

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 36 of 2011

In the matter of
Petition filed by M/s Ispat Industries Ltd. for clarification of Commission's Order dated
01.03.2011 in Case No. 44 of 2010.

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

M/s Ispat Industries Ltd

...Petitioner

V/s

Maharashtra State Electricity
Distribution Company Ltd.

....Respondent

ORDER

Dated: December 8, 2012

M/s Ispat Industries Ltd (*herein after referred to as "Petitioner"*) submitted a Petition under affidavit on April 20, 2011 for clarification of the Commission's Order dated March 01, 2011 in Case No. 44 of 2010 with regards to the date from which the interest on Regulatory Liability Charges (hereinafter referred to as "RLC") shall be payable and whether the interest so payable will be simple rate of interest or monthly compounded rate.

2. The Petitioner has prayed as follows:

“

- a) *clarify that the payment of interest shall be made from first date of payment of RLC by the Applicant till the actual date of refund and*
- b) *clarify that the interest payable at 11.75% would be on the monthly compounded rate of interest;*
- c) *pass such further and other order (s) as this Hon'ble Commission may deem fit and proper in the fact and circumstances of the case. ”*

3. The Petitioner in its Petition submitted as follows:

- a) The current Petition is filed for clarification with regard to the Order dated March 1, 2011 passed by the Commission in Case No.44 of 2010, pursuant to the Order dated August 05, 2010 passed by the Hon'ble APTEL in Appeal Nos. 70 and 110 of 2008. The Hon'ble APTEL while allowing the Appeal filed by the Petitioner herein recorded the following findings :

“26. The above orders would clearly indicate that the amount collected as Regulatory Liability Charges, from subsidy industries had been retained by the distribution company till October 2006 and the repayment and the repayment commenced in pursuance of the State Commissions' Order only in the year 2008-09. The retention of the money by the distribution company has, admittedly been held as a loan as per the orders of the State Commission. As such, the amount when returned, the principle of restitution and mandatory payment of interest would clearly be applicable.

32. 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.”

- b) The Hon'ble APTEL in the impugned Order dated August 5, 2010 directed to ensure that the Petitioner is paid the principal amount along with interest which is to be fixed taking into account the prevailing Prime Lending Rate (PLR). This Commission by its Order dated March 1, 2011 directed the rate of interest on the RLC amount outstanding as 11.75% per annum from the date of actual refund.
- c) Further pursuant to the Commission's Order dated March 01, 2011, the Petitioner filed an application being IA No. 9/2011 before the Hon'ble Supreme Court in the Civil appeal filed by the Respondent, MSEDCL. The Hon'ble Supreme Court vide its record of proceedings dated April 08, 2011 directed as follows:
"The interlocutory applications are dismissed. The civil appeals are expedited."
- d) The Petitioner seeks a clarification from the Commission with regard to the date from which the interest becomes payable. The interest has to be calculated from the date of payment of RLC till last payment is made by the Respondent, MSEDCL. In the present case, the RLC was imposed vide Commission Order dated March 10, 2004 and the same was discontinued with the effect from October 1, 2006. The Petitioner paid RLC charges from March 1, 2004 till September 30, 2006. The refund of the same commenced from July 2008 i.e. after a lapse of almost 4 years from the date of imposition of RLC.
- e) It is matter of commercial practice that while paying interest on the working capital, it is paid on monthly outstanding loan amount by any commercial enterprise. The Respondent would also be only paying interest on its funding from commercial banks on same basis.
- f) It has paid approximately Rs. 201.57 Cr for the period from 2003 to 2006 & as on date it has received only sum of approximately Rs.112.53 Cr on account of RLC. This payment has been received by the Petitioner without interest.
4. The Commission vide letter No. MERC/LEGAL/New Appln./2011/00266 dated May 04, 2011 directed the Petitioner, to rectify the deficiencies in the Petition within two weeks from the issue of the letter. In compliance of the same, the Petitioner rectified the

deficiencies & submitted the Petition to the Commission on May 17, 2011. Further the Commission vide notice dated June 2, 2011, scheduled a hearing on June 29, 2011, but the same was adjourned at the request from the Petitioner and rescheduled on July 25, 2011.

5. The Respondent, MSEDCL vide its affidavit dated July 21, 2011 submitted as follows:

a) The Hon'ble Supreme Court had dismissed the I.A No.9 of 2011 filed by the Petitioner, in Civil Appeal No.10279-10280 of 2010, on the grounds inter alia that liability to pay interest was the only question in the Appeal and therefore declined the Petitioner's prayer for release of interest during pendency of the Appeal.

b) It referred to the Hon'ble APTEL Order dated August 5, 2010 and reproduced the relevant portion of the same as follows:

“32.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.”

c) It was only on this limited aspect of the matter that the reference was made by the Hon'ble APTEL to the Commission. The above stated judgment of the Hon'ble APTEL in Appeals 70 and 110 of 2008 was challenged by MSEDCL before the Hon'ble Supreme Court vide Civil Appeal Nos. 10279-10280 of 2010. The Hon'ble Supreme Court has admitted the appeals where the main question is whether the Petitioner is entitled to interest. It further submitted that the Petitioner should have challenged the same before the Hon'ble Supreme Court or sought a clarification regarding the same from the Hon'ble APTEL, however, the Petitioner had not opted for either of the course of action. It is submitted that the present Petition is not maintainable, as the clarificatory Petition in Case No. 44 of 2010 had been filed pursuant to the limited reference by the Hon'ble APTEL, i.e. to determine the rate of interest.

- d) MSEDCL's Civil Appeal No. 10279-10280 of 2010 before the Hon'ble Supreme Court having been admitted, all questions related to the payment of interest on RLC amounts are now within the domain of the Hon'ble Supreme Court.
- e) The RLC amounts which were collected by MSEDCL pursuant to the Orders of the Commission under a specific directive Therefore, it is evident that the collection was never a loan and never a commercial arrangement, the questions on this aspect will also have to be determined by the Hon'ble Supreme Court while hearing the Civil Appeals. For the same reasons, all questions regarding the interest rate such as whether the same is to be simple annualized or compounded are also questions that ought to be addressed by the Hon'ble Supreme Court.
6. As regards the hearing on July 25, 2011, the Petitioner sought adjournment stating that it required time to consider the reply filed by the Respondent and file a rejoinder in the matter. In view of the above, the Commission re-scheduled next hearing on August 1, 2011.
7. During the course of hearing on August 01, 2011, the Petitioner once again requested the Commission to grant a short adjournment and prayed that the hearing be rescheduled on August 04, 2011. In view of the above, the Commission re-scheduled next hearing on August 17, 2011.
8. During the course of hearing on August 17, 2011, the Respondent MSEDCL, submitted that Hon'ble APTEL had directed the Commission to fix the rate of interest only, and the period from which the interest is payable would be specified by the Hon'ble APTEL. Further, it submitted that the Petitioner never raised these issues, during the course of hearings before Hon'ble APTEL. The Commission in consultation with the lawyers on the both the sides framed the following issues for further hearing:
- a) The "interest" is payable from which date?
 - b) Is the interest to be calculated as "simple interest" or "compound interest"?

The Commission directed both the parties to submit their written arguments, with respect to the above mentioned issues, after duly studying all the earlier RLC related orders issued by the Commission. The next hearing in the matter was scheduled on September 19, 2011.

9. In compliance of the directives issued during the hearing held on August 17, 2011 the Petitioner submitted a compilation of documents including the following:

- a) Tariff Order dated March 10, 2004 passed in Case No. 2 of 2003,
- b) Order dated October 20, 2006 passed in Case No. 54 of 2005,
- c) Order dated May 18, 2007 passed in Case No.65 of 2006,
- d) Master Circular-interest rates on advance dated July 01, 2006.

10. During the course of hearing on September 19, 2011 the Commission inquired the Respondent about the Petition filed by it, in the Hon'ble Supreme Court (Civil Appeal No.10279-10280 of 2010) and the prayers made therein. The Commission also inquired the Petitioner about the Interlocutory Application made by it (I.A. Nos. 9-10) in Civil Appeal stated above and the prayers made therein as the same had been dismissed by the Hon'ble Supreme Court as stated in the Record of Proceedings dated April 8, 2011. The Commission also referred the Hon'ble Supreme Court's Order dated December 3,2010 which stated that pending hearing and final disposal of the said Appeal, the proceedings before the Maharashtra Electricity Regulatory Commission could proceed, but there shall be no repayment until further orders. In view of the above, the Commission expressed views that prima facie the current case cannot be adjudicated, until the final disposal of the Appeal by the Hon'ble Supreme Court. The Advocate for the Petitioner prayed for one more hearing, with a view to providing further clarity as regards the Appeal filed in the Hon'ble Supreme Court and hence in view of the same, the Commission scheduled the next hearing on September 29, 2011.

11. Having heard both the parties and after considering the material placed on record, the Commission is of view as under:

- a) Hon'ble APTEL's in its judgment dated August 5, 2010 was pleased to direct the Commission as follows:-

32.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.

Thereafter, Hon'ble Supreme Court's in its Order dated December 3, 2010 was pleased to take the view as follows:

".....Pending hearing and final disposal of this appeal, the proceedings before the Maharashtra Electricity Regulatory Commission shall proceed. However, there shall be no repayment till further Orders. Liberty is granted to the parties to apply for further orders by way of I.A. after the matter is disposed of by the Maharashtra Electricity Regulatory Commission."

Hence, Hon'ble APTEL had directed the Commission to determine the rate of interest to be paid to the Petitioner and it was only limited aspect of fixing of rate of interest. The Commission has already fixed the rate of interest vide its Order dated March 1, 2011 in Case No. 44 of 2010 and directed as below;

"Hence the Commission hereby fixes the rate of interest on RLC amount outstanding as 11.75 % per annum from date of actual refund."

In the view of the above, the Commission opined that the phrase 'from the date of actual refund' does not clarify the date from which interest become payable to the Petitioner and direction from Hon'ble APTEL is only regarding the fixation of rate of interest.

The Commission hereby directs that the phrase ‘from the date of actual refund’ from the Commission’s Order dated March 1, 2011 in Case No. 44 of 2010 stands deleted and same should be read as below;

“Hence the Commission hereby fixes the rate of interest on RLC amount outstanding as 11.75 % per annum.”

- b) The next prayer made by the present Petitioner is to clarify that the interest payable at 11.75% would be on the monthly compounded rate of interest. If the interest was payable on monthly compounded rate of interest then the aforesaid Order dated March 1, 2011 would have said so.

The Commission referred to the Civil Appeal No. 10279-10280 of 2010 pending before the Hon’ble Supreme Court which was filed by the Respondent MSEDCL and opined that, in the view of the pending Appeal before the Hon’ble Supreme Court, the Commission is unable to issue any further directions or clarification in the current matter. Thus, the Commission directs that the current Petition stands disposed of with liberty to the Petitioner to come back after the judgment by the Hon’ble Supreme Court is issued in the above stated Appeal.

Accordingly, with the above directions, the Petition in Case No. 36 of 2011 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman