble Supreme Court and MSEDCL's submissions herein be not construed as an exercise to implement the payment of interest. MSEDCL further submitted that in its opinion, interest on RLC is not payable and same is being contested before Hon'ble Supreme Court.

9. Shri. Subir Kumar submitted that when the appeal was preferred no parties other than Ispat Industries Ltd. were present. Moreover, Ispat Industries Ltd. has already submitted that they issued an advertisement in the said matter in order to inform the other affected consumers, but none of the consumer responded to it. Thus, MSEDCL is of the view that the Hon'ble ATE's Judgment is applicable to only M/s. Ispat Industries Ltd. and not to Lloyds Steel Ltd.

10. Advocate Shri. Agarwal of the Petitioner, Lloyds Steel Ltd. submitted that on June 20, 2008 the Commission directed MSEDCL to refund an amount of Rs. 500 crore collected as RLC. Further, Shri. Agarwal stated that it is this Order which was challenged by Ispat in the form of Appeal. As per the Order of June 20, 2008 the Commission held that RLC is to be refunded with no interest. Rather, the Hon'ble ATE categorically delivered its Judgment which is not directed towards any one consumer. The same principle is applicable to the Petitioner and therefore, the net effect was that the Order was set aside. Therefore, the decision of the Hon'ble ATE is not only applicable to Ispat Industries Ltd., but also to the Petitioner.

11. The Commission enquired of the Petitioner about the cause of action. The Petitioner while replying referred to the Hon'ble ATE's Judgment dated August 5, 2010 and requested the Commission to fix the rate of interest keeping in view the prevalent prime lending rate. The relevant paragraph of the Judgment is reproduced below:

"In view of the above, we hold that the Appellant is entitled to the payment of interest along with the principal amount. To this extent, impugned orders are



set aside. The Appellant claims the interest to be calculated at 18% p.a. However, in our opinion, it would be appropriate to direct the State Commission to fix the rate of interest keeping in view the prevalent prime lending rate.

With these observations, the Appellant succeeds in these Appeals and the impugned orders are set aside to that extent as indicated above. Accordingly, the State Commission is directed to ensure that the Appellant is paid principal amount along with interest which is to be fixed taking note of the prevailing prime lending rate.”

12. The Respondent MSEDCL reiterated its submissions and submitted written submissions on December 23, 2010 in the matter. The submissions made by MSEDCL are as under:

- a) The Hon’ble ATE’s Judgment dated August 5, 2010 clearly reveals that the same is ‘judgment in personam’ in favour of Ispat Industries Ltd. and it does not create any right in favour of the Petitioner Lloyds Steel Industries Ltd. But the said Judgment has been intended to show as a ‘judgment in rem’ and applicable to all similarly situated persons.
- b) MSEDCL submitted that if the Judgment of the Ho’ble ATE been intended to be a judgment in rem and applicable to all similarly situated persons, the same would have been expressly stated in the judgement. In one of Hon’ble ATE’s Judgment in Appeal No. 130 of 2008, (Inorbit Malls India Pvt. Ltd. v/s MERC and others) the Hon’ble ATE while disposing the appeal specifically directed as under:

“06) Before parting with the appeal we also direct the Commission that while formulating new order in pursuance to this judgment it will give similar relief to all consumers who are placed similarly with the appellants herein so that other consumers similarly placed are not made to approach this Tribunal and cause avoidable expenses and consequent rise in tariff.”



- c) Therefore, the remedy sought by the Petitioner is not in the domain of the Commission and this can be granted only by the Hon'ble ATE through independent proceedings.
- d) Further, MSEDCL submitted that it had filed an Appeal against the said Judgment of Hon'ble ATE in the Hon'ble Supreme Court. The Hon'ble Supreme Court on December 3, 2010 admitted the matter and directed that the proceedings before the Commission to continue but stayed the refund of the interest.
- e) The Hon'ble Supreme Court is now seized of the matter and is to finally determine the liability to pay interest, if any, to Ispat Industries Ltd. In view of the facts, MSEDCL requested the Commission that the present submissions are without prejudice to its stand before the Hon'ble Supreme Court and the submissions herein should not be construed as an exercise to implement the payment of interest.
- f) MSEDCL is of the opinion that the interest on RLC is not payable and the same is being contested before the Hon'ble Supreme Court.
- g) Lastly, MSEDCL requested the Commission to dismiss the Petition of the Petitioner for direction of implementation of the Judgment of Hon'ble ATE passed on August 5, 2010 in Appeal No. 70 and 110 of 2008.

13. Having heard the parties and after considering the materials placed on record, the Commission is of the view that it would not be appropriate for this Commission to interpret as to whether Hon'ble Appellate Tribunal's aforesaid Judgment in Appeal Nos. 70 and 110 of 2008 dated 5 August, 2010 would also apply to the present petitioner when the present petitioner was not a party to the appeal that culminated into the aforesaid Judgement of the Hon'ble Appellate Tribunal. In view thereof, it would perhaps be apt for the Petitioner to move the Hon'ble Appellate Tribunal for a clarification in this regard.



The present petition in Case No. 75 of 2010 stands disposed of in view of the above.

(Vijay L. Sonavane)
Member

(V.P. Raja)
Chairman



(K.N. Khawarey)
Secretary, MERC

