

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 70 of 2009

In the matter of
Petition filed by M/s Pidilite Industries Pvt. Ltd. seeking clarification of Order dated
November 24, 2003 in Case No. 17 (3), 3,4,5 of 2002 passed by the Commission

Shri. V.P. Raja, Chairman
Shri. S. B. Kulkarni, Member
Shri. V. L. Sonavane, Member

M/s Pidilite Industries Pvt. LtdPetitioner

V/s

Maharashtra State Electricity Distribution Company LimitedRespondent

ORDER

Dated: April 23, 2010

M/s.Pidilite Industries Ltd. has submitted a Petition under affidavit before the Commission on October 09, 2009 seeking clarification from the Commission's Order dated November 24, 2003, in Case No. 17 of 2002 and a direction upon MSEDCL to refund 50% of Capital Subsidy paid to MSEDCL under protest by the Petitioner.

2. The prayers of the Petitioner are as follows:

“

- a) *The Hon'ble Commission to hold and declare that demand of MSEDCL of the share of 50% of the capital subsidy received by Pidilite Industries Limited and Vinyl Chemicals (India) Limited (now Pidilite Industries Ltd, pursuant to the Order of demerger passed by the Bombay High Court dated 24.12.2007) is illegal.*
- b) *Hon'ble Commission to direct MSEDCL to refund Rs. 20 lacs to Pidilite Industries Ltd.”*



3. The Petitioner submitted that it had received an amount of Rs. 20 lakhs from the State Government of Maharashtra (“GOM”) as Capital Subsidy for putting up wind farms. Capital Subsidy of the same amount has also been received by M/s. Vinyl Chemicals Ltd. M/s. Vinyl Chemicals Ltd has now merged with the Petitioner Company. It has been submitted that MSEDCL demanded 50% from the said amount as its share relying upon an observation of the Commission in its Order dated November 24, 2003, which reads as follows:-

“
.....such benefits (Capital subsidy) if materializing in future, should be equitably shared between the developer and the purchasing agency.”

4. The Commission, vide its Notice dated December 18, 2009, scheduled a hearing in the matter on January 7, 2010, in the presence of the four Consumer Representatives authorised on a standing basis under Section 94(3) of the EA 2003 to represent the interest of the consumers in the proceedings before the Commission. The Commission also directed the Petitioner to serve a copy of its Petition, along with its annexures, to the Respondent (MSEDCL) and the four Authorised Consumer Representatives.

5. During the hearing, the Petitioner reiterated that it had received a capital subsidy of Rs. 20,00,000 from the GOM. However, MSEDCL relying on the aforesaid Order dated November 24, 2003, demanded from the Petitioner an amount of Rs. 10,00,000 representing 50% of the Capital subsidy amount.

6. The contention of the Petitioner is that in the present case, MSEDCL is not a purchasing agency as stipulated in the above quoted passage in the Order dated November 24, 2003. It is furthermore stated that MSEDCL on the other hand is only wheeling the electricity that is generated by the Petitioner’s wind farm at Sangli and the entire electricity that is generated is supplied to their factory which is at Mahad. The mechanism of issuance of credit notes by MSEDCL is followed but actually no electricity is sold to MSEDCL. Thus, MSEDCL is not and cannot be “the purchasing agency” within the meaning of the aforesaid Order dated November 24, 2003. During the hearing, representative of the Petitioner read out the following passages from its Petition in order to explain the factual matrix:-

“The wind energy is generated at M/s.Pidilite Industries Ltd. Wind Farm site at Sangli and consumed at Mahad. The energy is “wheeled” from M/s. Pidilite Industries Ltd’s Wind Farm site at Sangli to M/s. Pidilite Industries Ltd. Mahad unit using MSEDCL’s electrical distribution network through an “Energy Wheeling Agreement” (EWA) with MSEDCL. The energy generated at the Wind Farm site at Sangli is fed into the MSEDCL grid at Sangli at 33 KV voltage level. The number of units fed M/s. Pidilite Industries Ltd.’s Wind Farm into the grid is certified by MSEDCL (Sangli) and a Credit Note is issued by MSEDCL to M/s.Pidilite Industries Ltd. stating the number of units credited. M/s.Pidilite Industries Ltd. submits this credit note to MSEDCL Pen where the monthly energy billing of Mahad unit, the wind energy units (as per Credit Note) is deducted from the total consumption of units to calculate the net units consumed by M/s. Pidilite Industries Ltd. Mahad unit from MSEDCL. The amount payable by M/s.Pidilite Industries Ltd. Mahad unit to MSEDCL is calculated on the basis of these net units. The transmission of energy through MSEDCL lines is subjected to wheeling and transmission losses. Hence, some units are deducted from the total gross energy fed into the grid and the net energy is arrived at. The credit note gives information on Gross units.”



In short, based on the above, the contention is that MSEDCL is not “the purchasing agency” within the meaning of that portion of the Order dated November 24, 2003 which contemplates sharing of capital subsidy with the purchasing agency.

7. Nextly, the Petitioner contended that the portion of the Order dated November 24, 2003 that contemplates sharing of capital subsidy with the purchasing agency, does not apply to the Wind Mills who are under the category of “Self-use and Sale to Third Party”. In this regard, the Petitioner has submitted that similar issues were dealt with by the Commission in its Order dated December 19, 2009 in Case No. 30 of 2009 in the matter of Petition seeking clarification of MERC’s Order dated November 24, 2003, with respect to applicability of the Order to “Self-Use/ Third Party Sale”. The Petitioner has relied upon the following passages of the said Order dated December 19, 2009 :

“17. In the circumstances, letters issued by the Respondent demanding share in the Capital Subsidy from Group I projects and from those Group II projects which have yet not received Capital Subsidy, are hereby set aside. The Commission is also of the view that it would be in the interests of justice to direct MSEDCL, the Respondent herein, to immediately stop and desist from stopping issuance of credit notes to Group-I projects, Group-II Wind Mills who have not received the capital subsidy and where MSEDCL is not the purchasing agency that is it is hereby clarified that the observation in the aforesaid Order that “.... such benefits (capital subsidy) if materializing in future, should be equitably shared between the developer and the purchasing agency” does not apply to the wind Mills who are under the category of “Self-use and Sale to Third Party”. In case the Respondent has deducted any amounts on account of sharing of Capital Subsidy from the categories clarified above, being unauthorized in law to do so, Respondent is directed to immediately refund such amounts to such Wind farm developers.”

8. The Petitioner also submitted that it is a Group-II Project within the meaning of the Order dated November 24, 2003. However, no capital subsidy amount ought to be shared because MSEDCL is not the purchasing agency due to the fact that the concerned project is under the category of “Self-use and Sale to Third Party”.

9. On facts, the Petitioner submitted that earlier there were two companies viz., M/s Vinyl Chemicals and M/s. Pidilite Industries. Both of them received Capital subsidy of Rs.20,00,000/- for each projects. Thereafter, M/s. Vinyl Chemicals merged with M/s. Pidilite Industries and became one industry. Thus, the total amount of capital subsidy received would be Rs.40,00,000/- and out of which the Petitioner herein has paid Rs.20,00,000/- under protest to MSEDCL on March 12, 2009 based on the demand of MSEDCL to share 50% of the total Capital subsidy.

10. During the hearing the Petitioner was represented by Shri. Birendra Saraf, and Shri. Ratnakar Singh, Advocates. Shri. R.G. Sonawane and Shri. S.G. Bharti, represented the Respondent. The Commission enquired as to whether there is any clause in the Energy Wheeling Agreement relating to the sharing of Capital Subsidy and whether this agreement was approved by the Commission. The Petitioner clarified that MSEDCL has not demanded share of capital subsidy on the basis of the Energy Wheeling Agreement but have demanded the same on the basis of aforesaid Order dated November 24, 2003. -



11. The Respondents, MSEDCL have submitted their reply in the matter on January 13, 2010. The main averments of MSEDCL in its reply are as follows:

(a) MSEDCL has quoted certain portions of the Order dated November 24, 2003 which is as follows:

“

Government of Maharashtra declared capital subsidy up to a maximum of Rs. 20 Lakhs per project. Though it may not be a very significant amount for any major project consisting of large numbers of wind mills, yet from the data furnished by the MSEB it is observed that individuals or institutions in a wind farm own small number of windmills. For such owners holding an installed capacity e.g. 2x225 kW of less than one or two MW, this capital subsidy can be a significant (2-5% of Capital) amount. Further, MEDA has reported that this incentive has not been made available to the investors due to budget constraints and other procedural issues. In view of these uncertainties, this benefit has been ignored both for past and future installations.”

(b) MSEDCL submitted that vide letter No.19029 dated June 29, 2006 it had requested MEDA to send a list of wind developers who had availed the benefit of cash subsidy. MEDA vide letter no. 5660 dated July 24, 2007 and 5762 dated August 4, 2007 have submitted the list of investors to whom the capital subsidy of Rs. 20 Lakhs has been given. It was further submitted that, in order to comply with the Commission's Order, MSEDCL had requested wind developers i.e. M/s. Suzlon Energy Ltd., M/s. Enercon, M/s. REDAM, and M/s. InWEA to pay 50% of capital subsidy (i.e. Rs. 10 lakhs per project) to MSEDCL, saying that otherwise the same will be recovered from energy bill vide letter no. 23275 dated May 24, 2007 and letter No. 34335 dated September 3, 2007.

(c) It is further submitted that MSEDCL as per MERC Order dated November 24, 2003 has forwarded the Energy Purchase Agreement (EPA)/ Energy Wheeling Agreement (EWA) to Wind Developers for Group-I and Group-II Projects. Based on the Clarification received from the Commission, EPA/EWA has been forwarded.

(d) MSEDCL further submitted that the Petitioner has executed the EPA/EWA with (MSEDCL) for Self Use and Third Party Sale under Group-II Category. As per the Commission's Order dated November 24, 2003 and EPA/EWA executed with MSEDCL, 50% capital subsidy shall be recovered from developers for the option of sale of power to MSEDCL, Self Use and Third Party Sale.

As per the Article 18 of Subsidy Clause (Section 18.03 and 18.04) in the EWA it is stated as under:

“If the Seller/Owner/Self User/ Third Party Seller is getting any subsidy (Cost Subsidy to the extent of which is not considered by MERC while arriving at the Normative Tariff), the same shall be passed on to the consumer (MSEDCL's)”

- (e) MSEDCL submitted that MEDA in its affidavit dated 27.2.2008 submitted to the Commission that the project cost of Rs.500 Lakhs has been recovered considering the various benefits availed by Wind Developers and revenue from generation during eight years period. Result of this is that the consumer has obtained total benefit of Rs.1085.519 Lakh (sales Tax Benefit around 500 Lakh per MW + 100% depreciation on invested amount project promoters had saved income tax of Rs.183.75 Lakh per MW + Revenue from generation of Rs. 401.769 Lakh).

In case of Self Use and Third Party Sale, MSEDCL has given the credit in energy bills of Wind Developers. Wind Developer has earned the revenue by giving credit adjustment of wind generation against their HT consumption, for Group-I and Group-II projects. Thus, Wind Developer has already been relieved from all commercial liabilities/ obligation, within a period of eight years of operation of project. Now, the capital subsidy has been materialised and which has been recovered from Wind Developer, as per the Commission's Order dated November 24, 2003 (i.e. 50% share of cash subsidy Rs.10 Lakhs per project has been recovered).

- (f) Also regarding share of capital subsidy amount from only developers who have opted for sale to MSEDCL will in turn discourage the developers to sell their wind power to MSEDCL and they can switch to Self Use and Third Party Sale. This will in effect reduce the RPS Obligation to be achieved by MSEDCL.
- (g) MSEDCL further submitted that no Wind developer has objected the clause of share of Capital Subsidy amount as mentioned in EWA before signing the agreement and they have executed the agreement with MSEDCL. Also those wind developers who have not executed the EWA with MSEDCL, have also not approached either to the Commission or to MSEDCL regarding the Clause of share of Capital Subsidy. This shows that Wind Developers have accepted the Clause of share of capital subsidy in case of Self Use and Third Party Sales.

12. The Petitioner filed the rejoinder to the reply of the Respondents, MSEDCL in the matter of dated January 13, 2010. The Petitioner submitted the following explanation:

- a) Petitioner submitted that due to the non-application of mind in interpreting the Commission's Order, it has to file the present rejoinder to the Commission.
- b) Petitioner further submitted that the ground raised by the Respondent in the reply is totally frivolous and without any substance and based on the imagination of the Respondents. That the Respondents while claiming 50% of the Capital subsidy, has solely relied upon the Commission's Order dated November 24, 2003 in Case No.17(3),3,4 and 5 of 2002, wherein the Commission was pleased to give its observation that "such Benefits (Capital Subsidy) if materializing in future, should be equitably shared between the Developer and the Purchasing Agency". However, the aforesaid observation is not at all applicable to Petitioner as the Respondents are not the 'Purchasing Agency' and it is only the Wheeling Agency and therefore the Respondents claim is not only unjustified but is also patently illegal which cannot be entertained.
- c) It has been submitted that the Commission has very recently once again clarified the ambiguity of the Order, if at all understood by the Respondents, dated November 24, 2003 in Case No. 30 of 2009 of M/s. Nav Maharashtra Chakan Oils Mills Ltd. vide its Order dated December 19, 2009.



- d) It is further submitted that the Petitioner has at the time of hearing relied upon the Order dated December 19, 2009 passed by the Commission in Case No. 30 of 2009 of M/s. Nav Maharashtra Chakan Oils Mills Ltd., since their case squarely falls within the ambit of the said Order i.e. the said Order covers the case and issues raised by the Petitioner.
- e) It further added that the Respondents have once again attempted to misinterpret the Order dated November 17,2003 stating in their reply that the same is applicable in the case of the Petitioner, However in view of the recent Order dated December 19,2009 passed by the Commission in Case No. 30 of 2009 of M/s. Nav Maharashtra Chakan Oils Mills Ltd., it can be seen that by no stretch of imagination it can be construed that the Order dated November 17,2003 can apply to the facts of the case of Petitioner, and therefore the reply filed by the Respondents is nothing but again a clear misinterpretation of the Commission's Order.
- f) It is further submitted that reply of the Respondents is not at all required to be considered and should be rejected in toto by the Commission, and the Petition filed by the Petitioner be allowed.

13. Having heard the parties and after considering the materials placed on record, the Commission is of the view that while claiming share of 50% of the capital subsidy MSEDCL has solely relied upon the order of the Commission dated November 24, 2003 (Case No. 17 (3), 3,4, & 5 of 2002, where under the Commission gave an observation as under :-

“.... such benefits (capital subsidy) if materializing in future, should be equitably shared between the developer and the purchasing agency”.

However, the aforesaid observation is not at all applicable to the Petitioner herein as MSEDCL is not the ‘purchasing agency’, it is only wheeling the power. Hence MSEDCL’s claim is not only unjustified but is also patently illegal which ought to be set aside.

The aforesaid Order dated November 24, 2003 also provides as follows:-

3.4.4 Capital Subsidy

*Govt. of Maharashtra declared capital subsidy upto a maximum of Rs.20 Lacs per project. Though it may not be a very significant amount for any major project consisting of large numbers of wind mills, yet from the data furnished by the MSEB it is observed that individuals or institutions in a wind farm own small number of windmills. For such owners holding an installed capacity e.g. 2x225 kW of less than one or two MW, this capital subsidy can be a significant (2-5% of Capital) amount. Further, **MEDA has reported that this incentive has not been made available to the Investors due to budget constraints and other procedural issues.** In view of these uncertainties, this benefit has been ignored both for past and future installations. (for details please refer to the Commission's rulings under section 2.2.15)” {Emphasis added}*

In view of the above, after considering the reply filed by the Respondent the Commission finds that the contentions raised in the reply filed by the Respondent are without any merit.

The Commission is also of the view that it would be in the interest of justice to direct MSEDCL, the Respondent herein, to immediately stop and desist sharing of the Capital Subsidy from Group-II Wind Mills where MSEDCL is not the purchasing agency that is it is hereby clarified that the observation in the aforesaid Order that “... *such benefits (capital subsidy) if materializing in future, should be equitably shared between the developer and the purchasing agency*” does not apply to the wind Mills who are under the category of “*Self-use and Sale to Third Party*” and where MSEDCL is not the purchasing agency. The Respondent has not disputed that it is not the purchasing agency.

In view of the above, the following directions are passed:-

- a. Demand of MSEDCL to share Rs. 20,00,000/- representing 50% of the capital subsidy received by Petitioner and M/s. Vinyl Chemicals Ltd., is contrary to the Order dated November 24, 2003, and accordingly, such demand / claim is hereby set aside;
- b. MSEDCL is directed to refund the Capital Subsidy deducted by it within 30 days from the date of this Order.

With the above clarifications and necessary directions, the present case stands disposed of.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman



(K. N. Khawarey)
Secretary, MERC